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S. Croswell Argus
W. H. Johnson Argus
F. S. Key Argus

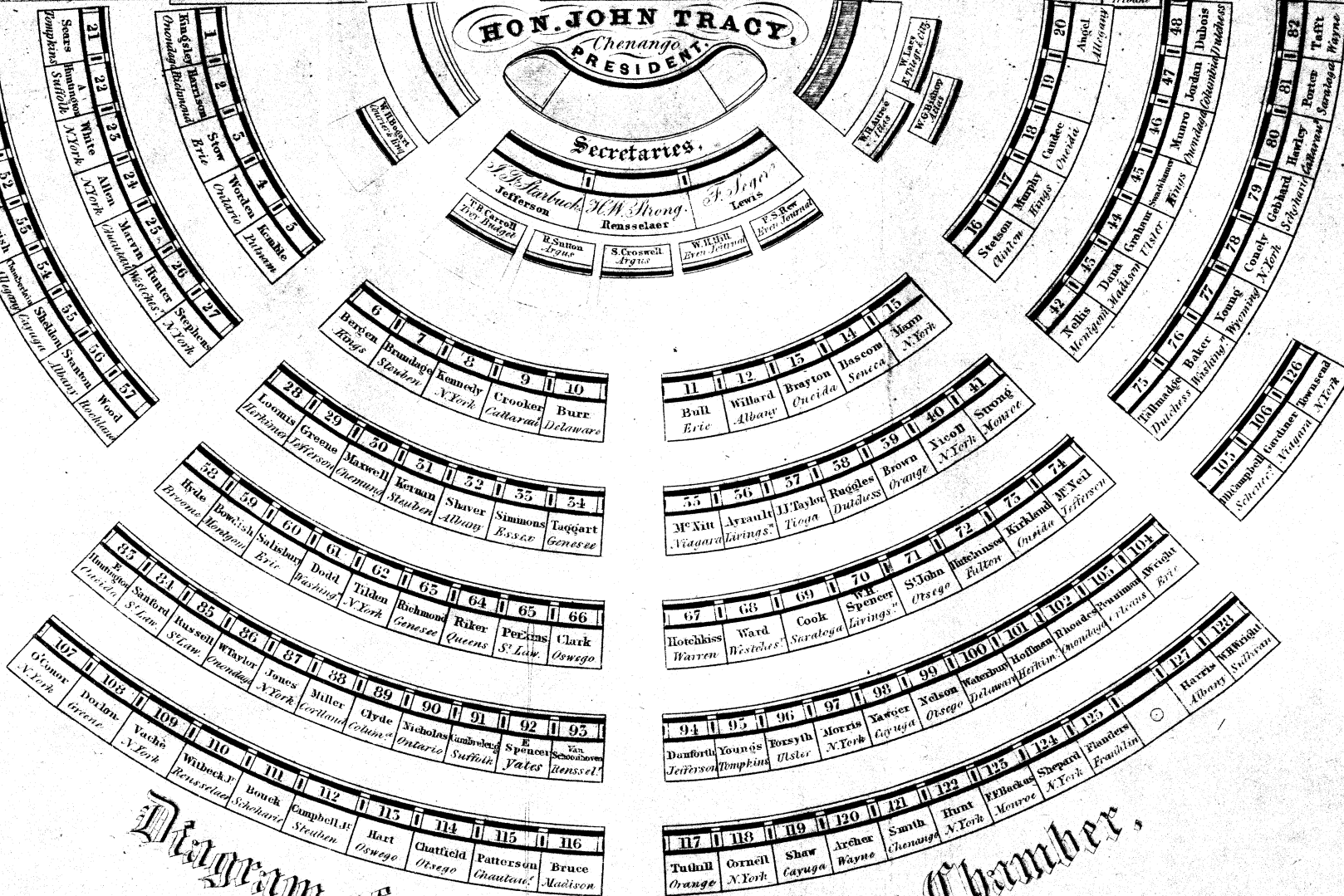


Diagram of the State Convention Chamber, 1846.

Seats for Visitors

1846.

Seats for Visitors

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DEBATES

AND

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PROCEEDINGS

IN THE

NEW-YORK (STATE)^{Constitutional} CONVENTION, 1846

FOR THE

REVISION OF THE CONSTITUTION.

BY. S. CROSWELL AND R. SUTTON,
Reporters for the Argus.

PRINTED AT THE OFFICE OF THE ALBANY ARGUS

.....

1846.

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INTRODUCTION.

THE reorganization of a State Government, by the People in their original sovereignty, through delegates appointed for that purpose, may well be regarded as an event of the highest interest, as it is certainly of the first magnitude in its results upon the welfare and prosperity of present and future generations. It is a proud feature in the history of our institutions, that the entire structure of the government may be remodded, great and radical changes perfected, and the terms of all official incumbents terminated—calmly, with perfect order, and with the cheerful acquiescence, or the undisturbed negation, of the sovereign power; and that a revolutionary movement, marked by such important changes, assumes the form of the organic law, without commotion, and with only such agitation as may be supposed to belong to an occasion affecting the rights, the liberties, and the interests of intelligent freemen.

The Convention for the revision of the Constitution of this State, which has just terminated its labors, affords an illustration, like that of 1821, of the admirable adaptation of our form of government, to the wants and condition of a free people, and the surest guarantee of its stability and permanence. Nor can it be regarded as indicative of a mere love of change, that at long intervals, material modifications of the structure of government, are demanded on the one hand, and conceded on the other, or that they are finally and perhaps radically resorted to. Defect is inherent in all human design and effort. Experience teaches the necessity, or the advantage, of change, as a part of the law of progress, whether in the departments of art, or science, or government. It was a new and admirable feature of the Constitution of 1821, that it provided for its own amendment. The present amended Constitution extends this principle, and provides not only the mode of intermediate amendment, but for the periodical submission of the question of entire and thorough revision.

The proceedings of such a body, and the principles and opinions which governed its action, as also the views and opinions of individual members, must be regarded with general interest, as matters of information, and for purposes of record and future reference. With this view, the reports now collected and published in this form, were undertaken by the reporters for the Argus; and, with such corrections as their rapid transfer from the columns of the paper to the pages of this edition

have allowed, are presented to the public. It embraces a full and minute journal of the daily proceedings of the Convention, with all the reports and propositions submitted and acted upon; and the speeches, arguments, debates and votes thereon. The final result of these deliberations is given in the amended Constitution, as prepared for publication by the Secretary of State, and which directly follows the debates and proceedings. To this is annexed a copy of the Constitution of 1821, and the subsequent amendments; and to these, a copy of the Constitution of 1777, with the amendment adopted in 1801. These will enable the reader to refer to and compare, at a glance, the results of the several Conventions for the adoption and revision of the Constitution, from the organization of the State government to the present time. To these we have annexed sundry statistical facts, and the votes on the question of "Convention" or "No Convention," as declared at the annual election in 1845. And the volume is rendered still more complete, by a copious Index, referring to the page for each subject, proposition and speaker.

That it is free from imperfections, is not pretended. But pains have been taken, and no expense has been spared, to render it as perfect and full as the circumstances under which daily reporting in deliberative bodies in this country, will allow. Several speeches not embodied in the regular daily proceedings, will be found in the Appendix, to which the reader is referred as a valuable addition to the work.

The importance and value of such a record, consists in affording a full and comprehensive view of the original articles and propositions; the modifications to which they were subjected; the form they finally assumed; the principles or grounds on which they were based; the arguments by which they were enforced, and which governed in their adoption; and the relative strength with which each article and amendment was carried, and by which analagous plans or propositions were defeated:—altogether forming an invaluable documentary and circumstantial record for future action under the instrument, and for future reference and construction if it shall obtain the approval and shall be adopted by the people.

To the general reader therefore, these contemporaneous reports will be found useful, as a valuable historical memorial, of what must be viewed now, and will be much more so regarded hereafter, as a memorable period in the annals of the state. To legislators and to jurists, and to all public men, they assume a higher degree of importance, as affording a knowledge of the spirit or *quo animo* of the occasion, and as a guide in deciding upon the meaning and construction of the Constitution. In this belief, this volume is submitted to the public judgment, and its authors and publishers hope, to the public favor.

STATISTICAL MEMORANDA.

THE question of "Convention" or "No Convention" was submitted to the people by the legislature of 1845, and the act of that session, entitled "an act recommending a Convention to the People of this State," and at the annual election in November of that year, the aggregate vote, as officially declared, was 213,257 for a Convention, and 33,860 for No Convention:—being a majority for the former of 179,397 votes.

In pursuance of this decision, the Convention assembled at the Capitol in the city of Albany, on the first day of June 1846. The delegates sedulously devoting themselves to the purpose of their convocation, remained in session until the 10th day of October—a period of 131 days.

The business of the Convention was first parcelled out or distributed by a committee of seventeen delegates, to eighteen different standing committees:—besides several select committees, subsequently appointed.

The Articles finally adopted, fourteen in number, and which form the Amended Constitution, were elaborately discussed,—many portions of them reconsidered and again discussed—and finally again considered and passed upon, through the report of a committee of revision, among the concluding proceedings of the Convention.

All the Articles of the Amended Constitution were adopted by large majorities, excepting the two important Articles in relation to the Judiciary and the Finances. Both these were debated elaborately, and with great ability. The former, which contemplates an entire change in this feature of the government, and introduces the anomaly of an entire *elective* judiciary, was adopted finally by a vote of fifty-three, (53) to forty-six, (46)—or a majority of seven. The provision of the latter which was most litigated, indeed the only material feature on which there was a marked division, was that in relation to the appropriation of the surplus revenues of the canals, and whether, after providing for the certain payment of the debt, these should remain subject to the disposition of future legislatures, or be definitely appropriated to the gradual completion of the unfinished public works. The latter proposition prevailed by a vote of 63 to 50, or a majority of thirteen; and was subsequently passed upon and re-enacted by about a like division of strength. The antagonist propositions were those of Mr. HOFFMAN, as modified by Mr. LOOMIS, on the one hand, and those of Messrs. BOUCK, CHAMBERLAIN, ANGEL, AYRAULT and STOW, on the other. The former, as originally presented, contemplated or authorized the sale of the unfinished works, and the appropriation of the surplus revenues, after providing for the speedy payment of the entire State debt, and for the support of government, to such objects as future legislatures should direct. The latter recognized the unfinished works as the inalienable property of the State, provided for the certain but less speedy payment of the public debt, and for the support of government, and for the specific appropriation of the surplus revenues to the completion of the unfinished public works. On this subject the proposition of Mr. WHITE, of New-York, being a modification of Mr. BOUCK's and Mr. LOOMIS's propositions, was finally adopted.

The discussions were characterized in the main, not only by ability and decorum, but by good temper, by an apparently sincere desire to attain right results, and by the absence of personal contention or party feeling and divisions.

The Constitution was engrossed on parchment, under the direction of a committee consisting of Messrs. NICOLL and BAKER, by JOHN CUYLER, esq., one of the clerks in the State Department. After the engrossed instrument had been finally read, adopted and signed by the several delegates, it was delivered in full Convention to the Hon. N. S. BENTON, Secretary of State, who was present, and received it from the hands of the President, to be deposited of record in his office.

CONVENTION VOTE—1845.

[OFFICIAL.]

STATE OF NEW-YORK, ss.—Statement of the whole number of votes given at the General Election, held in the said State, on the 4th day of November 1845, under and pursuant to the act entitled “An act recommending a Convention to the people of this State,” passed May 13, 1845.

Counties.	No. votes for “Convention.”	No. votes for “No Convention.”	Counties.	No. votes for “Convention.”	No. votes for “No Convention.”
Albany	7,873	568	Onondaga	8,743	45
Allegany	2,340	1,955	Ontario	5,437	104
Broome	2,050	615	Orange	4,681	606
Cattaraugus	1,726	678	Orleans	3,257	105
Cayuga	7,101	117	Oswego	5,495	59
Chautauque	3,575	146	Otsego	3,965	926
Chemung	2,060	88	Putnam	966	119
Chenango	4,169	245	Queens:	592	974
Clinton	2,133	249	Rensselaer	6,492	371
Columbia	4,799	893	Richmond	194	405
Cortland	3,677	173	Rockland	243	242
Delaware	4,587	247	St. Lawrence	5,611	328
Dutchess	5,132	500	Saratoga	4,418	304
Erie	5,440	225	Schenectady	1,227	431
Essex	1,616	437	Schoharie	2,754	1,240
Franklin	1,798	40	Seneca	2,749	152
Fulton and Hamilton	2,544	187	Steuben	4,636	253
Genesee	2,868	206	Suffolk	906	418
Greene	3,101	550	Sullivan	1,973	339
Herkimer	4,346	86	Tioga	2,077	155
Jefferson	6,397	1,100	Tompkins	4,280	400
Kings	2,072	1,048	Ulster	3,572	1,103
Lewis	1,277	738	Warren	934	808
Livingston	3,623	241	Washington	4,892	193
Madison	4,281	781	Wayne	4,748	125
Monroe	7,113	425	Westchester	1,267	1,346
Montgomery	3,096	315	Wyoming	2,770	307
New-York	10,967	7,186	Yates	2,869	87
Niagara	3,293	217			
Oneida	6,455	1,709			
			Total	213,257	33,860

We do hereby certify, that the preceding statement is correct.

Given under our hands at the Secretary of State's Office in the city of Albany, the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and forty-five.

N. S. BENTON, Secretary of State.

A. C. FLAGG, Comptroller.

BENJAMIN ENOS, Treasurer

LIST OF DELEGATES

To the New-York State Convention, held in the year 1846, to revise the Constitution of the State, arranged according to alphabetical order of the counties represented by them; with their several Places of Nativity, Ages, Profession or Occupation; and the foreign Country from which their Ancestors emigrated to this country.

Names of Members of the Convention of 1846.	Representing what County.	PLACE OF BIRTH.		Age	Profession or Occupation.	FROM WHAT EUROPEAN OR FOREIGN KINGDOM OR COUNTRY THEIR AN- CESTORS CAME.	
		County.	State or Country.			Paternal.	Maternal.
Horace K. Willard.....	Albany.....	Greene.....	New York.....	39	Physician.....	England.....	Germany.
Benjamin Stanton.....	Albany.....	Albany.....	New York.....	49	Farmer.....	England.....	England.
Ira Harris.....	Albany.....	Montgomery.....	New York.....	43	Lawyer.....	England.....	Scotland.
Peter Shaver.....	Albany.....	Albany.....	New York.....	50	Farmer.....	Germany.....	Germany.
William G. Angel.....	Allegany.....	Newport.....	Rhode Island.....	56	Lawyer & Far.	Wales.....	Scotland.
Calvin T. Chamberlain.....	Allegany.....	Kennebeck.....	Maine.....	50	Merchant & Far.	England.....	
John Hyde.....	Broome.....	Broome.....	New York.....	50	Farmer.....	England.....	England.
George A. S. Crooker.....	Cattaraugus.....	Greene.....	New York.....	45	Lawyer.....	England.....	England.
Alonzo Hawley.....	Cattaraugus.....	Saratoga.....	New York.....	38	Merchant.....	England.....	England.
Daniel John Shaw.....	Cayuga.....	Antrim.....	Ireland.....	53	Farmer.....	England.....	Scotland.
Peter Yawger.....	Cayuga.....	Hunterdon.....	New Jersey.....	58	Farmer.....	Germany.....	
Elisha W. Sheldon.....	Cayuga.....	Sullivan.....	N. Hampshire.....	45	Farmer.....	England.....	England.
George W. Patterson.....	Chautauque.....	Rochester.....	N. Hampshire.....	46	Farmer.....	Ireland.....	Ireland.
Richard P. Marvin.....	Chautauque.....	Herkimer.....	New York.....	42	Lawyer.....	England.....	
William Maxwell.....	Chemung.....	Bradford.....	Pennsylvania.....	52	Lawyer & Far.	Ireland.....	Holland.
John Tracy.....	Chenango.....	New London.....	Connecticut.....	62	Farmer.....	England.....	England.
Elisha B. Smith.....	Chenango.....				Lawyer.....		
Lemuel Stetson.....	Clinton.....	Clinton.....	New York.....	42	Lawyer.....	England.....	England.
Ambrose L. Jordan.....	Columbia.....	Columbia.....	New York.....	57	Lawyer.....	England.....	Ireland.
George C. Clyde.....	Columbia.....	Otsego.....	New York.....	43	Far. & Lawyer.....	Scotland.....	Scotland.
John Miller.....	Cortland.....	Dutchess.....	New York.....	68	Farmer.....	England.....	
David S. Waterbury.....	Delaware.....	Saratoga.....	New York.....	46	Farmer.....	England.....	
Isaac Burr.....	Delaware.....	Fairfield.....	Connecticut.....	65	Surveyor.....	England.....	Wales.
Peter K. Dubois.....	Dutchess.....	Dutchess.....	New York.....	50	Farmer.....	France.....	
Charles H. Ruggles.....	Dutchess.....	Litchfield.....	Connecticut.....	57	Lawyer.....	England.....	England.
James Tallmadge.....	Dutchess.....	Dutchess.....	New York.....	66	Lawyer & Far.	England.....	England.
Absalom Bull.....	Erie.....	Orange.....	New York.....	48	Lawyer.....	England.....	England.
Amos Wright.....	Erie.....	Grafton.....	N. Hampshire.....	52	Merchant.....	England.....	England.
Aaron Salisbury.....	Erie.....	Bennington.....	Vermont.....	58	Farmer.....	England.....	England.
Horatio J. Stow.....	Erie.....	Lewis.....	New York.....	36	Lawyer.....	England.....	England.
George A. Simmons.....	Essex.....	Grafton.....	N. Hampshire.....	55	Lawyer.....	England.....	England.
Joseph R. Flanders.....	Franklin.....	Orange.....	Vermont.....	31	Lawyer.....	Belgium.....	Ireland.
John L. Hutchinson.....	Fulton.....	Montgomery.....	New York.....	48	Farmer.....	England.....	Ireland.
Samuel Richmond.....	Genesee.....	Cayuga.....	New York.....	42	Farmer.....	Wales.....	Ireland.
Moses Taggart.....	Genesee.....	Franklin.....	Massachusetts.....	46	Lawyer.....	Ireland.....	Ireland.
James Powers.....	Greene.....	Columbia.....	New York.....	59	Lawyer.....	Ireland.....	Ireland.
Robert Dorlon.....	Greene.....	Queens.....	New York.....	62	Lawyer.....	England.....	England.
Michael Hoffman.....	Herkimer.....	Saratoga.....	New York.....	58	Lawyer.....	Germany.....	Ireland.
Arphaxed Loomis.....	Herkimer.....	Litchfield.....	Connecticut.....	48	Lawyer.....	England.....	England.
Elihu M. McNeil.....	Jefferson.....	Hampshire.....	Massachusetts.....	48	Farmer.....	Scotland.....	England.
Alpheus S. Greene.....	Jefferson.....	Providence.....	Rhode Island.....	50	Physician.....	England.....	
Azel W. Danforth.....	Jefferson.....	Middlebury.....	Vermont.....	52	Farmer.....	England.....	
Conrad Swackhamer.....	Kings.....	Hunterdon.....	New Jersey.....	31	Mechanic.....	Germany.....	England.
Tunis G. Bergen.....	Kings.....	Kings.....	New York.....	40	Farmer.....	Holland.....	Holland.
Henry C. Murphy.....	Kings.....	Kings.....	New York.....	35	Lawyer.....	Ireland.....	England.
Russell Parish.....	Lewis.....	New Haven.....	Connecticut.....	56	Lawyer.....	England.....	England.
William H. Spencer.....	Livingston.....	Middlesex.....	Connecticut.....	63	Farmer.....		
Allen Ayrault.....	Livingston.....	Berkshire.....	Massachusetts.....	52	Bank & Farm.	France.....	
Federal Dana.....	Madison.....	Hampden.....	Massachusetts.....	57	Farmer.....	France.....	England.
Benjamin F. Bruce.....	Madison.....	Madison.....	New York.....	31	Farmer.....	Scotland.....	Germany.
Enoch Strong.....	Monroe.....	Litchfield.....	Connecticut.....	63	Farmer.....	England.....	England.
Harry Backus.....	Monroe.....	Rutland.....	Vermont.....	52	Furnace-man.....	England.....	
Frederick F. Backus.....	Monroe.....	Litchfield.....	Connecticut.....	51	Physician.....	England.....	
John Bowdish.....	Montgomery.....	Montgomery.....	New York.....	38	Merch't & Far.	England.....	England.
John Nellis.....	Montgomery.....	Montgomery.....	New York.....	49	Lawyer & Far.	Germany.....	Germany.
Wm. S. Conely.....	New York.....	New York.....	New York.....	47	Mechanic.....	Ireland.....	England.
Solomon Townsend.....	New York.....	Queens.....	New York.....	40	Merchant.....	England.....	Ireland.
George S. Mann.....	New York.....	Grafton.....	N. Hampshire.....	46	Merchant.....	England.....	Germany.
Henry Nicoll.....	New York.....	New York.....	New York.....	33	Lawyer.....	England.....	England.
John H. Kennedy.....	New York.....	Baltimore.....	Maryland.....	43	Paint Dealer.....	Ireland.....	Ireland.
Charles O'Connor.....	New York.....	New York.....	New York.....	42	Lawyer.....	Ireland.....	
Alexander F. Vache.....	New York.....	New York.....	New York.....	46	Physician.....	France.....	Canada.
Samuel J. Tilden.....	New York.....	Columbia.....	New York.....	32	Lawyer.....	England.....	Wales.
Benjamin F. Cornell.....	New York.....	Newport.....	Rhode Island.....	34	Blacksmith.....	England.....	England.

LIST OF DELEGATES—(CONTINUED.)

Names of Members of the Convention of 1846.	Representing what County.	PLACE OF BIRTH.		Age.	Profession or Occupation.	FROM WHAT EUROPEAN OR FOREIGN KINGDOM OR COUNTRY THEIR ANCESTORS CAME.	
		County.	State or Country.			Paternal.	Maternal.
John L. Stephens	New York	Monmouth	New Jersey	39	Lawyer	England	Wales
David R. F. Jones	New York	Queens	New York	33	Lawyer	Wales	Ireland
Lorenzo B. Shepard	New York	Greene	New York	25	Lawyer	England	England
John H. Hunt	New York	Greene	New York	42	Printer	England	England
Campbell P. White	New York	Antrim	Ireland	60	Merchant	Ireland	Ireland
Robert H. Morris	New York	New York	New York	42	Lawyer	Wales	England
Stephen Allen	New York	New York	New York	73	Mechanic	England	Germany
John W. McNitt	Niagara	Hampshire	Massachusetts	59	Farmer	Scotland	England
Hiram Gardner	Niagara	Dutchess	New York	46	Lawyer	England	England
Charles P. Kirkland	Oneida	Oneida	New York	48	Lawyer	England	England
Hervey Brayton	Oneida	Oneida	New York	44	Merchant	England	Ireland
Julius Candee	Oneida	New Haven	Connecticut	46	Merchant	England	England
Edward Huntington	Oneida	Oneida	New York	28	Civil Engineer	England	England
Elijah Rhoades	Onondaga	Hampshire	Massachusetts	55	Merchant	England	England
Cyrus H. Kingsley	Onondaga	New London	Connecticut	56	Farmer	Wales	Ireland
David Munro	Onondaga	Cheshire	Massachusetts	62	Farmer	Scotland	Scotland
William Taylor	Onondaga	Hartford	Connecticut	54	Physician	England	England
Robert C. Nicholas	Ontario	Stafford	Virginia	44	Farmer	England	Scotland
Alvah Worden	Ontario	Saratoga	New York	48	Lawyer	England	England
John W. Brown	Orange	Orange	New York	38	Lawyer	France	France
Lewis Cuddeback	Orange	Orange	New York	38	Merchant	France	France
George W. Tuthill	Orange	Seneca	New York	45	Farmer	France	France
William Penuman	Orleans	Hillsborough	N. Hampshire	53	Farmer	England	England
Serenio Clark	Oswego	Hampshire	Massachusetts	52	Far. & Surveyor	England	England
Orris Hart	Oswego	Hartford	Connecticut	55	Merchant	England	England
Levi S. Chaffield	Otsego	Otsego	New York	38	Lawyer	Scotland	Scotland
David B. St. John	Otsego	Saratoga	New York	43	Farmer	England	England
Samuel Nelson	Otsego	Washington	New York	53	Lawyer	Ireland	Ireland
Gouverneur Kemble	Putnam	New York	New York	60	Iron Master	England	France
John L. Riker	Queens	Queens	New York	59	Lawyer & Far.	Holland	England
Perry Warren	Rensselaer	Rensselaer	New York	47	Farmer	England	England
Abram Witbeck	Rensselaer	Rensselaer	New York	36	Farmer	Holland	England
Wm. H. Van Schoonhoven	Rensselaer	Saratoga	New York	35	Lawyer	Holland	Holland
John T. Harrison	Richmond	Middlesex	New Jersey	60	Physician	England	Scotland
John J. Wood	Rockland	Rockland	New York	62	Farmer	England	Scotland
James M. Cook	Saratoga	Saratoga	New York	38	Manufacturer	England	England
John K. Porter	Saratoga	Saratoga	New York	27	Lawyer	England	France
Daniel D. Campbell	Schenectady	Schenectady	New York	42	Farmer	Holland	Scotland
John Gebhard, Jun.	Schoharie	Schoharie	New York	43	Geol. & Natur't	Germany	Germany
William C. Bouck	Schoharie	Schoharie	New York	60	Farmer	Germany	Germany
Ansel Bascom	Seneca	Onondaga	New York	60	Lawyer	England	England
Bishop Perkins	St. Lawrence	Berkshire	Massachusetts	58	Lawyer	England	Scotland
John Leslie Russell	St. Lawrence	Franklin	Vermont	41	Law. & L. Ag't	England	England
Jonah Sanford	St. Lawrence	Addison	Vermont	55	Farmer	England	England
William Kenan	Steuben	Cavan	Ireland	65	Farmer	Ireland	Scotland
Robert Campbell, Jr.	Steuben	Steuben	New York	37	Lawyer & Far.	Scotland	Scotland
Benjamin S. Brundage	Steuben	Orange	New York	53	Farmer	England	Dutch
Abel Huntington	Suffolk	New London	Connecticut	69	Physician	England	England
Churchill C. Cambreleng	Suffolk	Beaufort	N. Carolina	59	Farmer	Teneriffe	Scotland
William B. Wright	Sullivan	Orange	New York	38	Lawyer	Ireland	Ireland
John J. Taylor	Tioga	Worcester	Massachusetts	38	Lawyer	England	England
Thomas B. Sears	Tompkins	Putnam	New York	37	Farmer	England	England
John Youngs	Tompkins	Orange	New York	45	Miller & Surv.	Germany	Scotland
James C. Forsyth	Ulster	Orange	New York	27	Lawyer	Scotland	Scotland
George G. Graham	Ulster	Ulster	New York	31	Physic. & Far.	Ireland	Scotland
William Hotchkiss	Warren	Albany	New York	40	Mechanic	England	Holland
Edward Dodd	Washington	Washington	New York	10	Merchant	England	Ireland
Albert L. Baker	Washington	Saratoga	New York	30	Lawyer	England	Wales
Horatio N. Taft	Wayne	Berkshire	Massachusetts	40	Mechanic	Wales	England
Ornon Archer	Wayne	Washington	New York	31	Teacher	England	England
Aaron Ward	Westchester	Westchester	New York	51	Lawyer	England	Holland
John Hunter	Westchester	Philadelphia	Pennsylvania	56	Farmer	England	Ireland
Andrew W. Young	Westchester	Schoharie	New York	14	Author	Germany	Ireland
Elijah Spencer	Yates	Columbia	New York	70	Farmer	England	Ireland

THE CONVENTION

REPORTED FOR THE ALBANY ARGUS.

MONDAY, JUNE 1, 1846.

At 12 o'clock this day, the members elected to the Convention to revise the Constitution of this State, met in the Assembly chamber at the Capitol, agreeably to the law which called the Convention into existence. Hon. N. S. BEN- TON, Secretary of State, called the Convention to order, and announced that he attended with a certified roll of the members elected to the Convention, which he would call over to ascertain whether there was a quorum present.

The roll was called accordingly, and all the delegates elect answered to their names, except Mr. NELSON of Otsego, Mr. PORTER of Saratoga, and Mr. YOUNG of Wyoming.

Mr. HOFFMAN then rose and said a quorum of the Convention having appeared and answered to their names, it became necessary that the convention should take the proper steps under the act calling them together, for their organization. He understood the Secretary of State had with him not only the list of members which had been read, but the original returns also from which the list was made; if therefore there were no question made as to the returns, and he believed there were none, the next business would be for the Convention to proceed according to the act. That act declares that a presiding officer shall be chosen by ballot; it then prescribes the choice of other officers to complete the organization of the body. Desiring to proceed in a manner most agreeable to the Convention itself—in the manner most usual in like cases—he would move that CHARLES H. RUGGLES, of the county of Dutchess, be appointed the Chairman of this Convention, to preside over its deliberations until a President be elected and shall have taken his seat.

The SECRETARY OF STATE put the question to the Convention and Mr. RUGGLES was elected without dissent.

Mr. RUGGLES accordingly took the chair, to which *pro tempore* he had been elected.

Mr. RUGGLES, having taken the chair, announced that the first business for the Convention would be to proceed to the choice of a President by ballot.

The roll was then called by the Secretary of State, and delegates, as their names were called, advanced and deposited their ballots. The result of the ballot was as follows, Messrs. O'CONOR of New-York, BROWN of Orange, and STETSON of CLINTON, acting as tellers:

John Tracy,	69
Alvah Worden,	11
Geo. C. Clyde,	9
James Tallmadge,	7
John Miller,	6
Ambrose L. Jordan,	5
Chas. P. Kirkland,	6

G. W. Patterson,	3
Geo. A. Simmons,	2
Chas. D. Rugges,	1
Eljah Rhoades,	1
Blank,	6

JOHN TRACY of Chenango, having received a majority of all the votes cast, was declared by the CHAIR to be elected President.

The CHAIR named Messrs. ALLEN of New-York, and TALLMADGE of Dutchess, to conduct the President to the Chair.

The PRESIDENT, on taking the chair addressed the Convention as follows:

"Gentlemen of the Convention—I return you my most sincere thanks for the honor you have done me, in selecting me as your presiding officer. I enter on the execution of the duties of the office with diffidence—with a deep sense of its importance and responsibilities. You may be assured of my best efforts to discharge its duties faithfully and impartially, and I shall rely on your aid and assistance in giving effect to such rules and regulations as you may adopt for the preservation of order in the transaction of the business of the Convention. Allow me, gentlemen, to express the hope that the result of our labors here may promote the happiness and enduring prosperity of the people of this State.

Mr. STETSON of Clinton, remarked that the act under which we had assembled, provided that this body might appoint one or more secretaries. It did not require a ballot. In conformity with the provisions of the act, and guided by the precedent at the opening of the convention of '21, he begged leave to offer the following:—

"Resolved, That JAMES F. STARBUCK of Jefferson, and HENRY W. S'ONG of Reinselaer, be and they are hereby appointed secretaries of this Convention."

The resolution was adopted.

Mr. NICOLL of New-York, offered the following:—

"Resolved, That HIRAM ALLEN of Columbia, be and he is hereby appointed Sergeant-at-Arms of this Convention."

Mr. HOFFMAN:—The act originating the organization of this body, does not, in terms, make any mention of a Sergeant-at-arms. But a Sergeant is exclusively the executive officer of the house. It is so necessarily incident to every deliberative body, that I presume the Convention will have no difficulty in coming to the conclusion that we cannot be entirely organized without a Sergeant. Though not designated in the act in terms, it is strongly implied in it, and from the necessity of the case is indispensable. I therefore second the resolution, and shall vote for it with pleasure.

Mr. NICOLL'S resolution was adopted.

Mr. CAMBRELENG, of Suffolk, offered the following, which was adopted:—

“Resolved, That HEMAN R. HOWLITT, be and he is hereby appointed Door Keeper of this Convention.”

Mr. WARD, of Westchester, offered the following:—

“Resolved, That a committee of five be appointed by the President to prepare rules for the government and regulation of the proceedings of the Convention.”

Mr. HOFFMAN remarked that the rules and regulations by which a deliberative body were to proceed, were its law, and a most important matter for it to settle, being in fact the settlement of the means by which it would reach its end. It appeared to him therefore that it would be well to increase the number. He was not tenacious as to the particular number. In this case, he confessed, he should prefer a committee of 7.

Mr. WARD assented to that modification of the resolution, and as amended, it was adopted.

Mr. HOFFMAN moved that 11 o'clock be the hour of meeting hereafter, until otherwise directed by the Convention, which was agreed to.

Mr. BOUCK offered a resolution directing the Secretary to wait upon the clergymen of this city, and request them to make arrangements among themselves so that one of their number

shall open the daily meetings of the Convention with prayer. The resolution was agreed to.

Mr. MANN said some provision was necessary that they might be provided with seats. He therefore moved that they proceed at once to ballot for them.

After a conversational debate a resolution was adopted directing the Secretary to prepare ballots with consecutive numbers from 1 to 127 and deposit them in a box, and that some one member should be appointed to draw them therefrom as the names of the members were called, and that a committee of 3 be appointed to superintend the depositing of the ballots therein.

Mr. TILDEN moved that the Secretary be directed to furnish the usual number of newspapers to the members of the Convention.

Mr. CHATFIELD doubted if they had authority to make such an appropriation, or indeed any appropriation of the public money.

Mr. SWACKHAMER hoped the resolution would not be adopted.

Mr. RICHMOND moved to lay the resolution on the table—which was carried.

A motion to adjourn was made and lost.

Mr. CHATFIELD expressed the hope that the Convention would proceed to draw for seats.

On motion of Mr. WARD the Convention then adjourned to 11 o'clock to-morrow morning.

TUESDAY, JUNE 2.

Prayer by the Rev. Dr. WYCKOFF.

The minutes of yesterday were read, and on the motion of Mr. TALLMADGE, were amended so as to state the fact that the Secretary of State attended in person, called the Convention to order, and delivered the list of members to the Convention. As amended, the minutes were approved.

The PRESIDENT announced the following as the committee on rules, under the resolution of yesterday, viz: Messrs. WARD, TALLMADGE, LOOMIS, PATTERSON, CAMBRELENG, CHATFIELD and SIMMONS.

A MANUAL.

The PRESIDENT announced the first question in order to be on a resolution offered yesterday by Mr. BOWDISH, as follows:

“Resolved, That each member of the Convention be furnished, at as early a day as practicable, with a copy of our present Constitution, printed in proper size and form to be preserved with the files of the proceedings of this Convention.”

Mr. WARD moved as an amendment that the book be printed in pamphlet form, and that it contain the old and new Constitution with the various amendments which have been made therein.

Mr. STRONG suggested that the Constitution of the United States should also be included.

Mr. MURPHY suggested that the proposed book should also contain the act calling the Convention into being, together with the amendatory act which had been passed.

Mr. RUSSELL said it appeared to him that the resolution, even with the proposed amendments, would not be sufficiently comprehensive to meet the purpose of its mover. Most of them

were aware that several states of this Union had recently met in Convention and adopted new Constitutions, including new subjects of constitutional law. But few of them had seen those constitutions, and he presumed every member of this Convention would be desirous of reviewing those new provisions of constitutional law which had been adopted by other states. It would be exceedingly proper and necessary to their convenience that they should have those Constitutions before them; and it appeared to him that a sort of manual, about the size of the Red Book of the Legislature, embracing the act creating this Convention, and our own constitutional provisions, together with the rules of this body, a list of its members and residences, and other matter, would be an exceedingly useful book.

Mr. CHATFIELD said it appeared to him that the resolution was defective, inasmuch as it did not designate the officer or authority by which the resolution was to be carried into effect. He was of opinion that some person should be designated, either the comptroller or some other person. He had not consulted the proceedings of the convention of 1821, but he supposed the secretaries of the convention were the proper persons to furnish the ordinary supplies to the members of the convention. The resolution should designate the officer who was to carry it into effect, and he would move so to amend it. But to his friend from St. Lawrence he would suggest that he was about to make this contemplated book too large. If it was to be as comprehensive as intimated, it would not be printed until it was time that the convention should adjourn. If, however, the new consti-

tutions were to be incorporated in it, he should desire also to have the old ones, for he thought many of them were as good as the new ones.—There was, however, a book which might be had for seventy-five cents, containing the constitutions of the states, and rather than incur the expense and occasion the delay which would be consequent on the printing of so large a manual, he would prefer that the clerk should be directed to purchase copies of that book for the use of the convention.

Mr. RUSSELL informed the gentleman from Otsego that the book to which he referred did not contain many of the new constitutions which had been adopted by the states. It did not contain the constitutions of Louisiana, Missouri or New Jersey.

Mr. CHATFIELD: No, nor Texas.

Mr. RUSSELL moved the reference of the resolution to a committee of three, to be appointed by the Chair, to consider and report on the subject.

Mr. CHAMBRELENG said the gentleman from Otsego had referred to a book of constitutions of different states; now he had carefully examined that book and he found that there was scarcely one constitution there that was the present constitution of the states of the Union. It did contain the constitution of New Jersey, which had been adopted by a recent Convention; but he believed that was the only present constitution in the book. He (Mr. C.) had provided himself with the constitutions of Louisiana, Florida, Texas and Missouri, and the constitution of New Jersey could be taken from the book referred to; and he agreed with the gentleman that it would be advantageous to the members of the Convention to be furnished with these and the other new constitutions, which contained provisions that he hoped would be useful to the members here, and some of which he hoped they would adopt.

The motion to refer the whole subject to a committee of three, was then put and carried, and the PRESIDENT appointed as such committee Messrs. RUSSELL, BOWDISH and KIRKLAND.

APPOINTMENT OF PRINTER.

Mr. TAYLOR of Onondaga offered the following:—

Resolved, That the secretary of this convention be directed to employ the present contractor for the legislative printing to execute the printing of the convention, at the same rate of compensation fixed by their contract for the legislative printing.

Mr. HOFFMAN suggested that the resolution be put in such a shape as to have the printer for the convention enter into a contract with the Comptroller, precisely as he had contracted for the legislative printing. That would facilitate the keeping of the accounts and the settlement of them by the Comptroller. He had not the law before him, but his friend from New York (Mr. Morris) had, and could suggest the proper amendment.

Mr. MORRIS read from the convention act, to the effect that a printer should be appointed who should receive the same compensation provided by law for similar services for the assembly—the amount to be certified by the President of the convention. Mr. M. differed with his

learned friend from Herkimer—he had almost said New-York (a laugh)—in his suggestion that the contract should be made with the Comptroller. The appointment was to be made by the convention, the President was to certify to the amount to be paid, and it appeared to him the contract should be made with one of our own officers—the secretary—and not with the comptroller who was no officer of ours. He adopted, however, the wise suggestion of his friend from Herkimer, that the contract when drawn, should be in conformity with the existing contract with the Comptroller.

Upon hearing the resolution read again. Mr. M. said he did not see that it required any amendment.

Mr. HARRIS here moved to amend by striking out “the contractors for the present legislative printing” and insert the name of Chas. F. Boughton.

Mr. JONES called for the ayes and noes on the amendment.

Mr. PATTERSON objected that the resolution, as it stood, was not in strict conformity with the convention act—which prescribed that a printer should be appointed by the convention. Adopt it in its present form, and no name would appear on the record as printer. How were we or the public to know who was printer? The names of the present contractors should be inserted.

Mr. CHATFIELD moved to strike out “the present contractors,” &c., and insert the name of Carroll and Cooke.

Mr. PERKINS called for a division of the question.

Mr. HARRIS called attention to the fact that his motion to strike out and insert was first in order.

The CHAIR ruled that that was the pending motion.

Mr. JONES withdrew his call for the ayes and noes, and

Mr. HARRIS renewed it.

Mr. PERKINS renewed his call for a division of the question.

Mr. SALISBURY expressed his preference for the mode adopted last winter—of putting the printing out on contract to competition.

Mr. CHATFIELD replied that by the convention act the printer to the convention would receive no more than was paid to the legislative printer—and we were required by it to appoint a printer—not to put out the work on contract. As to the call for the ayes and noes, as we had yet adopted no rules, it required a majority vote to order them.

Mr. RICHMOND differed with Mr. C. on this point.

Mr. TAYLOR sustained Mr. C's position as to the parliamentary rule, and

The CHAIR so ruled.

Mr. CHATFIELD now modified his motion so as to insert the words Carroll and Cooke before the words, “the present contractors, &c.”

Mr. TAYLOR assented to that modification.

Mr. LOOMIS suggested that the appointment be made the direct act of the convention, instead of authorizing or directing the secretary to employ the present contractors.

Mr. TAYLOR replied that the resolution did

so in effect. He preferred that it should remain as it was.

Mr. PERKINS suggested that if we appointed a printer directly, under the convention act, which passed before the act under which the present printing contracts were entered into, there might be a doubt, unless special provision was made to the contrary, whether the printer would not be entitled to receive the old contract prices, which were three times as much the folio as the present prices.

Mr. TILDEN thought the resolution was in the right shape now. It would be tantamount to the appointment of the present legislative printers, on condition that they should do the work on the same terms charged now for legislative printing. He hoped the Convention would refuse to strike out, and dispose of the question at once. Otherwise the whole morning might be occupied on propositions to fill the blank.

Mr. HOFFMAN said he heard the resolution, as first read, very imperfectly. He had since seen it. It was substantially a fair execution of the convention act, and contained the proper limitation as to price. He was entirely satisfied with it. But his friend from Albany (Mr. Harris) wanted to name a person. Strictly, he admitted, a motion to strike out and insert was divisible. But for the last 20 or 30 years there was scarcely a legislative body that had not changed that usage by special rule. And he hoped, as the gentleman desired to run his man, he might have a fair chance for a race, and that the motion would be put on striking out and inserting, without insisting on a division. He hoped his friend from St. Lawrence would be liberal enough to acquiesce in this course. It would not waste time, or come to any very dangerous result.

Mr. PERKINS withdrew his call for a division.

Mr. HARRIS suggested that the resolution should have been offered in blank—and adopted in blank—so that a direct vote might be taken on inserting.

Mr. TAYLOR preferred to retain his resolution in the shape it was.

Mr. HOFFMAN remarked that the gentleman had no alternative but to move to strike out and insert. And as he (Mr. Hoffman) had asked that there might be no division of the motion, and that course had been assented to, he hoped the gentleman would be satisfied with it.

Mr. HARRIS was content.

The convention, by a majority vote, ordered the ayes and noes on Mr. Harris's motion to strike out and insert—and it was put and negatived, ayes 39, noes 84.

The resolution, as offered and modified by Mr. TAYLOR, was then adopted.

DOOR-KEEPERS AND MESSENGERS.

Mr. JONES submitted the following resolution:

Resolved, that WM. S. ROSS, of the city of New York, be and he hereby is appointed Assistant Door Keeper of this Convention.

The resolution was adopted.

Mr. PERKINS submitted the following:

Resolved, that FRANCIS BRADY, be and he hereby is appointed Second Assistant Door Keeper of this Convention.

Mr. TALLMADGE was not aware that they should require so many door-keepers and assistant door-keepers, together with a Sergeant at Arms, some of whom must necessarily have nothing to do. He would much rather have more boys employed as messengers than this accumulation of officers.

Mr. PERKINS explained that the alterations in the chamber, made a few years ago, rendered an additional door-keeper necessary. The pages certainly would be inefficient in keeping order in the lobbies, and at the door of the house. He thought it would be found that the number of door-keepers employed by the Assembly would not be too many for this Convention, nor more than the exigencies of its business required.

Mr. RICHMOND called the attention of the Convention to the number employed for many years prior to 1841, when the office of a second assistant was created; and he said he had yet to learn that there was more order since than before that increase of officers.

After some further explanations between Messrs. RICHMOND and PERKINS, the resolution was adopted.

Mr. RUSSELL submitted the following resolution:—

Resolved, That the President of the Convention be authorized to designate such door-keepers for the galleries as he may deem necessary, and also the necessary number of messengers for the Convention.

Mr. RUSSELL explained the provisions of the act under which they were assembled in relation to this subject, and the legislative practice likewise, and added that the resolution was necessary to legalize such appointments, and to authorize the payment of their compensation.

Mr. PATTERSON had no objection to the latter part of the resolution, but he had to the former part. He thought they had gone far enough in the appointment of door-keepers to this convention. He did not feel disposed to object to the appointment of three, for as the gentleman from St. Lawrence had said, they had three doors. Yesterday it was true, they went a little beyond the law, but he was willing that the Captain of this convention (Mr. HOFFMAN) should have his own way in appointing a sergeant-at-arms; but he was not willing that they should further trample upon the law and create officers not provided for or required. Now the question was should they appoint two additional door-keepers for the galleries? He was not aware that such officers had ever been appointed—he was not aware that it was necessary they should be appointed—and therefore he moved to strike out that part of the resolution relating to such appointments, on which he asked for the ayes and noes.

Mr. RUSSELL explained. One object was to clothe the President with power to appoint two keepers of the galleries in case he should deem them necessary, not only that the convention might proceed with its ordinary business without disturbance, but that citizens and ladies who desired to witness the proceedings from the galleries might do so with comfort.

Mr. STRONG admired the gallantry of the gentleman from St. Lawrence, who seemed very desirous to take care of the ladies, but he was not aware that there had been any complaint

made of disturbances heretofore, and hence he was at a loss to discover the necessity for the appointment of these two officers. If there should unfortunately be any officer required in the galleries, they could dispatch thither those employed for that chamber who had but little to do; and until some necessity was shown, he should object to such an expenditure of the people's money.

Mr. WATERBURY, in the course of some remarks on this resolution, said the people had complained of the expense of legislation, and this convention was assembled to make provision for securing an ample retrenchment, and yet forsooth they were setting out with the appointment of unnecessary officers who must be paid by the people.

The yeas and nays were then ordered on the motion to strike out, and it was carried by a majority of 63 to 56, as follows:

Y—Messrs Allen, Angel, Archer, Ayraut, H. F. Birkus, H. B. Ckus, Baker, Bascom, Bergen, Bruce, Bull, Burr, Cander, Chamberlain, Clark, Cook, Crocker, Dana, Dodd, Forlon, Flanders, Fosyth, Gibbard, Graham, Harris, Harrison, Hawley, Hoffman, Hun, A. Huntington, E. Huntington, Jordan, Kingsley, Kirkland, Marvin, Miller, Munro, Nicholas, Patterson, Penningman, Rhoads, Richmond, Salisbury, Sears, Haver, Sheldon, Simmons, E. Spencer, W. H. Spencer, Stanton, St. W. Stron Swachamer, Taggart, Tallmadge, Van Schoonhoven, Warren, Waterbury, White, Willard, Worden, W. Wright, W. B. Wright, A. W. Young—63.

N O—Messrs Bonck, Bowdish, Brown, Bruns, Cambreling, D. D. Campbell, R. Campbell, Chatfield, Clyde, Cornelly, Cornell, Cuddibick, Danforth, Dubois, Greene, Hart, Hotchkiss, Hutchinson, Hyde, Jones, Kemble, Kennedy, K. Ryan, Loomis, Mann, McNeill, McNitt, Maxwell, Morris, Murphy, O'Connor, Perkins, Powers, Riker, Kuggles, Russell, Sanford, Shaw, Shepard, Smith, St. John, Stevens, Stetson, Taffi, J. J. Taylor, W. Taylor, Tilden, Townsend, Tuthill, Vache, Ward, Witbeck, Wood, Yawger, J. Young—56.

Mr. CHATFIELD then moved further to amend by a provision to limit the number of messengers to five.

Mr. JONES opposed the amendment, remarking that 14 were employed by the late Assembly. He believed ten would not be too large a number but he preferred leaving it to the President.

Mr. PATTERSON thought the number should be limited, otherwise the President would be much embarrassed.

Mr. TILDEN said the number last session was not larger than the convenience of the members required. It would be an unwise economy to limit the number as some gentlemen desired.

Mr. RICHMOND contended that the convention would require a less number of messengers than the Assembly.

Mr. CHATFIELD said if the object was to give the boys good places, they had better appoint them, pay them their compensation and send them home, for they were not necessary there.

Mr. RUSSELL accepted the amendment of the gentleman from Otsego for the avowed purpose of terminating so serious a debate on so unimportant a matter.

Mr. TILDEN moved to strike out five and insert seven.

Mr. SHEPHERD seconded the motion, which on a division was lost.

The resolution as amended was then adopted.

THE JOURNAL.

Mr. WARD said as yet no order had been taken in regard to publishing the journal of the Convention, and as it was necessary that something should be done, he moved that 600 copies of the journal of proceedings be published daily, that being the number required by the Legislature.

After a brief discussion, in which Messrs. STRONG, TALLMADGE, BRUCE and WARD took part, Mr. MURPHY moved to refer that subject to the committee on printing the constitutions, to take such order on it as they might deem proper, which was agreed to.

ORDER OF PROCEEDING.

Mr. JONES offered a resolution for the appointment of a committee of 16, two from each senatorial district, for the purpose of considering and reporting to the Convention, the best practicable mode of proceeding to the revision of the constitution.

At the suggestion of Mr. CHATFIELD, Mr. JONES consented to let the resolution lie on the table.

RULES

Mr. TAGGART offered the following resolution:

Resolved, That the rules of the Convention for the revision of the constitution of 1821, be and they are hereby adopted as the rules of this Convention, until rules for that purpose are adopted by this Convention.

After a brief debate, the resolution was laid on the table.

On motion of Mr. PERKINS, ABNER M. BEARDSLEY was appointed to take charge of the books, stationery, &c., of members of the convention, which office he held under the clerk of the Assembly during the last session of the legislature.

JUDICIAL EXPENSES—EXECUTIVE PATRONAGE.

Mr. KIRKLAND here rose, saying that it was very important that the Convention should have authentic information on matters of fact having a bearing on the grave subjects that would come before it. He took the liberty, therefore, of offering two resolutions, calling for information which it might take some little time to obtain. Mr. K. sent up the following:

Resolved, That the Secretaries of this Convention be directed to address a letter to the county treasurer of each county in his state, requesting an immediate answer to the following question:—"What amount has been paid out of the treasury of your county to the judges of the county courts, for their judicial services during each of the years 1814 and 1815?"

Resolved, That the Secretary of State be requested to prepare for the use of this convention a list or statement of all the officers in this state, the incumbents of which are appointed by the Governor alone, and by the Governor with the consent of the Senate.

Mr. RUSSELL suggested that the first resolution would not probably reach all the information intended. The amount paid from the county treasury directly to judges for judicial services did not include the amount audited by the supervisors and paid for other services than attending courts.

Mr. KIRKLAND'S object was to obtain an authentic statement of the amounts paid to the judges of the county courts for strictly judicial services, not including the amounts paid for services which were ministerial.

Mr. SMITH suggested that the clerks of the counties could probably furnish this information with more facility than the county treasurers—as they kept a record of the number of days the courts were in session, and could easily certify to the amount paid.

Mr. RUSSELL concurred in this suggestion.

Mr. KIRKLAND understood from a gentleman near him that county clerks adopted different rules in the computation of time. But his object was to ascertain the judicial expenses of the counties, and would assent to any modification of his motion that would reach that end.

Mr. RUSSELL then moved to amend so as to direct the enquiries to the county clerks.

Mr. BROWN doubted whether the resolution was sufficiently comprehensive. He submitted to the mover whether, limited as it was, it was not extremely defective. All knew that the great expense attending the administration of justice through the county courts, arose from other sources than the mere per diem allowances to judges. Jurors fees, constables fees, the fees of other officers of the courts, the compensation paid to poor witnesses in criminal cases—contributed to swell these expenses. He desired

that the resolution should pass, but he desired to see it in such a shape as to reach all the information to which he had referred. He suggested, therefore, either that it should be modified or that it should lie on the table for further consideration.

Mr. KIRKLAND assented to that, and the first resolution lies on the table.

The second resolution now coming up,

Mr. STOW moved to include also the officers appointed by the Canal Board.

Mr. KIRKLAND assented to that.

Mr. STOW continued:—He hoped the resolution would lie on the table for the present—for like the other, it was not comprehensive enough. He hoped both would lie on the table and be printed.

Mr. KIRKLAND assenting, the resolution was laid on the table.

Mr. SHEPHERD desired to modify the resolution, and for that purpose moved that it be referred to a committee of five.

Pending Mr. SHEPHERD'S motion, the convention, on motion of Mr. CHATFIELD.

Adj. to 11 o'clock to-morrow morning.

WEDNESDAY, JUNE 3.

Prayer by the Rev. Dr. WYCKOFF.

The three gentlemen who were absent at the organization of the convention were this day in their seats. Mr. ANDREW W. YOUNG of Wyoming, was in attendance on Tuesday; Judge NELSON of Otsego, and Mr. JOHN K. PORTER of Saratoga, assumed their duties this morning.

RULES AND REGULATIONS.

Mr. WARD, from the special committee on rules, reported in part.

The report was read by the Secretary. It consisted of a series of rules which are common to nearly all legislative and deliberative bodies. They were again read separately for the action of the convention, and were adopted from one to twelve inclusive.

The thirteenth rule provided for the admission of persons to the floor of the House other than members and officers. is in these words:—

“No person, except members and officers of the convention, shall be admitted to the floor of the House except with the permission of the President or on the invitation of a member.”

Mr. MORRIS thought they had better pause a little before they passed that rule, as it would open the door to every person who might come there. He should feel impelled, under such a rule, to comply with the request of every man, woman and child soliciting admission; and knowing the kindness of feeling of the presiding officer, he had no doubt his liberality in this respect would quite equal his own. But when they did come they must stand, and the avenues would therefore necessarily be blocked up. He was willing to include those who were ordinarily included in such rules, and he would deprive the members of all power to admit any body else, and thus he hoped they should be able to pass through the labor incumbent on them in this oppressive season, without

destroying the health of those who were obliged to be here.

Mr. CHATFIELD desired the gentleman from New York to send up his amendment.

Mr. MORRIS said he was not prepared with an amendment. He subsequently said that having received an amendment from a friend near him he would submit it to the consideration of the convention.

The SECRETARY read the amendment, as follows:

“No person shall be admitted within the bar without permission of the President, except the members of the Convention and its attendants, the Governor, Lieut Governor, ex Presidents of the U. S., and former Governors and Lieut. Governors of this State, Judges of the Supreme Court, the Chancellor and Vice-Chancellor, the Attorney General, Comptroller, Treasurer, Secretary, an Surveyor General, Members and ex-Members of Congress, and Members of the Senate and Assembly of this State, Foreign Ministers and their Secretaries, officers who by name have received the thanks of Congress for their gallantry and good conduct displayed in the service of their country.”

[The reading of the amendment elicited roars of laughter.]

Mr. PATTERSON said he had been very much amused on hearing the amendment read. The gentleman from New York objected to any considerable number being admitted within the bar, but when they got that gentleman's amendment, they found that for every one that the members of the convention would invite to the floor this amendment would admit ten.

Mr. MORRIS requested the Secretary to state whose hand writing the amendment was in—for he had not read it. [Laughter.] It was handed to him by a gentleman near him, and it now, on hearing it read, appeared to be a brief for a speech in opposition. [Laughter.] But having offered it he was responsible for it, and he desired to know in whose writing it was.

Mr. WARD, in justice to his honorable friend, took upon himself the paternity of the amendment.

Mr. PATTERSON then made some remarks in explanation of the difficulties with which the committee had had to contend in this matter.—He added that there were seats in the galleries and below the galleries for the accommodation of visitors, and concluded with the expression of his preference for the rule as reported.

Mr. A. W. YOUNG thought it would be very inconvenient for every person desiring to come within the bar to be obliged to apply to the Chair. He would leave the whole matter to the discretion of members, without restriction.

Mr. WORDEN then proposed to exclude all persons, without permission of the Chair, except members of the Convention and its attendants. This would leave the courtesies of the Convention where they should be—in the hands of its presiding officer. This would secure admission to distinguished gentlemen who might desire it. But if the door was open to every delegate to exercise his own discretion in dispensing the courtesy of the Convention, it was plain that it would be restricted to no reasonable or proper limit. For one, he should feel bound, under such a rule, to invite every gentleman who should ask it, to a seat here. Mr. W. alluded to the large attendance of spectators within the bar at the last session of the legislature, as a serious interruption to the public business. It was not our fault that this hall was not large enough to admit all who might desire a seat within the bar; and we were compelled of necessity, especially at this season of the year, to restrict the courtesies of the body to narrow limits.

Mr. MORRIS here withdrew his amendment.

Mr. STETSON moved to strike out the exception, in Mr. WORDEN'S amendment—so that it should provide that no person should be admitted within the bar without permission from the Chair.

Mr. WORDEN assented to that.

Mr. BASCOM objected that Mr. Worden's proposition would still imply that members of the convention, who came here of right, were to come here only on the invitation of the President. He suggested that the rule should be that citizens of this state might be admitted on the invitation of the President.

Mr. SWACKHAMER remarked that the Governor General of Canada, was expected here in a few days, and that under such a rule, he might be excluded.

Mr. TAYLOR sustained the rule as originally reported. Under this amendment the chair would be overwhelmed with applications by members on behalf of some friend. All such applications would be granted, and we should have as many within the bar as if every member had the right to invite persons within the bar. He did not apprehend any difficulty under the original rule, nor was it probable that the lobbies would be so thronged as usually during a session of the legislature—and if it were so, they would come to listen to the debates, and not to importune or harass members in regard to matters pending here.

Mr. HOFFMAN urged that some exception

should be made in favor of the officers of the state government, and the judiciary—leaving distinguished individuals of other states and other countries admissible on the invitation of the President.

Mr. CROOKER offered a rule, substantially that suggested by Mr. Hoffman—urging that if the number privileged to come within the bar were limited, other exceptions made by the Chair in favor of distinguished personages would be in reality acts of courtesy, coming as they would from the Convention itself, through its presiding officer.

Mr. CHATFIELD vindicated the rule as reported by the committee. It left this whole matter where it should be, in the control and discretion of the Chair and of members. His objection to Mr. Hoffman's proposition was that it made invidious and unjust distinctions between judicial officers—excluding Recorders of cities, Vice Chancellors and others, who were as much entitled to admission as those proposed to be designated. It excluded also the President of the U. S., Ex-Presidents, Ex-Governors, U. S. Senators, members of Congress, &c. He concurred entirely with Mr. Patterson on this subject. He would make no distinctions between citizens, based on the circumstance of their having held office, or their holding office now. He could anticipate no difficulty or inconvenience from the discretion given by the rules as reported, to members and the Chair—believing that the courtesies of this body would not be abused, nor that any evil would result from it.

Mr. RUSSELL submitted as a sort of compromise, and substitute for all these propositions one excluding all persons except by permission of the President, or on the written invitation of members—such invitations to be preserved by the door-keepers.

Mr. GEBHARD submitted another, excluding all persons except the State Officers, the Chancellor and Vice Chancellors, the Supreme Court and Circuit Judges, unless under invitations from the President or some member of the Convention.

Mr. HOFFMAN sent up a proposition to the same effect, except that the President alone was to invite others to seats within the bar.

Mr. BRUCE urged that none except members, officers and attendants should be admitted within the bar, unless under invitation from the President.

Mr. HOFFMAN insisted on extending the courtesy of the floor at all times to the existing government. On various subjects which were to come up, we must consult them. Committees and the Convention would be obliged frequently to call on them for facts, for papers, and for a variety of information. They should have the same free access to our room that we had to theirs. And it was no objection to an exception in their favor that we had not room for every body. We were constrained by the size of the room from extending this courtesy further. The power being in the President to invite others to seats who in ordinary courtesy were entitled to expect it, the matter would be left sufficiently open, and whilst we should not be incriminated, for want of a proper circulation, all

would be accommodated that the space permitted.

Mr. R. CAMPBELL expressed his repugnance to a rule which, while it proposed to admit the servants of the people to seats here, excluded the sovereigns themselves, among whom were many who were entitled to distinction as public benefactors. He preferred to leave this matter in the control of members. He did not believe they would abuse the privilege—and hence, he should sustain the original rule.

Mr. W. TAYLOR also sustained the original proposition of the committee—and again urged that the result would be the same whether members were authorized to invite persons within the bar or the President—and that it would only be a matter of annoyance to the Chair to be obliged to hear an accede to requests from members for the admission of persons here.

Mr. WATERBURY thought as they were about to overhaul the constitution and laws of the state that it might be advisable to have the counsel and instruction and advice of many of those whom they represented; he was, therefore, in favor of a liberal admission within the bar.

Mr. SIMMONS said as a member of the committee on rules he approved of the rule as reported for reasons which had been already given. All the circumstances had been considered, the state of the weather, the probable embarrassments of the President, and the other suggestions which gentlemen had urged—and the rule as reported was approved by the committee. If it were adopted he did not apprehend that it would be abused to any considerable extent. He should have preferred to have designated all the members of the state government and some other gentlemen also, on the principle that the honor reflected would be more than that conferred, as it would be a standing invitation to such honorable gentlemen to be witnesses of the proceedings of the convention; but on the whole such a rule, it was apprehended, would create some embarrassment.

Mr. RUSSELL asked that his amendment might be read, which he had offered as a substitute, to come up hereafter for the approval of the convention. The difference was that members of the convention in inviting persons within the bar should send a written order, which should be kept by the door-keeper.—This formality would make less frequent these invitations and would diminish their abuse.

The substitute was rejected.

Mr. CONELLY offered a substitute which included the Governor, Lieut. Governor, State Officers, and some others, which was not adopted.

Mr. CROOKER urged a substitute which he had offered heretofore, to the effect that no person should be admitted to the floor of the house except the Governor, Chancellor, Justices of the supreme court, circuit judges, and heads of state departments, unless invited by the President or the convention.

The substitute was not adopted.

Mr. MARVIN offered a substitute, to limit the admissions to the Governor, Lieut. Governor, ex-Governors, and Lieut. Governors, the Chancellor, Justices of the Supreme Court, Circuit Judges, members of former Conventions,

and State officers, unless upon the invitation of the President. He explained his amendment, and stated that while he deemed it unnecessary to make provision for the admission of officers of the General Government, his substitute would admit an ex-President of the U. S. or a member of a former Convention.

Mr. RICHMOND said if he had his choice he should give admission to the members of the two last legislatures rather than to Chancellors and Vice-chancellors and Circuit judges, for the revision of the constitution had been deliberated upon by the legislature, and its members might be supposed to have matured their views in relation thereto.

The question was then taken on the substitute and it was rejected.

Mr. GERHARD moved to substitute the rule of the convention of 1821, with the exception of the word "late" before the word "chancellor."

Mr. PERKINS expressed a desire to move the previous question if at this time it could be entertained, which was negative.

Mr. LOOMIS said the convention evidently concurred with the committee in its main principle, which was that there should be no privileged class of officials or otherwise; and he apprehended the power which the rule as reported would give to members would not be abused.

Mr. BRUCE said he should go for that proposition which secured equal privileges. If they were to admit officers of state, and the dignitaries of the country, he should be in favor of admitting all.

Mr. STOW offered an amendment to the effect that when any person was invited to the floor of the house, the name of such person should be furnished to the door-keeper, accompanied with the name of the member giving the invitation.

Mr. RUSSELL advocated the amendment—Mr. SMITH opposed it. On a division it was rejected.

The rule as reported by the committee was then adopted.

Rules 14, 15, 16, 17, and 18 were also adopted. When the 13th was under consideration, Mr. TILDEN desired an explanation of a change which had been introduced from the usual legislative practice. The rule made provision for the reconsideration of questions, and did not limit the motion to reconsider to those who had voted in the majority.

Mr. CHATFIELD explained that the rules had been framed so as to leave their deliberations as open and liberal as possible. He imagined cases which might occur, to justify such a rule; and Mr. Tilden expressed himself satisfied.

Rules 19 and 20 were also adopted.

Mr. WORDEN thought it necessary to make a provision by which a chairman of a committee of the whole, whenever he found himself without a quorum, should report that fact to the President of the convention.

Mr. LOOMIS explained that the well understood parliamentary law, as explained in Jefferson's Manual, was sufficient for that and many other cases, to meet which the committee had not deemed it necessary to make special provision.

Mr. WORDEN was satisfied, and withdrew his proposition. But he desired the gentleman from Herkimer to explain what provision had been made for the amendment or abrogation of these rules, if that should be found necessary.

Mr. LOOMIS responded. That matter had been debated in committee. Usually an amendment of the rules required a two-third vote or some similar restriction, but as the rules had been adopted on the most liberal principles towards the minority, it there might be considered two parties there, which was questionable, it had been thought better to leave power with the majority to amend or suspend at any time.

Mr. WORDEN expressed his satisfaction with the explanation which had been given

CENSUS AND MAPS.

The PRESIDENT laid before the convention a communication from the Secretary of State, accompanied by 135 copies of the census and maps of this state, which had been procured and were now furnished by direction of the legislature of the state.

THE JOURNALS.

Mr. RUSSELL here reported in favor of Mr. WARD's proposition, directing the printing of 600 copies of the journal of the convention—which was agreed to.

JUDICIAL EXPENSES.

Mr. KIRKLAND called up his resolution, directing inquiries to be made of the several county clerks as to the expenses of the several counties for the judicial services of the county judges.

Mr. K. said his object in offering this resolution yesterday was specific, and he therefore limited the inquiry to the county expenses for judicial services. But under the suggestions of the gentlemen from St. Lawrence and Orange (Messrs. RUSSELL and BROWN) that it would be desirable to have still further information in relation to the expenses of the county courts, he now proposed to amend his own resolution in conformity with these suggestions. Mr. K. read his proposition as he had modified it—saying that he believed it would now be found to embrace every information that could be useful as matters of fact.

1st. The amount allowed during each of the years 1841-15 to the Judges of the County Courts of your county as compensation for attendance at Court.

2d. What, during the same period was the amount allowed for fees of grand jurors, of petit jurors, of constables, of criers and of poor witnesses, standing each separately.

3d. What was the aggregate expense during those years for said County Courts of drinking and summing jurors, of lights, fuel, &c., for the court room, and of any other charges on the county incurred by holding these courts.

4th. For how many days during each of said years were said County Courts in session.

5th. What was the number of civil cases tried at said Courts in each of said years, and what was the aggregate amount of verdicts therein.

Mr. KIRKLAND repeated that he supposed the resolution covered all the information on every point connected with the expenses of the county courts, which would be useful to the convention. His reason for offering it at this early stage of the session, was because the information sought was exceedingly important, and

would require time to prepare it with accuracy.

Mr. BASCOM desired to extend the inquiry to the expenses of the circuit courts, in the several counties. He had prepared an amendment which would call out that information. He sent up the following amendment:—

How many Circuit Courts and Courts of Oyer and Terminer have been held in said years of 1844 &? What has been the length of the sessions respectively? How many civil causes have been tried by jury? What the amount of the verdicts in the respective causes?—What convictions in the Oyer and Terminer, for what offences, and how punished?—What has been allowed the judges of the county for attending these courts?—What for grand jurors? What for petit juries? What for criers and constables? What for sheriffs? What for poor witnesses for each session or term of said courts?

Mr. KIRKLAND had no objection to that.

Mr. BASCOM desired the gentleman from Oneida further to amend his resolution so as to extend the inquiry to the expense of criminal proceedings in the county courts.

Mr. KIRKLAND expressed his fears that the inquiry might be so extended as to delay the answers to too late a period.

Mr. PERKINS suggested that there were some questions in the amended resolutions which the county clerks might not be able to answer. As the accounts were kept in St. Lawrence county, he knew that would be found to be so. The fees of grand and petit jurors, constables and poor witnesses, and the per diem paid to the county judges, the clerks could give easily. But the amount paid for fuel and light, drawing of jurors, and some other such items, they could not so readily give, if at all. These were matters of audit by the supervisors not passing through the hands of the clerks on certificates as in the other cases.

Mr. KIRKLAND, in order that the inquiry might be put in proper shape, moved to refer it with the amendment, to a committee of three.

Mr. RHOADES asked whether the inquiry was so framed as to obtain the amount of damages and costs separately?

Mr. KIRKLAND replied that it was not. The committee, however, could so frame it as to meet that object.

Mr. BASCOM suggested a committee of 8, Mr. KIRKLAND assenting, his resolution was so referred.

Mr. PATTERSON moved that the Secretary cause a diagram of the house to be engraved and furnish each member with a copy. Agreed to.

Mr. SHEPHERD offered a resolution calling on the Secretary of State for a list of the salaries paid to judicial officers throughout the state.

Mr. TAGGART moved to refer this resolution to the committee of eight just appointed.—Agreed to.

Mr. NICHOLL offered the following resolution, which was referred to the committee of 8 on Mr. KIRKLAND's and Mr. BASCOM's propositions:—

“Resolved, That the secretaries of this convention address letters to each of the circuit judges and the supreme court commissioners of this state to the first judge of the several counties, including the first judge of the superior court, and also to the several masters and examiners in chancery, for such information as they may be able to furnish in relation to their fees of office for the year 1845.”

NEWSPAPERS.

Mr. BROWN called up the resolution, providing for supplying members with newspapers—and it was adopted.

PREPARATION FOR BUSINESS.

Mr. CHATFIELD now called up Mr. JONES's resolution, directing the appointment of a committee of 16, to consider and report to the convention the best practicable mode of proceeding to revise the constitution.

Mr. CHATFIELD moved to amend so as to authorize the PRESIDENT to appoint one more for the state at large. He preferred an odd num-

ber, so that the committee might not be without a responsible majority.

Mr. JONES accepted the amendment.

Mr. PERKINS inquired what was expected of such a committee—what its duties in detail?

Mr. LOOMIS desired to submit some remarks and a proposition—which perhaps would occupy more time than the convention now would be willing to give him.

Mr. TILDEN (Mr. Loomis giving way) moved an adjournment, and the convention

Adjourned to 11 o'clock to-morrow morning.

THURSDAY, JUNE 4.

Prayer by the Rev. Mr. BATES.

The PRESIDENT announced the following as the committee, under the resolutions of the gentleman from Oneida (Mr. KIRKLAND,) adopted yesterday:—Messrs. KIRKLAND, NICHOLS, BROWN, HARRIS, PERKINS, SMITH, BASCOM, and RICHMOND.

MANUAL.

Mr. KIRKLAND, from the committee to whom was referred a resolution for the publication of certain constitutions and other matter in the form of a manual, reported in part verbally. By a fortunate accident, he said, the committee had ascertained that a person in the city of New York had in process of printing all the constitutions for another purpose, and he (Mr. K.) addressed to him a letter to ascertain the fact. This morning he had received an answer, accompanied with 32 pages of the forthcoming publication, as a specimen of the work, which informed him that 200 or 300 copies could be furnished in pamphlet form in the course of a week. Mr. K. read the letter, (from Mr. Walker, of the city of New York, publisher of the Statesman's Manual,) and said he would deposit the specimen with the Secretary to enable members of the convention to examine it. If on examination it should be found unobjectionable, the committee proposed to embrace in one pamphlet all these constitutions, not doubting that from the aggregate wisdom of the 28 states of the Union, this convention may derive a vast deal of information. The committee also, he was desired by the chairman to state, proposed to procure to be printed another volume containing matter which would be as useful and important; they were solicitous to have printed the proposed constitutions of other states or territories which have not become states, but whose constitutions have been adopted. The committee also proposed to publish the convention acts of 1845 and 1821, the names of the delegates to the convention, their places of residence, the names and residences of the officers of the convention, and certain statistical information, which may be important and necessary. He had no resolution to offer. He merely made the statement for the information of the convention.

ORDER OF BUSINESS

Mr. BROWN called up M. JONES's proposition, offered day before yesterday, as follows:—

"Resolved. That a committee of 17 be appointed by the President (two from each Senate district and one from the State at large) to consider and report to the convention the best practicable mode of proceeding to a revision of the constitution of this State."

Mr. LOOMIS having the floor, remarked that the resolution was in terms pretty comprehensive—contemplating the appointment of a large committee, who might take it upon themselves under the very strong and cogent powers proposed to be confided to them—who might feel called upon to report a general plan of action, limiting and directing to what points of the constitution, and to what only, the attention of the convention should be directed. He should infer that the mover had this in his mind from the magnitude of the committee he proposed. A committee of 17 would of itself constitute a pretty respectable body for legislation—so large as to require that its proceedings should be regulated by parliamentary rules—that it should have a chairman to be addressed in its deliberations. It would be too large a committee for those informal conferences which take place when two or three constitute a committee. It would be too much like a committee of the whole—and unnecessarily large if it was merely to propose the subjects on which we should appoint committees. A single individual could propose these subjects, and whatever the committee or an individual member might propose, the convention must finally pass upon it. It was therefore a much safer, better, shorter course, to permit all the members to be present when these propositions to distribute subjects among committees should be made, in order that all might hear what members of this committee of 17 might say, and have a voice on the questions submitted. Every member was sent here by his constituents to represent their wishes and views. They relied on his judgment and intelligence and they expected and desired him to pass on every proposition submitted here. It was not wise or discreet, in his judgment, to delegate powers unnecessarily. Committees were generally appointed to investigate facts, to trace out the course of legislation on particular subjects—to reduce propositions to form—but we never did create a committee, much less a committee of this magnitude, for the purpose of advising or passing on propositions. His own view was that the convention should resolve itself into a committee of

the whole on the constitution, and there let any member propose the subjects on which he desired committees to be raised. Somebody had got to do this before the committee of 17. It might as well be done here, and let all hear the reasons offered, and pass upon the questions, for the convention must decide on them at last. Again, a committee of 17 would no doubt embody men of the highest character here, and whatever they might report would carry a weight with it too strong to be salutary in its influences; too strong to allow a fair and equal consideration for the conflicting propositions of any single member. Mr. L. presumed this proposition was adopted upon looking at the proceedings of the convention of '21. He was aware that a proposition of this kind was made on the first or second day of the session of that body, by Rufus King. It was adopted instantly—probably without the consideration of a moment, certainly without debate and off-hand. But on looking at the proceedings afterwards, he found that several members regretted that that course had been adopted and presided a desire that the whole matter should have been referred at once to a committee of the whole. Among these was Col. Young who moved a reconsideration. Gen. Root then one of the most able members of that body, sustained the motion. Peter R. Livingston also expressed the opinion that the convention had acted hastily in appointing the then committee of 13. Mr. L. considered the weight of the precedent as amounting to nothing. That committee either because it properly had been questioned, or for some other cause, did not see fit to do more than to dissect the subject submitted to them; for instance, they proposed a committee on the legislative department, another on the judiciary, another on the Executive, another on the council of revision—all general subjects and presenting no such details as an individual would have submitted, after sitting down in his room and putting his proposition on paper. Hence, it was unnecessary to appoint a committee to suggest subjects on which committees should be appointed. Much less was it necessary, to have such a committee to propose the subjects on which we should act, and what not. All knew what we had to consider. The whole constitution of the state was before us—before each and every member of the body—and each had the right and was bound to pass upon every proposition submitted. It might be objected, if we went into committee of the whole, that we should be at sea, with no proposition to act upon. Mr. L. had anticipated this dilemma; and had prepared and should submit a proposition for dividing the body into committees. Any body could do this, and some other member might have done it for himself. He should offer his proposition, first by way of amendment to the pending resolution, and with the view then to move the reference of both to a committee of the whole. Mr. L. moved to strike out all of the word resolved in the original and insert:

That committees consisting of five members each be appointed to consider and report on the matters following respectively:

1 On the apportionment, election, tenure of office and compensation of the Legislature.

2. On the organization, tenure of office and compensation of the Judiciary.

3. On the appointment or election of the Judiciary, and of all state officers whose duties and powers are not local, except the legislature, and of the tenure of their office and compensation, except the legislature and judiciary.

4. On the appointment or election of all officers whose powers and duties are local, and their tenure of office and compensation.

5. On the powers to be vested in the State Legislature, and restrictions on the same, except as to public debt.

6. On the public debt generally, and including restrictions on the power of the Legislature in relation thereto, and on public revenues, canals and internal improvements.

7. On legislation for local purposes, and on the powers of municipal corporations with reference to debt and taxation.

8. On banking business, and on incorporations generally.

9. On the elective franchise and the qualifications to vote and hold office.

Mr. LOOMIS said these were the result of his best thoughts. He did not rise to discuss the several subjects; but rather to suggest that we had not better organize this formidable committee, with these extraordinary powers. It was imprudent and unnecessary—for each member was entirely competent to suggest subjects for reference to committees—and it was fairer to have a vote on the proposition of each member in the first instance, than after this formidable committee had perhaps repudiated it.

Mr. BROWN desired to express his obligations to the gentleman from New York (Mr. JONES) for introducing this proposition. For although he did not concur with that gentleman in the propriety of its adoption, yet it would serve all the purposes it should serve—to call out discussion and inquiry on the subject to which it related. He regarded the resolution as touching one of the most important, if not the most important subject that could come before the convention in this stage of its session—and he was not willing that it should go to a committee of 16 or 17 or of any other numbers, without having first passed through the ordeal of an examination and discussion here, that opinions might be elicited on all sides as to the subjects to be considered by this convention. He would here state that he was in a great measure indifferent as to the ultimate disposition that might be made of it—whether it went to the committee of the whole or the constitution, or whether all these propositions, after hearing the views of gentlemen here, should be sent to a committee. But he did desire most earnestly, and he deemed it essential to a fair and just and enlightened commencement of our labors, that this proposition should undergo discussion and examination. The proposition in effect was to refer it to a committee to report to us in what particulars the constitution should be, or was to be amended—to what subjects the convention should direct its labors. Hence, it was a proposition to refer to a committee one of the most important questions we had met to consider. He was aware, that when the report of this committee came in it would be subject to amendment. He was aware that every gentleman familiar with parliamentary proceedings, accustomed to public speaking and feeling a confidence in himself, might rise and propose his a-

ment. But if he did, he must encounter the weight and influence of this committee in opposition. And members like himself, might feel a diffidence and reluctance in undertaking to overthrow a report carrying with it the weight which would be attached to it.—Another consideration—he knew what it was for gentlemen taking a seat in a deliberative body for the first time, to rise and address it and to make a proposition. The weight of that feeling had oppressed and borne down many a man who from his experience and ability was well calculated to enlighten and instruct his fellows. And he was not willing to place these gentlemen whom he saw around him in a position of such disadvantage. He concurred, therefore, with the gentleman from Herkimer, that this question should be referred to a committee of the whole. That was the appropriate place for a free interchange of opinions—the place where alone every individual could make his proposition and have it considered.—There they could not be put down, without being fairly considered and acted on. And if the fundamental law was to be overturned entirely, and an entire new instrument framed—it was proper to know the views of each and all, in relation to every part of it. If a portion of it was to be maintained in its integrity, as it came to us from the wisdom of the past, let us know what portion was to be maintained and what amended. He was unwilling to commit this very important question, in the outset of our deliberations, to a committee. He had his opinions; others had theirs. In his section of the state, public opinion had indicated clearly to what these changes should have reference. He might differ with gentlemen from other sections on these points. If so, he desired to hear every proposition for amendment. Then, if they were found to be so multifarious, so numerous, so conflicting, that the committee of the whole could reach no result, he should be willing that a committee should take all these propositions in charge, with all the light that had been thrown upon them, and with all the knowledge of the views of this convention that the discussion might elicit. It was impossible to conceal the fact from ourselves, that the two great parties into which the state was divided, had had some connection with the election of gentlemen to this body, and with its organization. We could not conceal from ourselves, or the public, the fact that one of these parties was largely represented here, and the other not so largely. And though he was happy to state, and congratulate himself that there was very little of that party spirit here on which men honestly divided elsewhere.—that there was none that was likely to disturb the good nature and harmony with which we had begun our deliberations—yet it was due to the minority, to our own character, to the success of our labors—that in all our deliberations, and in all the steps we took at the outset—we should have reference to the rights of the minority. And he desired to put this vital and important matter in a position where gentlemen who might not appear to be on the side where the strength was, an opportunity to be heard fully and fairly and without any kind of embarrassment whatever. To look at this matter a

little further. Suppose this committee should undertake to say that our judicial system needed no amendment? This, he was aware, was a very extraordinary supposition. For he supposed a sense of the necessity of amendment in that particular was universal. But suppose such should be the report of the committee?—We should then have to encounter the weight of their report, to demonstrate its folly and injustice. But supposing on the question of suffrage, where there was no such unanimity of opinion—were the committee to come in here with a report and suppress that question entirely? By no means. He desired earnestly that it should not be so; but that all these propositions should come up here—that all of whatever party or profession or calling, however unused to public speaking or parliamentary rules, might have a full and fair opportunity to make any and every suggestion in regard to amendments of the fundamental law. He concurred therefore, with the gentleman from Herkimer, that if gentlemen had any propositions to make here, they should be at liberty to make them—make them now, during this discussion—for he must say for one, that if the majority of this body should be found against him on the question of referring this matter to the committee of the whole, he should feel it to be his duty to ask the house to instruct the select committee as to their report. This would give all an opportunity to do what they could do in committee of the whole.—But he trusted gentlemen would not refuse the opportunity of having this matter considered in committee of the whole. In all legislative bodies as a general rule all bills went to a committee of the whole. In the House of Representatives, revenue bills, and those affecting the Union at large, all took that direction—that they might be fully and fairly considered by every member. And having come here to ascertain what alterations should be made in the organic law, he asked if that was not a subject of as great magnitude and importance as the message of a Governor or a President, or a revenue bill? Could any deliberative body have before it a subject of greater magnitude to posterity or the living, than that which engaged our deliberations today? Before taking a step which might embarrass the inquiry, we should proceed with hesitation and caution. He had, therefore, in imitation of the gentleman from Herkimer, before he left his room this morning, drawn up some propositions which he would submit with the view of their being referred, with the other series, to a committee of the whole. If, however, the House should refuse that reference, he should then move them, by way of instructions, to the select committee. He did not regard them as embracing all the subjects which should be matters of reference; but he offered them rather as the nucleus for other propositions from other quarters. Mr. B. sent up the following:—

1. Resolved, That so much of the Constitution as relates to the finances of the state, and the power of the Legislature to create debts and to loan the credit of the state, be referred to a committee, to take into consideration and report what amendments, if any, are necessary to be made in respect to them.

2. That so much as relates to the power of the Legislature to appropriate the public moneys or property for private or local purposes, and for creating, continu-

ing, altering or renewing any body, politic or corporate, and to prescribe the powers, privileges, duties and obligations of such bodies, politic or corporate, or of the members and stockholders thereof, be referred to a committee to take into consideration, &c.

3 That so much as relates to the right of suffrage, and the qualifications of persons to be elected to office, be referred, &c.

4 That so much as relates to the judicial department, the manner of appointing or electing judicial officers, and the tenure and duration of the judicial office, be referred, &c.

5 That so much as relates to the Executive department, and the power of appointment to office, (other than judicial offices,) and the tenure thereof, be referred, &c.

6 That so much as relates to the number of Senators and members of Assembly, the tenure and duration of the Legislative office, the division of the state into separate Senate and Assembly districts be referred, &c.

7 That so much as relates to provisions for future alterations and amendments to the Constitution, be referred, &c.

8 That all parts of the Constitution not embraced in the preceding resolutions, be referred to a committee, to take into consideration and report what further alterations or amendments should be made therein.

Mr. WARD called for the reading of the original resolution—and it having been read,

Mr. BROWN moved his propositions as instructions to the committee of 17.

Mr. WARD apprehended that the gentleman had misunderstood the object contemplated. If this were referred to the committee of the whole for consideration, his impression was they would be detained here in discussing the various propositions from this time to the end of July and the house would even then have arrived at no definite conclusion. He perceived there was around him a disposition amongst gentlemen to go on with their work earnestly; and it seemed to him if the plan recommended by the gentleman from New York were approved and a committee were chosen, that committee might report to-morrow morning, and the convention might take up one of the propositions and proceed at once with its consideration. But if they at once proceeded to discuss the propositions that might be submitted—and perhaps nearly every honorable gentleman has some proposition to offer—he apprehended the discussion would be endless.—Gentlemen might recall to mind the course adopted by the convention which framed the federal constitution. That convention met in the month of May 1787, and the first proposition was a plan of a constitution by Mr. E. Randolph. On the same day Mr. Pinckney presented his plan of a constitution. Mr. Patterson of New Jersey also proposed another; and shortly after Mr. Alexander Hamilton submitted his plan. These several propositions were referred to the committee of the whole, as it was now proposed that these subjects shall be referred. The first taken up was the plan of Mr. Randolph, and the convention entered upon its discussion, section by section and clause by clause, and on the 1st of August, without any progress having been made, the whole matter was referred to a special committee. Two or three days subsequently, that committee made their report and it was not until that report was presented that any progress was made. He was very happy to see the harmony manifested here, and the disposition to go at once and directly to the discharge of the important duties of the convention. The course recommended by the gentleman from New-York (Mr. Jones) was the course of the convention of '21; and

what was the consequence? Why in little more than two months all its labors were ended, and the state had a new constitution. He did not doubt if this resolution should be adopted, a committee would be chosen, not to say how the constitution shall be amended—no at all—but merely for the purpose of suggesting how many committees shall be raised, and how the labors of the body shall be approached and expedited. That was its extent as he understood the proposition. If adopted, he was confident that they would be able to get through with their labors within two months, and that they should have a fair and liberal constitution. But if they were not to have the benefit of this mode of proceeding, he hoped they would take up each proposition and pass upon it, and not go into committee of the whole upon the constitution.

The PRESIDENT stated the question to be on the amendment of the gentleman from Herkimer, (Mr. LOOMIS.)

Mr. LOOMIS, in reply to the remarks of the gentleman from Westchester in relation to the debates in the convention on the federal constitution, said that the gentleman had shown that in that convention that there were several individual propositions—that one was taken up and formed the nucleus on which that wise and learned convention proceeded, until they had settled nearly every proposition, and formed the present constitution of these United States. Now, although it took until the 1st of August, they were then prepared with a constitution, which a committee very soon matured. It was then a short work; and the precedent there furnished was precisely analogous to his present proposition.

Mr. WARD, for one, was willing that the question should be taken on the amendment of the gentleman from Herkimer, with a view to determine which course the convention preferred. That could be done in a very few minutes. It could not be necessary to go into committee of the whole for the purpose, for the moment they got into the committee, the entire subject would be opened—they would get fifty different propositions, and no one could predict—not the wisest amongst them—where it would end.

Mr. JONES desired very briefly to state the reasons which induced him to offer his proposition. He did not offer it without some consultation with members of this convention—a consultation which had induced him to change somewhat its form. As originally prepared, it gave to the committee a greater scope of power than would be conferred by the resolution in its present shape. His original intention was, that the committee should report to the convention, not only the best practicable mode of proceeding to the revision of the constitution, but also whether in the opinion of the committee, it was demanded by the popular will, and would best subserve the interests of the state, to present to the people an entire new constitution as a whole, or whether the public interests demanded that they should submit to the people only such amendments as should be made to the present constitution. The resolution in this form, he submitted, among others, to a gentleman from Onondaga, who thought the resolution in that shape would give rise to a premature discussion, and that the

convention in its early stages would not be so competent to decide whether a new constitution should be presented to the people, or amendments merely, as at a subsequent period. He adopted the suggestion of the gentleman and modified his resolution so as to confine it simply to an instruction to the committee to report what in their opinion was the best practicable mode of proceeding to the revision of the constitution. The gentleman from Herkimer (Mr. Loomis,) who had given his views to the convention with great ability and great fairness—both of which qualities were characteristics of that gentleman—had stated that he (Mr. Jones) was probably influenced in offering his resolution by the consideration that a similar course had been adopted by the convention of 1821. That was so. He found, on looking at the proceedings of the convention of 1821—(a convention whose proceedings he hoped this convention would follow as far as it could—a convention whose proceedings were marked by that moderation and wisdom which were worthy of imitation by this convention, notwithstanding it had greater experience by more than twenty years)—that one of its most distinguished members (Mr. Rufus King) presented a resolution similar in form to that which he had offered; and he found that it was unanimously adopted, it having the general concurrence of the members of that convention. The number of the committee proposed in the resolution of 1821 was 13, instead of 16 as now proposed; but in a discussion which immediately followed as to the mode by which the committee should be appointed, he found that Col. Young, of Saratoga, had changed his views somewhat as to the manner in which the convention should commence its business, and seemed to be of the opinion now expressed by the gentleman from Herkimer, that it was best to refer the whole subject to the committee of the whole in the first place, instead of a select committee. Gen. Root, as had been stated by the gentleman from Herkimer, concurred in the views of Col. Young. These views however were met by Mr. King. It did not appear from the book from which he obtained his information, that any other gentlemen spoke than those three, Gen. Root, Col. Young and Mr. King; for immediately after the two former had spoken in favor of a reconsideration, and the latter against it, the question was taken and lost, the vote in the affirmative not being large enough even to cause it to be stated. Probably the motion was lost by a large vote, as the original proposition was carried unanimously. He found further on looking at the proceedings of the convention of 1821, that after the adoption of the resolution to which he had referred, the committee of 13 was appointed, and on the afternoon of Friday, the committee reported a plan for the reference of the different portions of the constitution to appropriate committees. The President named those committees on Saturday, and on Monday Gen. Tallmadge presented a report from one of them, and the next day Gen. Root a report from another. These facts showed how admirable the plan was to expedite the business of the convention, for although the resolution was not offered until Thursday, the different portions were referred to the respective committees, and they laid their views before

the convention on the following Monday and Tuesday, and the convention at once proceeded with the consideration of the subject presented to it by Gen. Tallmadge. This seemed to be a practical mode of doing business, and he thought the convention could scarcely follow a more wise or more judicious precedent.—Respecting the number which he proposed to constitute the committee, he found that there was not entire unanimity of opinion. The gentleman from Herkimer seemed to think, in the first place, that the committee was too large, and then that it was too small. On reflection he (Mr. Jones) trusted the gentleman from Herkimer would find that he was right in neither position. He held the opinion that the committee was neither too large nor too small, if it were designed that it should report to the convention whether any and what part of the constitution should be amended, and what left untouched.—If such were to be its scope, which he did not admit, certainly the gentleman from Herkimer would concur with him, that the committee was not too large. A committee of two from each senatorial district would embody the views of the constituents they represent, and it seemed to him that their report would be but the echo of the popular will on this subject. Put if it was designed that the committee should merely report—and such was his intention—what parts of the constitution should be referred to committees for examination and consideration, the committee did not even in that case appear to him to be too large. But suppose they followed the gentleman's advice, and went into committee of the whole, what would they have then?—Why, a set of resolutions offered by the gentleman from Herkimer, a somewhat different set from the gentleman from Orange, and a proposition from himself, differing somewhat from each of the others; and he doubted not that half the members of the Convention had their views also as to what portions of the constitution required amendment. Now, his resolution contemplated the concentration of the views of the members of the Convention, who would converse with the members of the committee, whose report would thus be made to embody the concentrated sentiment of the Convention. But the gentleman from Orange (Mr. Brown,) had said that a different course was taken in congress, and in the state legislature, with the messages of the President and the Governor, and that both had a reference in the first instance to the committee of the whole. This undoubtedly was so; but he ventured to suggest to the gentleman from Orange the difference between the two cases. The object in referring the messages of the President and the Governor was not to amend those instruments, but to discuss them; and where could there be a more appropriate place for discussion than in committee of the whole? Experience bore out the truth of this position, for at the last session of the legislature, though in one of the first weeks of the session, the message of the Governor was referred to the committee of the whole, it did not come out until there were but some two or three weeks of the session remaining. It underwent during a session of four months an elaborate and prolonged discussion. What was the object of the gentleman from Orange in proposing to give the

constitution the same reference? Although the object might be, in some measure, to discuss the various projects and amendments, yet the main object would be to amend rather than to discuss. When the special committee shall have given the subject a full, fair, and free examination, and reported thereon, their report would be sent to the committee of the whole Convention, and then there would be abundant room for discussion, if gentlemen desired discussion.—With regard to the proposition of the gentleman from Orange, if his resolution should be adopted, to instruct the committee to report the particular propositions for reference, Mr. J. trusted it would be so guarded as not to instruct the committee to report any particular gentleman's project, but that the committees would be left to the exercise of their own judgment to report such plans as they might deem to be the best and the wisest.

Mr. LOOMIS, with a view of testing the sense of the convention on this question, proposed to have it taken in convention directly, as between the proposition for a committee and the proposition to refer the several subjects to different committees. He had moved his proposition as an amendment to that of the gentleman from New-York, and he desired that the question should be taken on the first branch of his proposition, leaving the rest to be decided upon afterwards.

Mr. WILLARD thought the discussion into which they had been drawn, unprofitable, if not irrelevant. It certainly did not follow in the wake of the resolution before the Convention. He felt desirous to economise the time and the duties of the Convention; and to avoid random or profitless debate. He preferred the proposition of the gentleman from New York (Mr. JONES) as calculated to facilitate the business of the Convention, and to lead soonest to the direct consideration of specific subjects. He hoped at least that the question would be brought at once to a vote, and the matter disposed of in some shape.

Mr. WHITE sent up the following substitute:

Resolved, That a committee be appointed to take into consideration and report the manner in which it is expedient to proceed with the business of this Convention, in order that such alterations in and amendments to the Constitution may be made, as the rights of the people demand.

Mr. TILDEN was aware that there would naturally be a predisposition in this body to follow the course marked out by his colleague (Mr. JONES). That course had the sanction of the precedent adopted in a previous Convention, and it appeared extremely plausible too, in the prospect it held out of proceeding to the subject matter of their deliberations without useless discussion. Nevertheless, in its effects upon the course of the business of that body, and on the result of their deliberations, it was, in his judgment, a question of the highest importance for them to settle correctly. The usual and parliamentary course in respect to the Governor or President's message was to refer it to the committee of the whole. For what purpose? Not exclusively nor generally, as his colleague seemed to suppose, for the purpose of a rambling discussion, but for the purpose of distributing its several parts to appropriate committees con-

stituted by order of the House, for consideration, in a regular and parliamentary manner. They might safely assume in this as in most similar cases, that parliamentary usage had some significance and utility; and he apprehended, if gentlemen now entertained doubts on the subject, that before the end of the session they would be abundantly satisfied that the custom was a wise and appropriate one. The first thing they ought to do, in order to expedite business, and to get at an intelligent and satisfactory result, was to refer all the matters upon which they were to act, to appropriate committees; and in order to do that, it was a matter of the first importance that they should have an accurate, careful, and considerate classification of the subject matters. If they commenced business with an inadequate or imperfect classification, they would find themselves wandering through that business to the end of the session. It would be better that they should know at the outset what would be proposed for their consideration. They had better go into committee of the whole, where every gentleman in the Convention might present any proposition he might have to offer, or submit any mode of classification; and then, after these suggestions had been freely made for a few hours or a day or two, refer them to a select committee to arrange and put in a systematic form. This course was recommended to them by the facility it would afford in the transaction of their business. It would give a full and complete classification of their business, and would enable the President, when he came to form the committees, to distribute them in such a manner as to submit to their consideration all the subjects on which they should be called upon to act. There was a still more important point of view in which this question should be considered; and that was that the action of this committee would be to a considerable extent, in practice, restrictive of the subjects for the consideration of this body—not directly, not necessarily in terms, but in its inevitable effect. Suppose in that committee there were a majority composed of those individuals who thought a particular proposition was not of sufficient importance, or sufficiently desirable, to justify them in raising a committee to consider it, or that it was not embraced in the classification which they might adopt: they would have nine and probably seventeen of the most influential members of this body committed to the opinion that the subject ought not to be considered. From what little experience he had had in parliamentary bodies, he should be led to think that any proposition in which his constituents were interested, would lose 25 per cent at least of its chance of being considered, if that committee should form such an unfavorable judgment in relation to it; and yet here, without any judgment, or consideration,—without any suggestion of the various propositions on which they might be prepared to act, they might by the adoption of such a resolution submit the whole subject to the initiatory power of a committee composed of some 17 members. His friend and colleague from New-York (Mr. JONES) had told them that as the proposition was originally drawn, it was intended that the committee should consider and

report upon what subjects it was expedient for the convention to act, but that on consultation with other gentlemen he had modified his resolution by striking out that part of it. His (Mr. TILDEN'S) objection to the form in which it now stands, was that although it did not in terms, it did in substance, in a large degree, have the same effect; and if his friend was disposed—Mr. S. did not believe he was—to limit the range of the action and discussion of this body, he would better accomplish his object by this resolution, than by any other form regularly proposed. There was great reason to fear that the effect of the course of proceeding would be, to some extent at least, to organize a superior body in the bosom of this convention, and if they had ever seen the effect of the united and concerted action of 10 or 20 men, in a body of this size, they could judge of the effect that might be reasonably expected to result. It might be, unless the good sense and firmness of this body should counteract it, the organization and application of the caucus system to their deliberations. It was for these reasons that he was opposed to it. He came here believing that they should have the widest latitude of consideration and proposition. Whenever twenty members of this convention thought a proposition should be adopted, in his judgment there should be a committee to whom that proposition shall be referred, and through whom it might be presented on fair and equal terms with every other proposition that should be submitted to their consideration. Take a possible case of an omission in the classification of subjects. There were a considerable number of persons who supposed that the rights of property of half the community were not sufficiently protected by the existing laws—who think that the same objects which by a refined and complicated system of artificial laws are secured to the few who are wealthy enough—to those who are able to pay the price—should be given as a free and common right and without price to every member of the community,—who think that the property of married women, instead of being secured by a system of trusts, should be accomplished by the ordinary laws, remedies and securities. Now suppose that in the organization of these committees, there should be no one to which a question of this kind could be appropriately referred? Did they suppose that a proposition made to the convention on that subject would stand an even chance as if presented at the organization of the convention? He apprehended not.

One word as to this dispatch of business. It seemed to him that if they formed a committee as was proposed, in the first instance, that committee would have to bring its report into the Convention, and the question would then arise on their report, whether it should be amended. Any gentleman who had a proposition to make which he did not deem fairly included in the classification, would then offer it, or some amendment which would provide for it, as an amendment to the report, and they might have then as long a discussion as if they allowed free latitude for a day or two, without being committed to any particular course of action. There might also be some propositions

of restriction which gentlemen might desire to offer, though it were somewhat questionable if gentlemen were then prepared to make their propositions. In every respect, he thought it would be profitable to spend a few days at the commencement of the session in an examination of propositions that might be made, and that it would save time hereafter.

Before he sat down he ought to correct an error into which his colleague had fallen respecting the course pursued in the legislature on the Governor's message. It was true, the message was referred to the committee of the whole, and that some parts were not taken out of committee of the whole until nearly the close of the session; but all the material parts on which discussion and final action were had, were taken from the committee, he should think, within the first month of the session. In that case he was averse, as he was now, to going into a general discussion in that committee. He thought it would be wiser to refer originally, and to discuss the specific propositions. He thought now that after they had had discussion enough to enable them to classify their propositions, it would be wiser to refer them to special committees, than to go into a general discussion; but for the purpose of an accurate, comprehensive classification, he thought they should, for a short period, receive propositions from various quarters. There was a stronger reason now than in the case of the Governor's message.—There all the subjects on which the legislature was to act, were contained in the document, and it was but brief work to analyze, separate, and discuss its respective parts. But here, there would be many which were not found in the Constitution at all—for instance, the proposition in regard to state debt. It was important therefore that each member should have an opportunity to offer subjects on which the Convention should act; if then, there was any difficulty in coming to a definite conclusion, they could pass a resolution referring all the propositions to a select committee, or if in committee, a motion to rise and report could be made, and the purpose of gentlemen might be accomplished by refusing leave to sit again. A committee so formed, would be acquainted with the disposition of the members of the Convention, and would be able to make a classification which would promote a prompt, energetic and intelligent despatch of business.

Mr. SWACKHAMER inquired the state of the question?

The PRESIDENT stated the question to be on Mr. LOOMIS' substitute for the original resolution.

Mr. SWACKHAMER then remarked that the question of reference did not come up under this motion—and to prevent this random discussion of the whole subject, he now moved that the original resolution, together with the two amendments, be referred to a committee of the whole on the constitution. This would present the distinct question of reference.

Mr. TAYLOR said that, having been consulted by the gentleman from New-York (Mr. Jones), as to the original resolution, it was due to himself to state his relationship, if any, to it. The resolution was submitted to him. He had

not reflected much on the subject ; but he knew the course taken in the Convention of '21.—Deeming that course suitable and proper, and that the action of the committee would be very limited, he suggested some alterations, striking out all that would be likely to lead to debate, and presenting the simple proposition contained in the resolution. Mr. T. was aware of the practice in Congress and here, of going into committee on the Executive message, and then distributing it among the appropriate standing committees. But we had no such committees. And his idea was, that we should appoint a committee to designate the various committees to which different subjects might be referred.—This would take but a short time ; and when these committees had been ordered, then, if the Convention were disposed to go into committee of the whole on the Constitution, and distribute its various parts among these committees, the proceeding would be perfectly proper, and analogous to the usage in legislative bodies. If gentlemen desired to go into committee, and to present their views early on the various subjects of constitutional reform, he had no sort of objection to it. On the contrary, he was for the broadest latitude of debate. He would not curtail it now. He thought, however, a committee of eight would be sufficiently large to suggest what committees should be appointed. If these should be found afterwards not to embrace all the subjects that might be brought up for reference—or rather, if none of them should be deemed appropriate—it would at any time be competent and proper to raise a select committee. He would however restrict this committee, after the remarks that had been made, to the simple business of designating the committees, that in their judgment should be appointed ; and then the reference of different parts of the Constitution to these committees, would be a matter proper for consideration in committee of the whole.

Mr. O'CONOR had listened attentively to all that had been said pro and con in regard to this question of reference ; and though unable to bring to his aid, in forming a judgment on it, any amount of parliamentary experience, or knowledge of parliamentary law, yet he felt, as a member of that body—the question having been treated as one of some importance—bound to express his views on it. They might be in some respect different from those expressed by any one gentleman, though perhaps not essentially in conflict with a true view of the whole argument, as presented on all sides. He regarded this proposition as analogous to that first important proposition, connected with our organization, with which we commenced this session—the subject of the rules of order. We had a vast subject spread before us. How to approach it, was the question. To take a view of the whole of it at once, was impossible. Where we should commence, and how we should progress, was the question now before us—what mode should be adopted to guide our judgments as to the place where we should begin, and the manner in which we should proceed in traversing all this vast subject. Now, in relation to the appointment of committees, Mr. O'C. had entertained precisely the opinions he had heard expressed here by gentlemen opposed to the re-

ference to the committee of 17. And yet, he was in favor of the appointment of that committee. To make himself intelligible, it might be important to look at the two propositions, and see in what consisted the distinctive character of each. The first was an open, general proposition, that it be referred to a committee, to lay before the Convention a plan of operations. The counter proposition was, that the body itself, in its collective capacity, do now proceed to the classification of subjects, and the appointment of the committees to which these particular subjects should be referred. What would be the proper course of operations under these two modes of proceeding ? He should infer, if this matter were referred to a committee of 16, as proposed by one of his colleagues, and modified by another, that it would become them to determine whether the Constitution should be divided, classified, and referred to distinct committees, or whether propositions should be discussed before the house in committee of the whole, in the first instance—or whether a plan might be adopted by which both these modes of proceeding would be introduced and the advantages of each secured. Suppose this committee should come before the house with a classification according to their views. It would certainly be competent for us to vary that classification, as might strike the good sense of the convention. It would be competent also for any member who conceived that classification to be incomplete or indefinite, to bring forward a modification of it. If, for instance, any member should desire to abolish the property qualification for voting or holding office, in all cases—or any other of the various amendments that had been agitated—it would be competent for any member to bring forward such a proposition, and move its reference to some appropriate committee. It seemed to him that a committee raised to chalk out a course of proceeding, might safely, and in all probability would, not only secure to us the advantage of committees, and a proper rule of order, in disposing of the main subjects of reference—but might provide generally for a reference of subjects falling under any general classification ; and a disposition once made of such a subject would give a construction to that classification, which would govern thereafter. Or in case very important propositions were presented, they might be discussed in committee before being referred—and thus reduce the duty of a committee to a mechanical duty—as, it secured to him, the duties of committees generally should be. Now, whilst the first proposition aimed directly at laying before us a sort of programme of proceeding—the amendment was open to this objection, that under it an individual member would execute the duty which would be entrusted to the deliberate examination of a number of minds—thus making a classification for himself, according to his own views. Certainly we should much more surely arrive at a safe and satisfactory classification, by having that important subject carefully considered by a number of minds in advance. And we should have progressed very far in our work, when we should have secured the opinion of five or six or any other number of experienced gentlemen in favor of

a particular classification. For he should assume, and at this early stage of the session, all should assume, that every gentleman would be influenced by good motives and by an honest desire so to classify subjects that they would come up in a manner convenient for discussion, and not in a manner calculated to embarrass. On the other hand the proposition of the gentleman from Herkimer (Mr. Loomis) contemplated that we should at once—now—proceed to make a classification, as a whole—the whole body acting on it at the outset. That would be attended with great inconvenience. We should have a thousand conflicting opinions on the subject; it would be as difficult as it would be to establish rules of order in committee. Therefore tho' entertaining generally the views of the gentleman from Herkimer that individual opinions on any of the great questions before us ought not to be forestalled by the dictation of any committee, or by the weight attached to their report—still he thought, on this mere question as to the order of proceeding, a great deal would be gained by referring it to a committee—a smaller committee, however, than that proposed—so that it might be brought in a matured shape before the body and deliberately considered. He would not have the opinions of any individual forestalled by the report of a large committee. He thought it extremely desirable also, that after the appointment of the committees, under the classification that should be adopted, that each member should have the opportunity of presenting his proposition or amendment, and advocating it in the house, before even a small committee shall have presented another involving a negation of it. He was not at all apprehensive that the action of the proposed committee, whether of 17 or of 8, would have the effect to overawe members—nor did he believe that the committee would become so wedded to their own classification, as to band themselves into a party to sustain it. He preferred, decidedly, in order that business might be brought regularly before us, that there should be a committee to chalk out a plan of proceedings, under the original resolution. When that plan should be presented, the body could vary it, if deemed defective. He was prepared to move to vary any part of it that did not seem calculated to bring forward the reforms which his constituents desired. After discussing their report, it seemed to him we could get fairly at work on the matters before us—not on a subject of mere form, a matter of mere classification, but on distinct, untechnical propositions, touching the distinctive reforms which members might feel instructed to present.

Mr. HOFFMAN expressed his obligations to the gentleman from New-York (Mr. Jones) for bringing this question before the Convention—calculated, as it was, to bring the minds of members distinctly to the question, in what manner we could best proceed to cut up, to dissect, classify and arrange the subjects on which we were to act. But he was more indebted to his friend from Kings (Mr. Swackhamer,) who had moved, as Mr. H. thought, the proper reference of the subject. He had no great claim to make to legislative experience. But he should be wanting in duty to the Convention, and to his own conscience, if he did not say,

that on a question like this, he preferred the committee of the whole, because it left to us every other mode that might be suggested.—Whilst we could lose nothing by it, we gained by it all that could be gained by a special committee. We were engaged in a great labor—and when he recollected that in all conflicts for freedom, the grand committee—the committee of the whole—had been the instrument by which victory had been achieved, he could not sit here and leave his friend unsupported. Submit this question to a committee, and they would be in the condition in which we were now—with the Constitution before us, and the existing government in its complicated workings. Refer it to a committee of the whole, and they would have the same matter before them. Was it not supposable that the entire Convention might come to wiser and better conclusions than any committee? The mover of the resolution very properly admitted that the select committee would not rely entirely upon their own intelligence, but consult other members of the Convention than their own number. And yet, he assigned as a reason for not going into committee of the whole, that every member would be at liberty to present his own project of distribution. How else were the select committee to get at the views of members? Were they to travel round from room to room and collect them? Or were members to come before the select committee, sitting in their room, and propose their plans? Could any thing be more disorderly than such a proceeding as this? In committee of the whole, members could not only submit their propositions, but could speak to them and defend them. And if the select committee were to be aided at all by the suggestions of individual members, it could only be done by debate in committee of the whole. He demurred to the idea that we were to facilitate the dispatch of business by this short cut. But all knew that before this resolution would be taken from the table and referred, instruction upon instruction might be moved and a debate had upon each. And so when the report came in, amendment upon amendment might be proposed and debated—and it was not to be supposed that at this early stage of the session, the previous question would be very freely resorted to. If dispatch was the object, the end would be best attained in committee of the whole. A day or two spent in committee, would in his judgment enable members to show on what subjects they desired committees. But if it should so happen that there should be no concentration of views, the matter could then be taken from the committee of the whole, with entire satisfaction to all, and then a select committee would have heard enough to enable them to make such a partition of the subject as to be generally acceptable. He had no fears of an interminable debate in committee on the merits of various important propositions. But it was better that occasional departures from the strict rule of order should occur, than that gentlemen undisciplined to this species of deliberation should be trammelled by calls to order. They would injure nobody, might elicit useful truths, and in no other way could all have an opportunity of participating in the settlement of this important

question. Nor had he any fears of any wrangling personalities in committee, or any departure from the decorum that belonged to the body. True, many of us had been actors in the past. But that action could not be recalled. Good or evil, it had gone forever. We were called here to make a constitution, not for the three millions now on the stage, but for the millions who were to succeed them. This consideration ought to control any disposition here to make observations on each other, and to induce us to engage heart and hand in framing the best constitution in our power for the future. Commencing with that great instrument of public freedom the committee of the whole, he trusted we should succeed in attaining that end.

Mr. CAMBRELENG regarded this as a mere question of time and the order of business. His friend from Herkimer must be familiar enough with the usage which prevailed in congress, to understand the necessity of a preliminary enquiry—and how these things were done in every deliberative body. There was no caucus, usually, or a select committee to arrange the matter of referring a message—but a few prominent men got together and arranged the order of business. They went into committee, and some gentlemen previously designated, presented the resolutions of reference. The object of this motion of the gentleman from New-York was to have an informal committee to suggest the standing committees, as it were of this body—such as all legislative bodies had. No principle was involved in it. If any member had expressed a desire or a design to suppress any proposition which any member desired to present, that would present a different question. But all knew that no such design was entertained by any member here. The object was to get a committee to propose the order of business—that we might take the course pursued by every legislative body throughout the world, in dissecting the message of a governor or president. Go into committee now, and we should have 40 different propositions and interminable confusion—and at the end of two weeks, we should probably come out of committee with all these conflicting propositions undecided—and should have to refer the whole subject to a select committee, precisely as it was proposed to do now.

Mr. HOFFMAN confessed to having taken part in the labor of dissecting a message—but he had never had any thing to do with any informal conference out of doors, in relation to it.

Mr. CHATFIELD thought the question was misconceived. Gentlemen seemed to have understood that while referring this matter to a committee of 17 to report a *projet* for the house, they were referring it to the committee to report a constitution, perhaps one already prepared, which was to be smuggled through the house, without any body being allowed to know any thing about it. Now he did not believe the

committee would find the gentleman from Herkimer asleep, if they had any such expectation. He was ever too wide awake.

Mr. HOFFMAN said he had never heard of such a proposition as that referred to by the gentleman from Otsego (Mr. CHATFIELD). He understood it to be a question of mere distribution.

Mr. CHATFIELD had heard no gentleman make such a proposition, but that appeared to be the result at which they seemed to be coming. Now he understood it to be a proposition to take up the constitution, and to appropriate its parts and the amendments that were necessary to special committees. Beyond that the committee could not go;—and he asked if there could be any danger of that committee obtaining a controlling influence in this body out of such a trust? He should be glad if gentlemen would point out to him where the danger lay, and where it was to be looked for. The committee would report no opinions. Their report would come simply in the form of resolutions; the subject then would be referred to the committees; and if there should be any unappropriated subject, it would be very easy to have an appropriate reference. He thought the adoption of the resolution would facilitate business, for if it were disposed of now and the committee appointed, they would probably report to-morrow, and then the subjects could be sent to the various committees to digest plans for the convention to act upon.—But if the other course should be pursued, they would find themselves afloat on a wide sea, without helm or compass. They might debate the constitution for a month, and not advance their business one whit.

Mr. JONES read a substitute which he had prepared for his resolution.

Mr. SWACKHAMER objected to it as out of order.

Mr. JONES, at the solicitation of others, withdrew it.

Mr. TILDEN explained the positions he had assumed, as they did not appear to have been understood by the gentleman from Otsego. He said he was not in favor of going into committee of the whole for the purpose of a general discussion, but for the purpose of giving to the 111 members of the Convention as fair a chance to present their propositions as 17-123ths of it.

Mr. SHEPHERD asked his colleague to give way for a motion to adjourn.

Mr. TILDEN said he had done.

Mr. CHATFIELD asked leave of absence for Mr. NELSON of Otsego. for one week, unavoidable business having called him home.—Leave was granted.

Mr. SHEPHERD renewed his motion, and the Convention adjourned to 11 o'clock to-morrow morning.

FRIDAY, JUNE 5.

Prayer by the Rev. Mr. BATES.

EXPENSES OF THE JUDICIARY.

Mr. KIRKLAND, from the select committee of 8, in relation to the expenses of Judiciary proceedings, submitted the following resolutions:—

COUNTY, MAYOR'S AND RECORDER'S COURTS.

Resolved, That the Secretaries of the Convention be directed to address letters to the County Clerk of each County in the State, requiring an immediate answer to the following questions:—

1. How many terms of the County Courts of your County were held, and for how many days did said courts sit during the year 1845?
2. How many civil causes were on the calendars at said terms *for trial*, how many were tried; and what was the aggregate amount of verdicts therein?
3. How many of said causes were on appeal from Justice's Courts; and in cases of appeal, in which verdicts were rendered, state in each case the amount of the recovery for debt or damages before the justice, and the amount of the verdict in the county court?
4. How many causes arising on certiorari were on the calendars at said terms? How many judgments were recovered? How many affirmed?
5. What was the amount allowed during said year to the Judges of the county courts and common pleas, for their fees or salaries as compensation for travel and attendance at said courts; and what for travel and attendance at the courts of oyer and terminer?
6. What amount was allowed, and chargeable to the county for fees, during said year, in said county courts, of grand jurors, of petit jurors, of sheriffs and constables, of crier, of county clerk, for services in said courts, stating each separately?

Resolved, That the secretaries address similar letters to the clerks of the several mayor's and recorder's courts in this state, except the recorder's court of the city and county of New York, asking for similar information, so far as applicable to their courts.

CIRCUIT COURTS, &C.

Resolved, That the secretaries, in their said letters to the county clerks, and also in a letter to be addressed by them to the clerk of the circuit court in and for the city and county of New-York, request answers to the following questions:—

1. How many terms of the circuit court were held in your county during the year 1845, and for how many days did said terms continue?
2. How many civil causes were on the calendars at said terms; how many were tried; what was the aggregate amount of verdicts rendered at each term?
3. What amount was allowed for fees at said terms, of grand jurors, of petit jurors, of sheriffs and constables, of crier, stating each separately?

Resolved, That the Comptroller be requested to prepare for the use of the convention a statement showing the amount of salary or compensation paid or accrued during the year 1845, to the chancellor, the vice-chancellor, the assistant vice-chancellor, the justices of the supreme court, the circuit judges, the state reporters, the register, including clerk hire and other expenses allowed to him, the assistant register, including clerk hire and other expenses allowed to him, the clerks in chancery, the chancellor's clerk, the clerks of the supreme court, including clerk hire and other expenses allowed to them, the criers and constables attending the supreme court, the sergeant-at-arms of the court of chancery, the members of the court for the correction of errors, its officers and attendants, and all other charges or expenses during said year paid by the state, or incurred and chargeable to the state, for the court for the correction of errors, the court of chancery, the supreme court and the circuit courts.

Resolved, That the secretaries of the convention be directed to address a letter to the Vice Chancellors, the assistant Vice Chancellor, each of the Circuit Judges and Supreme Court Commissioners, the First Judge of each county, each of the Judges of the superior court and of the court of common pleas of the city and county of New York, and of the Justices of the peace court in said city, the Recorders of each of

the cities of the state, the clerk of the supreme court in the city of New York, and also to the several masters and examiners in chancery in the state, requesting them severally to communicate to this convention without delay, the amount of fees and perquisites of office received or charged by them respectively, for services rendered during the year 1846

Mr. STRONG remarked that the report appeared to be defective on one point. He said some of the counties paid their first judge a salary and the fees and perquisites which he received were returned to the board of supervisors and thus became the means in part from which his salary was paid.

Mr. RICHMOND suggested that the books of the county treasurers would show what amount was paid to the first judges wherever they were salaried officers.

Mr. STRONG moved to amend the report by the addition to the word "fees" the words "and salaries."

The amendment was adopted.

Mr. SHEPARD suggested that there was another omission in one of the resolutions, which only called for returns of county courts in the respective counties. Now in the city of New-York the county court is distinct from the court of common pleas, and does more of the ordinary business of county courts in the other counties of the state; therefore returns on the resolution as now framed would be defective. He moved the addition of the words "and Court of Common Pleas" after the words "County Court."—That would obviate any objection he had.

The amendment was adopted.

Mr. RHOADES moved the following additional resolution of instruction, which was adopted:—

Resolved, That the clerks of the supreme court be requested to furnish to this Convention a statement of the number of judgments rendered in that court during the year 1845, with the aggregate amount of damages and costs, stated separately.

Mr. JOHN J. TAYLOR said there was another omission. He desired to obtain returns of enumerated and non-enumerated motions made and decided in courts of common plea.

Mr. PERKINS thought that to obtain a return of mere motions made, was to obtain returns of matter simply relating to the progress of a cause. They were not requiring returns as to the business of the courts, but as to the amount of taxation which these courts entailed on the community, and the drafts which were thus necessarily made on the treasury. It was not therefore necessary to call for information to show simply whether the courts had worked hard or otherwise. If they encumbered the resolutions with too many amendments they might defeat their purpose, for if they sent too many interrogatories they would get no returns until it was time for the convention to adjourn. The committee had omitted the year 1844, because the enquiries would have been too extensive for the practical purposes of the convention, and hence he hoped the amendment would not be pressed.

Mr. KIRKLAND said the committee thought

when their labors were completed, that they had incorporated in their report as many interrogatories as would obtain all practicable information within a reasonable time. They had before them a proposition on the subject mentioned by the gentleman from Tioga, but on deliberation it was deemed better to avoid the smaller matters, respecting which the committee would be glad to make inquiries, lest they might defeat the main inquiry. If however there were other subjects on which gentlemen deemed it necessary to inquire, he would suggest that they should offer separate resolutions at a subsequent period so as not to embarrass the adoption of the report now made. He apprehended it would be found, if gentlemen had listened to the reading of the report, that its results, if the returns were properly furnished to the convention, would be voluminous.

Mr. J. J. TAYLOR would not press his amendment if he could suppose that it would encumber the inquiry about to be made; but he was of opinion that when the clerks were looking over their books to ascertain what causes had been tried, and to obtain the other information which the resolution of the committee called for, this additional information might be readily obtained at the same time without any considerable extra labor. The motions to which his amendment alluded occupy our courts a good deal of time, and he supposed one great object was to compare the efficiency of our courts with the expense which they cost the people; and they could not know how efficient they were until they knew what business they performed.

Mr. SMITH, in the course of some observations, contended that the interrogatories were as full, and embraced as many subjects, as the committee supposed could be answered.

Mr. LOOMIS said he perceived that criminal cases were embraced, but that district attorneys were omitted.

Mr. KIRKLAND explained.

Mr. BERGEN inquired if the officers on whom the calls were to be made were compelled by law to answer the interrogatories? If not, he thought the convention should circumscribe its inquiries as much as possible, as a response would require much labor and a great consumption of time.

Mr. STRONG suggested that the whole subject should be laid on the table until to-morrow, to give members an opportunity to mature their amendments. This course he thought would result in a saving of time. He, therefore, moved to lay on the table and print.

Mr. RHOADES said he desired to extend his amendment for the purpose of getting the same information from courts of common pleas that was required from the supreme court. He deemed such information of much importance to the convention.

Mr. RUSSELL hoped the convention would adopt the report to-day, in order that the earliest possible communication might be had with the officers on whom these calls were to be made. He doubted in any event if they should get returns on all the subjects mentioned, before this body adjourned. It was, therefore, very desirable that the communications should be sent out as soon as possible. The convention had

appointed a committee of eight, who were conversant with the subject, and the chairman of that committee had told them that the inquiries were as extensive as practicable, if they hoped to obtain returns in season for the action of the convention; and it seemed to him that it would be rather discourteous to the committee and subversive of its objects to delay action on their report. He thought there should be an inquiry into the expenses of criminal courts, and the amount of fines collected and bonds estreated. He now, however, would send up a resolution, believing that it would be proper that the committee of eight should be charged with the duty of revising the returns that should be received and the preparation of an abstract of them.

The PRESIDENT apprised the gentleman that the question pending was on the motion of the gentleman from Tioga (Mr. TAYLOR).

Mr. T.'s amendment was read by the Secretary. It was an amendment to the second subdivision, and was intended to call for returns of the number of civil causes on the calendar at each term, how many were tried, and the amount of the verdicts thereon. Also how many enumerated and non-enumerated motions were heard at the same terms of the courts of common pleas.

The question was taken, and the amendment negatived.

Mr. RUSSELL now sent up the following amendment:

Resolved, That the same committee be charged with the duty of superintending a compilation of such returns when received, and the printing of them, or abstracts thereof, for the use of the Convention.

Mr. KIRKLAND opposed the motion. The committee would be unable to discharge that duty—a duty which of right devolved on the secretaries. He moved to strike out the word "committee" and insert "secretaries."

Mr. RUSSELL thought the secretaries would be fully employed with the general business of the convention, but that the committee could "superintend" the compilation, to make which doubtless the convention would afford them ample clerical aid.

The amendment was lost.

Mr. HARRIS offered the following resolution.

Resolved, That the Clerks of the Supreme Court be requested to inform this Convention of the number of causes upon the Calendar for argument at each of the terms of the said Court, during the year 1845—the number of such causes whose issue bears date in the year 1845—and the number whose issue bears date in each preceding year—and the number of causes heard and decided at each of said terms.

Resolved, That the Register and Assistant Register be requested to furnish similar information with respect to the Court of Chancery.

Mr. NICHOLL desired to submit a substitute.

Mr. KIRKLAND repeated the expression of his wish that gentlemen would not encumber the report with these motions, but that they would offer them as independent propositions.

Mr. HARRIS, while he could not see how delay could be occasioned by the inquiries he desired to make, was nevertheless disposed to yield to the suggestion of the gentleman from Oneida. He therefore withdrew his resolution.

- Mr. NICHOLL, for the same reason, would not press his substitute.

The question was then taken on the amendment of Mr. RHOADES, requesting the clerks of the courts of common pleas of the several counties of the State, to furnish the convention with a statement of the number of judgments docketed in said courts in the year 1845, and the aggregate amount of damages and costs stated separately.

The amendment was adopted.

Mr. STOW would not move to lay the report on the table, but he wished to make a few enquiries from the chairman of the committee.—He wished to enquire if there were any interrogatories proposed which would reach the cases of those officers who were occasionally paid for acting as judges? For instance in his own county (Erie), there were aldermen who occasionally attended the Recorder's court, and he desired to know if there were any interrogatories that would reach such cases. He wished further to enquire if there were any interrogatories which would reach the case of an officer who was incidentally paid, as were some Recorders who had salaries, but who also received compensation from the board of supervisors. He called the attention of the chairman of the committee also to a technical distinction in some courts. He believed the city of Albany afforded an instance, where what is commonly designated the Recorder's court was the Mayor's court. He desired further to direct the attention of the chairman of the committee to the fact that while these resolutions were calling for returns of the fees of criers of courts, those fees had been abolished by law, and a per diem substituted.

Mr. KIRKLAND admitted that the report should be amended in respect to mayors' and recorders' courts. With respect to some of the other points, the committee had had them under consideration, and had thought it better to pass them by at present and make some general remarks about them when the returns came into the convention. They had omitted all matters which were not likely to bring forth information as to the counties at large, where the practice was general, and not merely local.

Mr. SMITH moved to lay the report of the committee on the table, for the reason that there was a more important subject to be determined, what was pending when the convention adjourned yesterday.

The motion was lost.

Mr. MORRIS had an amendment, which was not an alteration, but merely proposed to designate the proper officers in New-York, to whom enquiries for information should be addressed, and who could readily furnish it. Mr. M. sent up an amendment.

Mr. KIRKLAND presumed as this amendment was designed and calculated to further the object of the enquiries, that there would be no objection to it.

This amendment was adopted, and the report as amended, adopted.

Mr. CLYDE submitted the following additional enquiries:

Resolved, That the secretaries of this convention be and they are hereby directed to address a letter to each of the surrogates of this state, requesting from them

and each of them an immediate answer to the following inquiries:—

1. What was the total amount of fees and compensation received by you as surrogates for the year 1845.

2. How many applications were made to you during said year for the proof of wills and for letters testamentary.

3. How many applications were made to you during said year for letters of administration in cases of persons dying intestate.

4. How many letters testamentary and of administration were granted by you during said year.

5. In how many cases did you appoint guardians for minors during said time.

6. In how many cases were there settlements of the accounts of executors and administrators before you during that time, and how many of them were final.

7. How many applications were made to you for the sales of real estate during said time.

The resolution was adopted, and on motion of Mr. KIRKLAND, the secretaries were authorized to procure such printing to be done as might be necessary to carry out the object of all these enquiries; and the report of the committee was ordered to be printed.

ORDER OF BUSINESS.

Mr. WARD now called up the resolution of Mr. JONES, directing the appointment of a committee of seventeen, to consider and report to the convention the best practicable mode of proceeding to the revision of the constitution.

The resolution was taken up—the question being on the motion of Mr. SWACKHAMER, to refer the resolution and the amendments to a committee of the whole.

Mr. DANFORTH sustained the motion to refer. When the resolution to raise this committee of 17 was first made, it struck him unfavorably. Disguise it as we might, the result would be that the influence of such a committee, embodying as it would, the strength of the convention, would be felt in all our deliberations. True, it would be the privilege of every member to suggest topics for the consideration of committees. But here was a very large committee to be selected from the several senatorial districts, and representing no doubt a large share of the wisdom collected here. The presumption would be that the committee would be fully competent to the duties devolved on them. And hence, if his constituents felt an interest in any matter of reform, not embraced perhaps in the programme of the committee, their representatives here, single handed, might be able to force it on the consideration of the convention, and might not. He hoped the convention would pause before they authorized the raising of any such committee. He desired to see the whole subject referred to the committee of the whole. Some little time might be consumed in discussing them, it was true—but he believed the time would not be unprofitably spent, in considering the preliminary steps of our proceedings. It would prepare us better for our duties, and open the way for the transaction of business more speedily than in any other mode.

Mr. MANN opposed the reference moved by Mr. SWACKHAMER. He believed that if we once got into committee of the whole on this preliminary question, we should not get out of it in six weeks. The whole constitution would be discussed in all its parts, and the merits of every project of amendment argued. But he merely rose now to say, that if the motion to refer should

not prevail, he should, as so much had been said as to the influence of so large a committee, propose to reduce the number to 7.

Mr. SWACKHAMER sustained his motion to refer. If this was not done, the convention had already been told by the gentlemen from Herkimer and Orange, that they would move their propositions by way of amendment or of instructions. This, of course, would precipitate us at once into the whole field of enquiry as to what parts of the constitution required amendment, and what not. And thus we should have to discuss here the whole plan of action, and the body must decide upon it, here in convention, and without the advantage which a committee afforded to every member to propose and discuss measures. He trusted that what we had all seen this morning would admonish members of the importance of keeping matters in their own control. If it went to a committee of 17, they would necessarily become wedded, after they had made their report, to its conclusions, and to some extent prejudiced against propositions brought forward by individual members. We appointed an unimportant committee the other day to reduce to form certain enquiries—and what was the result? They reported this morning—and he believed that with a single exception, not one of the various amendments were adopted, without the assent of the Chairman of that committee. And however unprejudiced gentlemen of a committee might be, when first appointed, they became of necessity more or less biased by interchanges of opinion and views among themselves. He was aware of the complaints made of the waste of time by legislative bodies, in profitless debate—but he did not apprehend that we should be blamed, provided we came at last to right conclusions, if we did spend a few days, or even a few weeks in discussing generally so important a subject as a revision of the fundamental law. And inasmuch as any and every subject might be broached here in convention, under amendments or instructions, he hoped the body would consent to have the discussion take place where there was the greatest latitude of debate, and where every member could present the suggestions which he knew to be in accordance with the wishes of his constituents. He did not concur in the suggestion that this committee of 17 would embody, of course, the popular sentiment of the state. He supposed, what he thought a very probable case—without in the remotest degree intending to reflect on the President—that the two members of the committee from the first district were to be taken from the city of New-York, represented as it was here very ably.—The consequence would be that Long Island and its views on the subject of state debt, and the propriety of expenditures for internal improvement—to which it was hostile—would not be represented in the committee. In committee of the whole every portion of the state would be represented—every local interest—and by an interchange of opinion there, the whole broad ground which we came here to explore, would be covered—the views of members would be concentrated on the several important topics that must come up, first or last—and we should then have accomplished half the work before us.—

We had precedent for this course, drawn from the practice of one of the most august assemblages that the world had ever known—and it did strike him that we could take no course better calculated to lead to right results, than to follow in the wake of the great men whose labors had reflected such honor and benefit on the human race. Certainly, we could take no more objectionable course than to act as to oblige individuals submitting propositions here, to encounter the opposing influence and weight of this large committee.

Mr. LOOMIS said that had he anticipated this protracted discussion, when he offered his amendment, he should probably have shrunk back and permitted the matter to have taken its own course. He did so however, in conformity with what he thought the usual and safe parliamentary usage—never departed from in ordinary legislation—of arranging subjects for the consideration of committees, before the whole body. He had never heard of but one instance of departure, and that was in the former convention. His course was the ordinary course—not the exception. The course proposed by the gentleman from New-York (Mr. JONES,) he regarded as the exception. And he thought this body had better take the ordinary and safe course of legislation. But he felt no particular sensibility on the subject. He should be perfectly satisfied with any course the convention might take. He would remark however, that if the convention would take into its own hands, either here or in committee, the business of dissecting and distributing subjects among committees, it could be done in half the time that had been consumed in deciding how it should be done. He presumed three propositions offered by himself, and Mr. BROWN, and indicated by Mr. JONES, were all that were prepared for submission to the body; and he doubted very much whether they would lead to a protracted debate here or in committee. But he rose to suggest that the convention now take up one of these propositions and go through with it, either here or in committee.—Perhaps before we adjourned to-day—certainly to-morrow—and before this committee could report, we could adopt some classification. He did not know of a single member who was prepared to make a general speech on constitutional reform. The only question was one of dividing the subject—and so arranging the parts that the duties of committees should not conflict. The subjects were such as naturally presented themselves to the minds of gentlemen. But he rose to say merely, that if the convention would make the trial of arranging these matters themselves, and if it should become apparent that no satisfactory progress could be made in that way, he should be content to send the whole matter to a select committee.

Mr. CHATFIELD took issue with Mr. Loomis as to what was the ordinary parliamentary course. Mr. C. never yet heard of a legislative body going into committee of the whole to provide rules for its government or for the appointment of its standing committees. The original resolution had a two-fold object—first, the creation of committees; and secondly, the reference of subjects to their appropriate committees.—The amendment of the gentleman from Herki-

mer proposed in terms that certain subjects should at the start be sent to separate committees consisting of a certain number—in effect proposing that the body should without the preliminary action of a committee, itself provide for the appointment of its committees. This he had never known done by any legislative body.—Standing committees were always raised on the report of a committee on rules, the rules designating the committees; and no legislative body ever went into committee of the whole to determine how subjects should be referred, but petitions, bills, &c., went of course to their appropriate committees, by direction of the presiding officer—the committees being a matter of previous arrangement.

Mr. LOOMIS interposed. The gentleman and he did not differ in point of fact. The message of a Governor or President when communicated, was the subject matter of legislation and the only subject before them—the Executive being required to present such subjects as in his judgment required legislation. The business before this body, was precisely analogous—it was the constitution. The Executive message, or in other words, the subject of legislation before the body, was always taken up in committee of the whole, and there dissected and distributed. His proposition was precisely analogous to this—and though we had no committees actually raised, yet in effect there was now a committee in existence on every subject properly referable, and our business was to distribute the matter before us among them.

Mr. CHATFIELD'S experience in legislation led him to other conclusions. The message was not the only business before a legislative body. It was always referred in parts—but the instances were rare when legislation grew out of such references. Legislation was generally based on petitions. But suppose the message was the only subject of consideration for a legislature? Were we restricted to the consideration of the constitution alone? Mr. C. thought not. To borrow the idea of a member, more distinguished than he could ever hope to be, Mr. C. undertook to say that we stood here on the foundations of society, with the elements of a constitution scattered about us—perhaps in disorder—and we were to arrange and bring them into form, and if possible, to frame a better constitution than the old. Our first business was to form committees to which different subjects might be referred. And when the committee of 17 reported, it would then be for the Convention to adopt, to modify or reject their classification. Its business was simply to suggest the several topics that should be matters of reference, and present something tangible for the action of the Convention. Their functions would cease the moment they had reported. The question was one of mere expediency—in what way could this classification be best accomplished? It struck him as the most orderly, direct and parliamentary mode to refer the matter to a select committee.

The question was here taken on Mr. SWACKHAMER'S motion to refer the resolution of Mr. JONES and the pending amendments to the committee of the whole, and it was negatived—ayes 31, noes 90, as follows:

AYES—Messrs. Bascom, Brown, Burr, Conely, Cuddeback, Danforth, Dubois, Flanders, Hoffman, A. Huntington, Hutchinson, Jordan, Loomis, McNeil, Nellis, Pennuman, Perkins, Russell, Sanford, Shepard, Tetonson, Swackhamer, Taft, J. J. Taylor, Tilden, Townsend, Tuthill, Waterbury, Witbeck, Wood, the President—31.

NAYS—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bergen, Bouck, Bowditch, Brayton, Bruce, Brundage, Bull, Cambreleng, D. D. Campbell, R. Campbell jr. Candee, Chamberlain, Chatfield, Clark, Clyde, Cook, Cornell, Crooker, Dana, Dodd, Dorlon, Forsyth, Gardner, Gebhard, Graham, Greene, Harris, Harrison, Hart, Hawley, Hotchkiss, Hunt, Hunter, E. Huntington, Hyde, Jones, Kernan, Kingsley, Kirkland, Mann, McNeil, McNitt, Marvin, Maxwell, Miller, Morris, Munro, Murphy, Nicholas, Nicoll, O'Connor, Parish, Patterson, Porter, Powers, Rhoades, Richmond, Riker, Kuggles, St. John, Salisbury, Sears, Shaver, Shaw, Sheldon, Simmons, E. Spencer, W. H. Spencer, Stanton, Stephens, Stow, Strong, Taggart, Tallmadge, W. Taylor, Vache, VanSchoonhoven, Ward, Warren, White, Willard, A. Wright, W. B. Wright, Yawger, A. W. Young, J. Youngs—90.

Mr. LOOMIS now renewed his amendment, in order to test the question whether the Convention would raise at once the committees proposed, or refer the matter to the committee of seventeen.

Mr. JONES remarked that he had a series of propositions to offer, by way of amendments to these, if they were now pressed. But he hoped they would be withdrawn, and that the Convention might be permitted to come at once to a vote on his proposition to raise a committee of seventeen. If the sense of the Convention was in favor of appointing this committee, that would dispense with the necessity of a vote on the amendments. If the Convention should reject the proposition to raise a committee, then these amendments could be renewed, as original propositions.

Mr. BROWN said he regarded the vote just taken as decisive. The Convention having refused to act on these propositions in committee of the whole, it was hardly to be supposed that they would act on them here. He hoped therefore a vote would be at once taken on the resolution of Mr. JONES.

Mr. TILDEN said it was quite indifferent to him what course was taken—though he had supposed yesterday that the whole question might be disposed of in committee of the whole, sooner than by a select committee. But the thing might be done a little more carefully by a select committee, and he should therefore interpose no objection to it.

Mr. LOOMIS here withdrew his proposition.

Mr. MANN asked his colleague to strike out the number of the committee from his resolution and leave it blank.

Mr. JONES said the object of his colleague could be reached by moving a different number, and taking the sense of the convention thereon.

Mr. MANN accordingly moved to strike out 17 and insert 7.

The motion was negatived.

Mr. TOWNSEND was opposed to the appointment of a committee until the propositions of gentlemen were drawn out. He was aware that even after the appointment of the committee of 17, it would be competent for any gentleman to offer his amendments, and thus bring up the questions involved in them for discussion. but he feared that some question of order might intervene, or some objection be interposed; and

therefore he now asked leave to submit an amendment to the proposition before the body. His amendment embraced five different propositions, to raise five different committees on the subjects therein mentioned, some of which were included in amendments offered yesterday. He would read them in succession. They proposed committees, first to consider the propriety of making some constitutional provision for the organization of the militia; second, for the abolition of the inspection laws; third, to enquire as to what circulating medium, if any, other than gold and silver, should be adopted as the currency of this country; fourth, to enquire in relation to the enforcement of prospective contracts, so that the legislature from year to year might not be called upon to make laws in relation thereto; and fifth, as to the exemption of certain personal and real estate from execution on judgments where no fraud had been shown to exist.

Mr. JONES called for a division of the question, so that a vote might first be taken on striking out.

Mr. TAYLOR, of Onondaga, entreated the gentlemen from New-York (Mr. TOWNSEND) to withdraw his amendment, after the strong expression had in favor of the appointment of the committee of 17. When that committee should have made its report, he had no doubt the whole ground would be covered; but if not, the gentleman might move to refer it to the committee of the whole, or might submit his propositions as a programme for the instruction of the committee.

Mr. CHATFIELD also suggested that when the committee was appointed, it would be a very easy way of arriving at what was desired, to submit the proposition, and move its reference to the committee. He hoped it would now be withdrawn.

Mr. TOWNSEND could not consent to withdraw his propositions.

Mr. STRONG thought the Convention could vote down the propositions in half the time it took to talk about them. The gentleman from New York seemed to have got the sub-treasury in his amendment; and when they came to that, they might like to have the report of a committee on it, rather than have it taken up as the gentleman desired. He hoped, however, the gentleman would not press his resolutions against the evident sense of the Convention. Mr. S. was ready to vote on the original proposition, and he hoped the question would be taken without any further loss of time.

Mr. SWACKHAMER called for a division of the question.

Mr. TALLMADGE remarked that the resolution proposed to appoint a committee to prepare a schedule of business. That committee would be charged to look up subject matter or their action, and he supposed they would report to-morrow, subjects which would embrace every part of the constitution. If however any gentleman thought there were any new or other subjects, he could then offer resolutions of instruction; but as yet it was a simple question of the appointment of a committee and the number of which that committee should consist; and he

submitted respectfully as a question of order that these propositions were not now inadmissible.

The PRESIDENT remarked that the question was amendable, and being so, that the gentleman from New-York had the right to call for a division of the question.

Mr. HOFFMAN said the Convention, by a decided majority having determined not to send the whole matter to the committee of the whole, this question as to the number of committees to be raised, and the subjects to be referred to them, had virtually passed from the consideration of the body. It became them then to shape their action to that decision in the best way they could. He had no doubt the gentleman from New York had a perfect right, to call for a division of the question. And propositions to instruct the committee of 17, could scarcely find favor, if they could be regarded as entirely parliamentary. His own view under the circumstances, was that until the committee presented a report, the power of amendment, though existing in form, was in substance gone.

Mr. CHATFIELD and Mr. HOFFMAN entered into mutual explanations.

The question was then put on the motion to strike out, and negatived.

The question then recurred on Mr. JONES' resolution, and it was carried.

The PRESIDENT immediately appointed the following as the committee under that resolution:

1st District, Messrs. JONES, MORRIS and ALLEN.
2nd, Messrs. HUNTER and TALLMADGE.
3rd, Messrs. BOUCK and CLYDE.
4th, Messrs. HOFFMAN and STETSON.
5th, Messrs. GREENE and BRAYTON.
6th, Messrs. CAMPBELL and LEWIS.
7th, Messrs. MILLER and SHELTON.
8th, Messrs. F. F. BACKUS and TAGGART.

Mr. HOFFMAN desired to be excused from serving on the committee.

Several gentlemen hoped not.

Mr. HOFFMAN said if personal inconvenience could constitute an excuse, he had it.

Mr. HUNTER trusted his friend from Herkimer would reconsider his determination. Perhaps no gentleman had given a more severe attention to the subjects which would be discussed, and the experience he possessed would be valuable. The gentleman had said that it might be very inconvenient; and so it might to himself (Mr. Hunter), and he could with more propriety ask to be excused, on account of his health.—He hoped therefore the gentleman from Herkimer would not ask to be excused on account of mere inconvenience.

The question was then put, and the gentleman was excused.

The PRESIDENT filled the vacancy by the appointment of Mr. Hoffman's colleague, Mr. LOOMIS.

Mr. MURPHY offered a resolution instructing the committee of 17 to report in favor of a committee on municipal corporations.

Mr. MURPHY said that following up the suggestions which had been thrown out in course of the discussion of the resolution for the appointment of the committee of seventeen, he would submit very briefly the reasons which had induced him to offer the resolution which he had sent to the chair. He would not however

have troubled the convention with any remarks if there had not been indications in the different *projets* of the gentlemen from Herkimer and Orange, that the important subject embraced in his resolution might not receive that preliminary investigation in committee, which it appeared to him at least to demand. If he correctly understood the proposition of the gentleman from Herkimer (Mr. LOOMIS) it only referred so much relating to municipal corporations as regards their powers to tax and create debts. In his opinion this was entirely too limited—too circumscribed a view of the subject; and he could well conceive how the mind of the gentleman from Herkimer, meditating upon the general subject of debt and taxation, had inadvertently overlooked other equally important powers of those bodies. For himself he had long entertained the opinion—the decided opinion, that our municipal corporations whether deriving their existence from royal grace and mere motion, or from state legislation, were improperly constituted in many other important particulars. They were in fact an *imperium in imperio* and exercised powers both legislative and judicial by what he regarded as a species of usurpation. His object however, was not to enter into a consideration of the powers of these corporations, but simply to call the attention of the convention to the importance of the inquiry. He had looked over the census map politely furnished by the Secretary of State, and he had found that this question affects one fourth of our population if we confine it to cities alone, and, if we include incorporated villages, one third of the people of this commonwealth. It might not be very important to the other two thirds; but to the one third to which he alluded, it involved the most vitally interesting questions which could be submitted to the decision of this body. The proposition of the gentleman from Orange (Mr. BROWN), differed from that of the gentleman from Herkimer, and was too multifarious. It sought to submit to the same committee the consideration of the appropriation of public moneys for private and local purposes, that of private corporations, and also that of municipal corporations. What a vast field of investigation was here opened? The first branch of the gentleman's proposition embraced the whole subject of internal improvements, and our financial policy; while that relating to private corporations was one which had for the last ten years, indeed for the greater part of the time since the adoption of the present Constitution to the present time, almost constantly occupied the public mind. If those two branches of the proposition of the gentleman from Orange were duly considered, how much chance of proper investigation would that in regard to municipal corporations, which to him was not less important, stand? In truth, that proposition should be subdivided into three. By such a subdivision of committees, we would be the gainers in other respects. We would have an advantageous subdivision of labor, and be more likely to collect the information which is possessed by different members of the Convention. In regard to private corporations, his friend from Suffolk (Mr. CAMBRELING) would, by his long legislative experience at a time when that subject was

much discussed in the national legislature, by his great opportunities for collecting information in regard to it, and by his study of the questions connected with it, be particularly at home on the committee having it in charge—while he would probably not be so conversant with municipal corporations. The honorable gentleman from New-York, who heads your list of members, and whom you have appointed from the State at large on the committee of seventeen (Mr. ALLEN), has probably more practical knowledge of the workings of our system of private corporations than any other member of this body; and also in regard to municipal corporations. I beg pardon for thus alluding to these gentlemen, merely for an illustration. So, too, on the question of appropriating public moneys for private or local purposes, there are gentlemen here who have given it much study and reflection; but who, having never dwelt in cities, and having never felt the power delegated by the throne, greater than the throne itself, have never reflected upon the extraordinary powers of municipal corporations. Mr. M. said he had now accomplished the purpose for which he rose, and that was, to call the attention of the committee and the Convention to the magnitude of the questions embraced in his resolution; and he would therefore move the reference of this resolution to the committee of seventeen.

At the suggestion of Mr. PATTERSON, Mr. M. modified his proposition so as to refer it to the committee of 17 to enquire into its expediency, and in that shape it was referred.

Mr. BASCOM proposed to refer it to the same committee to enquire into the expediency of reporting in favor of committees by some general designation, without undertaking to classify the several subjects to be referred to such committees respectively. Agreed to.

Mr. TAYLOR offered an additional rule prescribing the order of business, as follows:—

1. (After reading and approving of the journal,) petitions and communications from the Executive, state officers and others, to whom enquiries may have been addressed.
2. Reports of committees
3. Motions, resolutions and notices.
4. Unfinished business.
5. Special orders.
6. General orders.

At the suggestion of Mr. MARVIN, and with the consent of Mr. T., the rule lies over, and, on motion of Mr. STRONG, was ordered to be printed.

Mr. TAGGART had leave of absence for 10 days.

Mr. BOWDISH moved to refer it to the committee of 17 to inquire into the expediency of appointing a committee on the subject of a system of free schools. Agreed to.

Mr. CHATFIELD moved that on and after Saturday next, the daily sessions of the Convention commence at 9 o'clock.

Mr. RICHMOND objected, unless the further order was made that the sittings should end at 12 M., and recommence at 2 P. M.

Mr. BROWN urged 10 o'clock A. M. Otherwise, committees would have no time to mature business.

Mr. TILDEN moved to lay on the table—and
Mr. C. assenting,
The resolution lies over.

On motion of Mr. STRONG, the Convention
then
Adj. to 11 o'clock to morrow morning.

SATURDAY, JUNE 6.

Prayer by the Rev. Mr. BATES.

ORDER OF BUSINESS.

Mr. JONES, from the committee of 17, charged with the duty of considering and reporting the best practicable mode of proceeding to revise the constitution, submitted a report, which he said had the assent of all the members of the committee. Mr. J. stated that the committee had adopted the order, in which the several subjects were presented in the existing constitution. The committee had aimed so to distribute these subjects, so far as they were susceptible of division, among the several committees in such manner as that the action of neither should interfere with another. But in reference to the judiciary, the committee were unanimously of opinion that there should be but one committee on that subject. The committee had also with equal unanimity left it to the Convention to decide upon the number of which the committee should consist. Mr. J. proceeded to read the resolutions. They recommend that so much of the constitution and laws as relates to the following subjects, be referred to separate committees:—

- 1 The apportionment, election, tenure of office and compensation of the legislature
- 2 The powers and duties of the legislature except as to public debt
- 3 The canals, internal improvements, the public revenue and property, and public debt, and the powers and duties of the legislature in reference thereunto.
- 4 The elective franchise and the qualifications to vote and hold office.
- 5 The election or appointment of all officers, other than legislative and judicial, whose duties and powers are not local—their powers, duties and compensation.
- 6 The appointment or election of all officers whose powers and duties are local, their tenures of office, duties and compensation.
- 7 The militia and military affairs.
- 8 Official oaths and affirmations, and oaths and affirmations in legal and equity proceedings.
- 9 The judiciary system of the state.
- 10 The rights and privileges of citizens of this state.
- 11 Education, common schools and the appropriate funds
- 12 Future amendments of the constitution and the revision thereof.
- 13 The organization and powers of cities, villages, towns, counties and other municipal corporations—their power of assessment, taxation, borrowing money and contracting debt.
- 14 The currency, and banking business and corporations.
- 15 The tenures of landed estates.

The report concludes by asking a discharge from the further consideration of the subject.

Mr. PERKINS said it was obvious that the distribution of the business of the Convention was a matter of great moment, and that no committee could be appointed until they had a *projet* of all the business that was to come under consideration. It was probable there were subjects which some might desire to bring before us, that were not embraced within the scope of the resolutions now presented. If there were such, and the Convention should deem them

worthy of a reference, it would be desirable that these matters should be known to the President before he appointed any of his committees. If the President should proceed to appoint his committees on the supposition that the resolutions which had been read embraced all that would be subjects of reference, the committees would be organized differently both in their numbers and composition, than if there were to be ten more committees raised. This was a matter on which there should be deliberation, before they took any action on it; and with a view to give time to consider and make suggestions, he would move that the report now read be printed and laid on the table until the meeting of the Convention of the — instant.

Mr. CHATFIELD, (Mr. PERKINS waiving his motion) said on looking over the notes he had taken of the report of the committee, he did not perceive any thing in relation to the Executive department; and inasmuch as there was doubtless a variety of opinions in relation to what should be referred—and as he had been a strenuous advocate for the appointment of this committee, he could very appropriately make the motion which he was then about to submit. He should make this motion to give gentlemen an opportunity to express their views and make known their *projets*. He moved that this report be referred to the committee of the whole house and that it be printed. He thought we had arrived at a point where we might act with a probability of arriving at some conclusion. He was not apprehensive that any difficulty would follow the course he suggested. The report might be referred to-day; and there was another thing which might be done, and which perhaps should be a preliminary matter—the discharge of the committee. He therefore moved that the committee be discharged in addition to his motion to print and refer.

Mr. PATTERSON said on listening to the report of the committee it occurred to him also that there was nothing embraced in it in relation to the Executive Department of the Government.

Mr. JONES interposed. The committee had not omitted a reference of that matter as the gentleman supposed. True, they had not named the Executive officers specifically, but had divided them into two classes, general officers and local officers, and every thing relating to the appointment and tenure of both classes, was in the resolutions. It had been thought better to put it in that form than to name the officers specifically.

Mr. PATTERSON thought he had not misunderstood the report, and he was still of opinion that there was nothing in the resolutions of the committee in relation to the manner of appointment and the term of office of the Executive of the State, nor his powers and duties.

Mr. JONES: Not by name.

Mr. PATTERSON : Nor by inference. There were offices embraced, that were of both a local and a general character, but the powers and duties of the Executive, the manner of his election and the tenure of his office were not specified; and he had therefore prepared a resolution on that subject, for if there was any thing about which the people were aggrieved it appeared to him to be the powers and duties of the Executive. He read his resolution as follows :—

“Resolved, That so much of the constitution as relates to the Executive department and the powers and duties of the Governor be referred,” &c.

Mr. LOOMIS said the action of this committee in this respect, fully embraced the suggestions of the two gentlemen who had addressed the convention. The resolution referred all matters pertaining to officers other than judicial and legislative, which certainly meant executive and administrative, and all matters relative to their appointment or election—

Mr. CHATFIELD : Oh no

Mr. LOOMIS—Their compensation, powers and duties. It did not name the executive in the sense in which the term was usually applied to the governor, but if the manner of appointing and electing all officers in the state was considered under that resolution, it would certainly include the executive and the powers and duties vested in him.

Mr. PATTERSON said he had seen the resolution of the committee, and that he was now satisfied it did embrace the powers and duties of the executive ; he therefore withdrew his resolution.

Mr. WARD thanked the committee of 17 for the prompt manner in which they had discharged their duty—and for the well-considered report which they had submitted. He thought it was due to the committee that we should take up this report in convention now, and not in committee on Monday—hear, discuss and pass upon each proposition by itself—and, if all concurred, adopt them at once—and thus allow the President the earliest opportunity to select the committees.—If other and further committees should be desired, they could now be proposed, or on some future day—and just as well whilst the President was in the chair as in committee. Here too, every member could not only present and urge his proposition, but could have the ayes and noes on it—which could not be done in committee. He anticipated no difficulty in disposing of these propositions to-day—nor in the President's announcing the committees on Monday—and he hoped the motion would not be pressed to print the resolutions, and refer them.

Mr. CHATFIELD said his better judgment inclined him not to go into committee of the whole on these resolutions—but he yielded his own opinion mainly to gratify some gentlemen around him for whom he entertained the highest respect, and who seemed to feel some solicitude on the subject—though he thought it quite immaterial what course was taken.

Mr. BROWN said it was unimportant to him where the resolutions were considered—but he protested for himself and his constituents against this action at once—as his friend from Westchester (**Mr. WARD**) had it. He hoped there would be no hasty action on a question of

this importance—but that gentlemen who, like himself had but imperfectly heard the resolutions read, might have an opportunity to examine them. They should be printed, and laid before members—that they might take them home and see what subjects were included and what excluded. He too, though he listened attentively to the reading of the resolutions, supposed with the gentleman from Chautauque (**Mr. PATTERSON**) that all that portion of the Constitution relating to the executive department had been overlooked. What other omissions there might be, or how far he might be in error as to there being any, he could not determine, unless they were printed. He trusted, if only two or three desired to look at these propositions in print, that the opportunity would not be denied them. He was at a loss to perceive why gentlemen were so anxious to approach this subject with such haste, or what the necessity for hurrying them to a vote. Was any thing to be gained by it? Was there any gentleman here prepared now to express an opinion on any one of these subjects?

Mr. CHATFIELD explained that his motion was to refer, not to go into committee now.

Mr. BROWN replied that that was the motion, but the suggestion in other quarters was that we should proceed at once to a vote on them. He believed that all wanted information on these questions—and to hear what might be said. He alluded to the much mooted proposition of clothing boards of supervisors with legislative powers, as one which he had heard casually talked over last evening—and yet not one of the intelligent gentlemen engaged in it was prepared to express an opinion as to what power should be given and what withheld. He wanted to hear these matters talked over. He believed we should all be benefitted by a discussion of them, four or five days in committee.—And he hoped that those who differed with him and others, and who differed with him and them yesterday, would at least allow these propositions to be printed, so that they might be examined before action on them.

Mr. PERKINS said it was quite immaterial whether we examined the report in Convention or in committee of the whole; but he hoped the gentleman from Westchester, for whom he cherished a high regard, would not drive the Convention to a vote or to any action upon the report, until they had had an opportunity of reading it carefully, with the view to see if the subjects embraced in it were all that they desired to have considered, and whether some of these subjects might not be advantageously subdivided. Without time to examine the report and to prepare their resolutions of amendment, they could not act intelligently here. If however they were to take the course suggested by the gentleman from Westchester, it was evident they must take the report as they found it, and thus they would be forestalled, as was anticipated when it was first proposed to raise the committee of 17. He confessed, although others might have the same infirmity of mind, he felt it impossible to grasp the entire scope of the resolutions from hearing them read, nor should he be able to do so until he had had time to read and consider them for himself. But the great

objection which he had to proceeding at once to the ratification of any one of the resolutions, was that involved in the position taken by the gentleman from Westchester—that if they should sanction the resolutions to-day, the committees could be appointed on Monday morning and go to work. Now this was a result which he wished to avoid. He thought the President would be exceedingly embarrassed if he were called upon to appoint the committees suggested, without knowing whether the resolutions covered all the subjects that were to be considered. If there were 25 committees, the number and the composition of them would be different from what they would be if there were 10, 12, or 15. If we were to have 15, the number of which each committee should consist might possibly be 7.—If 25 committees, the number on each might be 5, and that would place nearly every member of the Convention on some committee. If the smaller number of committees was agreed on a considerable portion of the Convention might be without employment until we had a report from a committee. But if we first had the *projets* of all the members, we could determine the number that should constitute the committees, and the President could act intelligibly in his appointments. Mr. P. proposed to lay on the table and to print, for the reason that we could do nothing in committee of the whole to-day except to rise and report. We should gain nothing by that—but instead of facilitating business it would cause delay.

Mr. W. TAYLOR hoped the motion to refer to the committee of the whole would prevail.—He fully concurred in the views expressed by the gentleman from Orange (Mr. Brown), as to the importance and necessity of deliberation before action; and he felt persuaded that if we took that course, the best opportunity would be afforded for all the deliberation which the subject required, and for the presentation of such additional matter or suggestion as to the division of subjects, as gentlemen might be prepared to offer. And the Convention would then be the better prepared to act on the entire subject matter which they would have under consideration.

Mr. HOFFMAN said, if the Convention should determine not to send this matter to the committee of the whole, he should feel warranted in the conclusion that nothing brought into the Convention would be deemed worthy of such a reference. He thought the motion to send the report to the committee of the whole, entirely the proper one. At what time we should take it up in committee, was another question altogether. Certainly we should not, before it was printed and examined carefully. He should infer from hearing it read, and from what had occurred here before it was made, that it did cover almost every thing apparent on the face of the Constitution. Whether it referred, in connection with these, other matters which a majority here might desire to have referred, he could not pretend to say. He supposed, from hearing it read, that many matters growing out of the actual working of the government—not written in the Constitution, but written in action—had been omitted. In this he might be mistaken; and without a printed copy of the report at his room, where he could read it with the benefit of re-

flection and a pencil, and perhaps not even then could he form a correct conclusion without ample discussion in Convention. He would not now undertake to show what all these subjects were. He would mention casually the great power of appropriating money. Should it be done as it had been, for many long years, in an endless way? Or should there be a period when money, appropriated by law, shall cease to be paid? This, in his view was a question of vital importance to every representative government. But he could not say whether there should be a committee, in addition to those suggested, to consider whether there should not be a provision in the Constitution, to the effect that acts appropriating money should be renewed at stated periods. Again, having looked at one species of taxation and another—having travelled at the West, and seen in what manner your salt tax operated as a bounty to raise up competitors against you, and draw from you the manufacture and supply of salt—he had been compelled to say that the tax was as impolitic as it was unjust. He knew of no species of taxation that exceeded it in injustice. But from merely hearing this report read, he could not tell whether any of the specified committees could properly take charge of it. Again, we had one tax directly against trade—the auction tax. This matter should be referred to a committee, if it was not done, to inquire when the day will come when we may end this taxation on commerce, or if the tax must continue, whether it should not be given to the locality where it was collected. Again, the State claimed to be a proprietor, as of property, in the sacred right of way and travel. The sovereign did not claim to hold it in trust for the million, but held it with the power to make it the property of the sovereign. We had such ways now. In a few years, many of those constructed would fall in by lapse of their charters. Did we intend to adjourn and leave the question open, whether the right of way—the right to travel and of transportation—a right which could be no property in land, should be a property in the sovereign—or whether we would restore it in society to its place in nature—as a right held in trust for trade and travel, and commerce—the sovereign making no revenue from it beyond a just indemnity for construction and maintenance? Whether any of these subjects could be properly referred to these committees, he knew not; and if it were not for fatiguing the Convention, he would call attention to others of as much importance, and as much entitled to a place in a general programme. They might be now. The difficulty was, he could not judge of it. Gentlemen who were on the select committee, had the advantage of him, in this respect; and if he voted now, he must vote on his faith in them. He hoped the resolutions would be referred; and that when printed, we might consider them in committee. It might be that we should be entirely satisfied with this programme, when we had looked at it. He at least was not now prepared to vote for or against it.

Mr. SWACKHAMER supported the reference. His fears had been fully realized and his predictions verified. Even his friend from Herkimer (Mr. Loomis) came out of the committee

fully wedded to its conclusions. This report might be perfect, but we know nothing of it.—He asserted without the fear of contradiction, that if this reference was denied, the report would preclude all our action hereafter. He hoped we should have an opportunity to debate and amend the conclusions of this committee.

Mr. WARD said he was the last man in the convention that would daunt to abridge the privileges of any member of it, by any course of action here. But he must be allowed to say, and he called on those who believed him honest, to mark what he said—that if this matter went over until Monday, and was then taken up in committee, there was no certainty whatever that we should get through it during the whole of next week. What was to be gained by going into committee? Did any one imagine that we were to settle the whole question of the constitution there, on this matter of reference? That any thing would be done towards forming a constitution until the committees were formed and reports presented? Was any thing then to be gained by a discussion in committee, prior to such reports being submitted for consideration and amendment? Could we expect any other result than the loss of one entire week of the session? He was not one of those who believed that the people of this state would complain, if we did pass even four months here—nor that they would even call us to account in regard to the number of pages, or door-keepers we employed here—or in reference to any of these small matters—but he believed they would look to see whether we were disposed to go on with the business they had entrusted to us—and it did seem to him that we might take up the first of these resolutions and order the committee to be raised under it—and so with the second, third, &c., until we had gone through with the series, and dispose of them to-day—and thus make a beginning in the work before us. Still he had no feeling on the subject whatever. He was not one of this select committee. He had suggested no course of action to any member of it. He had not even spoken to his colleague (Mr. HUNTER) on the subject. He should feel more favored if the President should not assign him a place on any of the committees—for he desired to come to the consideration of the subjects that were brought forward entirely untrammelled.—But since it seemed to be the wish of several gentlemen who voted in the minority yesterday, that this question should go over until Monday, and then that it be taken up in committee, he should interpose no strenuous opposition to it.

Mr. PATTERSON thought undue importance had been given to this question. The resolution to appoint the committee of 17 was offered on Tuesday and laid on the table, and on Wednesday brought up, and again laid over at the request of the gentleman from Herkimer. Thursday was entirely taken up in discussing the question whether the committee should then be appointed, or the resolution referred to a committee of the whole. Yesterday one half the day was used up in the discussion of the same question when we came to the vote. That seemed decisive of the question of how we should proceed. A vast majority—three to one—voted to send to a select committee, and they have re-

ported to-day. At first he thought they had not included one subject, but had become satisfied that he was mistaken. The only question now was, whether we should now take up this question here or send it to a committee of the whole. On this question, so far as he was individually concerned, or knew the views and feelings of those with whom he acted—he meant the minority of the Convention—it was a matter of indifference whether the resolutions were taken up in Convention or in committee of the whole, except as a question of the saving of time. Of the time spent during the week just passed, he believed no gentleman of the minority had occupied five minutes. He believed nearly all of it had been used by the other side; and now the question was whether they should go into committee and use up another week in discussion. He concurred with the gentleman from Westchester, that we should take up these resolutions here in Convention, send these subjects to committees, and await their reports before we went into a general field discussion in committee of the whole. Time passed in debate before, was all time lost, as all such discussions would be repeated when the reports came in.—Print the resolutions and pass upon them here. His word for it, if we went into committee of the whole we should not get out again short of a week, if what we had already seen was to be taken as a sample of what we were to expect before we got to the end. It seemed to him to be a waste of the public time to go into committee of the whole, until we had something to act upon there.

Mr. CHATFIELD remarked that as far as the consumption of time was concerned, there would be less in committee than in the Convention. It was not to be supposed that any gentleman who had a proposition to make, would omit to submit it nor to speak on it, whether in Convention or in committee. But in the Convention we might be continually embarrassed with calls for the yeas and nays, which could not occur in committee of the whole.

Mr. WARD asked if there might not be the same delay when the committee of the whole reported to the Convention? Every proposition could be there again debated, and the yeas and nays called upon all.

Mr. CHATFIELD did not anticipate such a course; he believed gentlemen would be content with the discussion and vote in committee, and that they would not embarrass the Convention with any factious proceedings. But there was another advantage which all would have in committee of the whole—the greater freedom of debate, for there certain restrictive rules did not apply. He wished for the fullest and freest discussion, and that all might have the opportunity to communicate the views which their good sense and their responsibility to their constituents might dictate. For himself, he was willing to adopt the report of the committee without any discussion, but he foresaw that that would not be done—that gentlemen who had propositions which they deemed of vast importance, would discuss them, and discuss them freely—so that we might abandon the hope of adopting the report without remarks. If any gentlemen entertained such expectations, they

reckoned without their host. His motion was not that we should go into committee now, but that the report should now be referred.

Mr. RHOADES preferred that all, or at least the bulk of the propositions that were to be made to raise committees, should be presented before the Chair was called upon to appoint them. He should have preferred also, that the committee of 17 would have still retained their functions, and not have asked a discharge—in order that each one of us might have the opportunity to present his proposition and have it referred to that committee. But as the question now stood, he was in favor of a reference to the committee of the whole—that such propositions might be there presented, and be passed upon by the body itself. He urged that the organization of the committees and the distribution among them of subjects of enquiry, could be done more to the satisfaction of the house and of the presiding officer, if all matters of reference, as far as might be, should be presented and passed upon before the selection of any one of the committees.

Mr. TILDEN was perfectly prepared to vote on these propositions either here or in committee of the whole. But delay seemed to be apprehended if time was conceded to consider and amend them. He thought not. If a day or two were spent in the discussion, the probability was that some such scheme of distribution as this would be adopted—and acting under that presumption, the Chair could not be better employed during that time than in reflecting how these committees should be constituted. The Chair must have a day or two for that, and no delay could occur under the proposition to refer. Our first business was to select all such matters as we were to act upon, and then to distribute them. He thought the select committee had for the most part executed their duty wisely and well. He was not prepared to say but there might be subjects omitted which it was desirable the convention should consider. Certainly we should look over the whole ground before entering on any part of it. There was the question of *eminent domain*—its definition and limitation—in regard to which he confessed he had no very precise opinions—but on which he should be glad to have the matured reflections of others here, under a special reference. But he was ready to vote now on these propositions, believing that most of them would meet the approbation of the house. Still, it would facilitate business if those who wanted the opportunity to examine it more, were gratified.

Mr. ANGEL was one of those who voted to send this matter to the committee of 17. He did not give that vote because he wanted to prevent discussion in committee of the whole, but that their report, when made, should be referred and discussed in committee. That was a mode of getting into committee of the whole which he preferred. The reason why he desired the reference to the committee of the whole now, was because he wanted to know the minds of all the members of the Convention in relation to these resolutions before he voted on either of them.—Hence, he should vote for the motion of the gentleman from Otsego (Mr. CHATFIELD.)

Mr. TALLMADGE explained. The com-

mittee of 17 had addressed themselves assiduously to their duties, since their appointment, feeling that the public were looking to us to see when we should begin our labors, and intending that there should be no delay on their part. He trusted we should not consider ourselves as at work until our committees were appointed and were in operation. That could as well be done on Monday as on Monday week. Allusions had been made to a majority and minority in this Convention. He must be permitted to say that the composition of the committee of 17 exhibited somewhat the same proportion—four of them being of the minority. And yet there was no feeling in the committee. Their labors were unanimous throughout. But why this anxiety to get into committee of the whole? It was avowed to be to learn the opinions and views of gentlemen on the great questions which were to come up. That was the very thing which the committee of 17 had been sedulous to avoid—and hence they withheld any, the slightest intimation or suggestion beyond the naked propositions submitted—nor was it wise to have any free interchange of views until the committees had reported. Discussion before, could lead to no practical result. We might interchange views on the merits of the subjects to be referred, and yet the vote on the mere reference would be no test of the sense of the Convention on the merits. Indeed, strictly, the merits of the subject matter of reference, would be debatable only to a very limited extent. Hence to discuss matters under circumstances where we could not vote on them, would be a mere waste of time. When the committees reported a *projet* for the action of the body, then amendment and debate would lead to some result—then we could be called upon to vote and decide, as well as discuss, and the sense of the convention ascertained in a tangible shape. He desired such a course to be taken now, that the people would understand that on Monday we should be actually at work. And he knew the President too well to imagine that he would be embarrassed by any responsibility, in regard to the appointment of committees, that we might throw upon him to-day. The committee of 17, carefully avoiding any expression of opinion on the merits of any subject, had divided the Constitution into fifteen distinct departments. But their report did not commit them or the convention against any further subdivision. If their suggestions were adopted, we should at once have committees at work, and should have made a beginning. If afterwards, other committees should be deemed proper, they could be proposed and ordered. He repeated that nothing save the mere naked question of reference could be debated in order, in committee of the whole—nor would a vote on these propositions commit any body, except to the opinion that this and that subject should go to separate committees. He saw no necessity for printing this schedule of committees, nor how a debate on the merits of the subjects involved could legitimately grow out of them. He gave notice, that if these committees should be ordered, he should move that each should consist of seven members—except that on the judiciary, which should consist of thirteen.

Mr. ANGEL disclaimed having used the word

feeling in the strong sense in which it seemed to have been understood by the gentleman from Dutchess. He had no feeling or desire on the subject other than to know the views of members, before voting on many of these propositions.

Mr. TALLMADGE so understood the gentleman, and so intended to express himself.

Mr. STETSON, in allusion to a remark of the gentleman from Dutchess, said it was true the action of the committee of 17 was entirely harmonious—and because its duties were of a very simple and mechanical character, under the resolution of the Convention and the discussion here yesterday. The refusal of the body to go into committee of the whole, had a broad influence on the course of the committee. It necessarily limited its duty to a sub-division of the constitution according to its general parts. They did not pretend to cut up and give direction to amendments that might be presented here—but only to furnish subjects to amend by. Yet the whole duty of the Convention laid in a part not touched by the committee. They had drawn these convenient lines for the first action of the body—and the question was whether debate might now arise on the duty to be done, or whether debate should be limited until the duty was performed—whether the committees should go out enlightened by discussion, or go out and afterwards meet opinions here wholly unexpected. This whole matter had been discussed by the people—a very numerous committee of the whole. We were their representatives—and yet almost the first act here was a visible distrust not of those who sent us here, but of the intentions of each other. We dared not hear each other talk! The report was limited to a distribution of duties, under the expectation that suggestions might be made in Convention that would improve it—and without determining the time when, or way in which it should be acted on. That was his view of it. He could not have harmoniously agreed to any other report. He had no proposition to submit to the committee of the whole; but he desired to hear the propositions of others. He felt that he was sent here for that purpose—and that to refuse to any one an opportunity to submit his views, would be to do injustice to him and to those who stood behind and supported them. Let this be a convention of the committee of the whole. He had confidence in it. Let us not make the mistake that this was a legislative body, with general powers. It was not a two-house legislature, with broad, general legislative powers, and with numerous bills before it. It was a Convention—a single house of assembly charged with the duty of framing a single bill. Now, the proposition was to charge committees with distinct sections, who without unity of action, and without a consideration of the whole bill, were to constitute its several parts! When the rules were under consideration, he was inclined to rise and ask for a committee of the whole on the whole constitution. It was not the consideration of a single part, but the whole instrument that we wanted to view before we sent it to committees to guess out public expectation. He was therefore in favor of a discussion, if gentlemen desired it, in committee

of the whole. We should not distrust each other.

Mr. RUGGLES said that if the only object of going into committee on this report, were to propose new subjects for the consideration of other committees, he should have been opposed to that course, on the ground that new subjects of enquiry might be proposed in convention as well as in committee—and that any one of these subjects would probably be referred by the convention without difficulty and almost without debate, because they would involve a mere question of reference. No member here would probably vote against a reference, unless there was something either trivial or shocking to the sense of propriety of members, in the proposition to refer. But he did not understand that to be the sole object of going into committee. One of the objects of the gentleman from Orange, (Mr. Brown) was to inquire whether the subject, for instance, referred to one of these committees, by the report made, might not with greater propriety be referred to some other committee.—There were some subjects which were dependent on each other, and it might be doubtful whether they were properly referable to one or another committee. For instance, whether the power of appointment of general judicial officers should be referred to the committee on the judiciary or to a committee on the appointing power, might be a question of some importance. Yesterday, the gentleman from Herkimer (Mr. Loomis), proposed an amendment to the resolution of Mr. JONES, referring the question of the appointment and tenure of judicial officers to a different committee from that raised on the judiciary, and it struck him that that classification had much to recommend it. By the report made to-day he saw that that question was given to the committee on the judiciary. It might be therefore a matter worthy of consideration whether some of these subjects which were dependent on each other were properly referred as proposed by the committee of 17. Under that idea, and in the belief that it was proper to allow any gentleman who desired it, ample time to consider the report, he should be in favor of going into committee on it, but for the purpose of making new propositions it did not strike him as necessary; and he had no disposition to refuse time for the amplest consideration of any subject that gentlemen might propose. But because it might be proper to consider whether all these references were so classified as best to lead to the object in view, he should vote to refer to the committee of the whole.

Mr. PATTERSON said whatever might be the final action of the house on the matter of reference, he thought all would agree with him that they had taken one step which had saved much time. The appointment of a committee of 17 to draw up, in the form of resolutions, the various subjects that were to be referred to committees, had resulted in the apportionment of the work during the brief period of yesterday afternoon and this morning. In that time the committee had accomplished more than could have been done in committee of the whole in a week. Gentlemen near him said one month but be that as it might, he was satisfied the com

mittee had put more material into shape in the short period which had elapsed since their appointment, than the convention could have done in a week. Whatever, therefore, might be expected of the Convention hereafter, much had been accomplished by its action yesterday afternoon. He differed from the gentleman from Otsego as to the advantage of the committee of the whole over the house. His experience was otherwise. True, if the question were taken up in the house the yeas and nays could be called. But how was time to be saved in committee of the whole? There each member could speak as often as he pleased, for they were not restricted to twice, and when the subject came to the house from the committee, each gentleman had a second chance to speak twice on every question, and then could have the yeas and nays thereon when ever 10 members could be had to call for them. The advantage, therefore, was in favor of going into the discussion in Convention. When this subject was under discussion yesterday it had been said that to refer the Constitution was like referring the Governor's message to a committee of the whole; and what was our legislative experience? Since 1839, the first time that the message was discussed for any great length of time—for before, it was referred forthwith in courtesy to the Executive—the Governor's message had been made the peg on which speeches were hung, to be sent home; and during the last session the message was under discussion until near the last week of the session in the month of May. From him the Convention would hear no long speeches; for he came there to act and not to talk. He, therefore, hoped now the Secretary would be allowed to read each resolution in succession, and he apprehended every member would be prepared to answer ye or no. The question was not whether they were in favor of or opposed to any particular amendment of the Constitution, but whether they would have a committee upon it to put it into shape, for the action of the Convention; so that it appeared to him that the time they should be occupied in committee of the whole would be lost time.

The question was divided. The committee of seventeen was discharged, and the printing ordered.

The question then recurred on referring to the committee of the whole.

MANUAL.

Mr. RUSSELL, from the committee to whom was referred the subject of the printing of various Constitutions of the States, and other matter, in the form of a manual, here asked and obtained leave to report. The report concluded with the following resolution:

Resolved, That the Secretaries be authorized to procure for each member of the Convention a copy of the 'American Constitutions;' and also cause to be printed under the direction of the committee a copy for each member and officer of the Convention, of the publication list proposed, and that the expense of both works be certified to the Comptroller.

Amendments were suggested by Messrs. VANSCHOONHOVEN, BROWN and SWACKHAMER, and adopted.

The report was then agreed to and the business which its presentation interrupted was resumed.

ORDER OF BUSINESS.

Mr. MORRIS said when he voted yesterday to refer to the committee of 17, he did so under the impression that that committee was nothing more nor less than a part of, or that it would perform a part of the duties which ordinarily devolved on the committee on rules of legislative bodies. He supposed that the ordinary duty of the committee on rules and orders, had been divided, the one committee reporting the rules and the other designating the standing committees. With these views he had voted for the committee of 17. It was not that they should express any opinion whatever on the several subjects that would ultimately be referred, but only to select the necessary number of committees. Their report had been made, and now the only question in relation to that report it struck him, was this—whether the committee had referred to one committee subjects which conflicted with each other, or subjects which should be properly referred to separate committees; and again whether the report provided for a sufficient number of committees to receive all the subjects that might be referred by the Convention. There were gentlemen who believed that this business could be better done in the committee of the whole, while others were afraid that the debate in committee would be interminable. He must confess, the little observation he had been able to make of the proceedings of this Convention, led him to suspect that it would run to an unnecessary length; yet he was one of those who believed that an ounce of experience was worth a pound of theory; and he was therefore perfectly willing to go into committee, and receive the ounce of experience; because one short day's discussion in committee would show them whether a few days, or weeks were to be consumed, if they were to continue there. In any event, gentlemen could soon stop the debate in committee by refusing leave to sit again; but for the purpose of getting the practical notions of gentlemen he should now vote to go into committee of the whole.

The question was then taken on the motion to refer, and it was carried—ayes 71, noes 39

AYES—Messrs. Allen, Angel, Baker, Bascom, Bowditch, Brown, Cambreleng, R. Campbell, jr., Candee, Chatfield, Clark, Clyde, Conely, Cornell, Crooker, Cuddeback, Dana, Dorton, Dubois, Flanders, Gebhard, Graham, Greene, Harris, Hart, Hoffman, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Jones, Jordan, Kernan, Kirkland, Mann, McNeil, Maxwell, Morris, Murphy, Nellis, Nicholas, Nicoll, O'Connor, Penniman, Perkins, Porter, Powers, Rhoades, Richmond, Riker, Ruggles, Russell, St. John, Sanford, Shaver, Shepard, Stanton, Stephens, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Tilden, Tuttil, Waterbury, White, Witbeck, Wood, the President—71.

NOES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Bouck, Brayton, Bruce, Burr, Cook, Dodd, Gardner, Harrison, Hawley, Hotchkiss, Hyde, Kingsley, McNitt, Marvin, Miller, Parish, Patterson, Salisbury, Sears, Shaw, Sheldon, Simmons, E. Spencer, W. H. Spencer, Stow, Strong, Tallmadge, Van Schoonhoven, Ward, Warren, Willard, W. B. Wright, Yawger, A. W. Young, J. Youngs—39.

Leave of absence was granted to Mr. SMITH for ten days, and to Mr. MUNRO for one week.

BUSINESS OF THE COURTS.

Mr. NICHOL submitted a resolution which was adopted, directing the Secretaries to ad-

dress interrogatories to clerks of the supreme courts—the registers and clerks in chancery, and to the clerks of the superior and marine courts in the city of New York, for certain specified information in regard to the business of these several courts.

REPORTERS.

Mr. CROOKER offered a resolution, which he desired should be laid on the table until Monday, for the employment of two competent stenographers to report the debates of the Convention.

THE APPOINTING POWER.

Mr. KIRKLAND called up a resolution which

he had heretofore submitted, requesting from the Secretary of State a list of all officers appointed by the Governor alone, and by the Governor with the consent and advice of the Senate.

After a few remarks from Mr. STOW, who withdrew an amendment he had heretofore offered,

Mr. RHOADES submitted an amendment, calling for returns of the salaries, fees, and compensation of each officer as far as could be furnished, which Mr. KIRKLAND accepted.

Before the question was taken on the resolution,

The Convention adjourned to 11 o'clock on Monday morning.

MONDAY, JUNE 8.

Prayer by the Rev. Mr. BENEDICT.

RULES AND REGULATIONS.

Mr. W. TAYLOR called up an additional rule, offered by him on the 5th inst., prescribing the daily order of business.

After some conversation between Messrs. MARVIN, TAYLOR, HOFFMAN, and CAMBRELING, the rule was referred at the suggestion of Mr. MARVIN, to the committee heretofore appointed on rules.

Mr. STRONG moved the same reference of the 13th rule of the Assembly of 1843, which provides for the endorsement of resolutions and papers by the members offering them; which was agreed to,

EXECUTIVE PATRONAGE

Mr. KIRKLAND called up his resolution, pending when the Convention adjourned on Saturday—requiring the Secretary of State to prepare for the use of the Convention a list of all the offices, the incumbents of which are appointed by the Governor alone, or by the Governor and Senate, together with their fees, perquisites, salaries, &c., as far as they can be ascertained, and it was adopted.

BUSINESS OF THE CONVENTION.

On motion of Mr. SWACKHAMER, the Convention resolved itself into committee of the whole, Mr. RUGGLES in the chair, on the report of the committee of 17, as to the manner in which the Convention shall proceed to the revision of the Constitution and recommending the appointment of committees on various subjects.

The SECRETARY read the report at length.

Mr. RICHMOND said it would be recollected that on Saturday when the motion was made to go into committee of the whole on this subject, the Convention ordered the printing of the report of the committee for the purpose of having it laid on the tables of members. As yet the resolutions had not been received from the printers. He was not tenacious respecting any propositions he might desire to bring forward, if they were embraced in the propositions of other gentlemen, but he desired to have the resolutions before him that he might see if there were any omissions. Believing it would be unprofitable to proceed now without having the printed report before them, he would move

that the committee rise, report progress, and ask leave to sit again.

Mr. NICHOLAS asked if the report had been printed?

The CHAIRMAN replied that he was informed by the Secretary that the report was placed in the hands of the printers when it was ordered to be printed by the Convention, but it had not yet been returned in a printed form.

Mr. RICHMOND'S motion was carried and the committee rose and reported progress, and obtained leave to sit again.

HOOR OF MEETING.

Mr. CHATFIELD called for the consideration of his resolution to fix an earlier hour (9 o'clock) for the meeting of the Convention.

Mr. NICHOLAS suggested that it would be well if a message were sent to the printers to ascertain when the report of the committee of 17 would be printed, for it was unfortunate that the Convention should be thrown out of business for want of its printed documents.

This matter not being pressed further,

Mr. CHATFIELD'S resolution was taken up.

Mr. BROWN moved to amend by striking out 9 and inserting 10.

Mr. SWACKHAMER preferred an earlier hour of meeting, 8 o'clock; and an adjournment at 12—and gave notice of his intention to move an addition to the resolution, after the amendment was disposed of.

Mr. PERKINS suggested that to meet earlier than 10, and adjourn at 12, would so break up the day, that committees would have no time to meet, except in the most oppressive part of it or very early in the morning. Nor did he see the necessity of fixing on any different hour of meeting at present.

Mr. PATTERSON thought also it was too early now to change the hour of meeting—especially whilst there were no committees appointed, no report on which the convention could act. He should prefer at the proper time, 9 o'clock, leaving the matter of the time of adjournment under the control of the body. He had no objection to meeting at 9 now, and do what we had to do, during the cool of the day—being quite indifferent how early the convention met in the morning.

Mr. TAYLOR thought it would be time e-

nough when we had our business arranged and before us, to act on this matter—and he moved to lay the resolution on the table.

The motion prevailed—44 to 40.

BUSINESS OF THE CONVENTION.

Mr. SWACKHAMER said, having just received a copy of the report of the committee of 17, he would move that the Convention again resolve itself into committee of the whole thereon.

Mr. SHEPARD said he had not had the report five minutes, and consequently had not had time to consider it. To afford time to the members to read and consider the report, he moved that the Convention now adjourn.

Mr. TOWNSEND hoped the printers would withdraw the printed copies of the report, for correction, for he found it was full of typographical errors.

The motion to adjourn was negatived, and the Convention again resolved itself into committee of the whole—Mr. RUGGLES in the chair.

The SECRETARY, on the suggestion of Mr. HOFFMAN, read again the separate resolutions, to afford members an opportunity to make amendments thereto.

The resolutions were read, from one to five, as follows:—

1 Resolved, That so much of the Constitution as relates to the apportionment, election, tenure of office and compensation of the legislature be referred to a committee to consider and report thereon.

2 Resolved, That so much of the Constitution as relates to the powers and duties of the legislature, except as to public debt, be referred to a committee to consider and report thereon.

3. Resolved, That so much of the Constitution as relates to canals, internal improvements, public revenues and property and public debt, and the powers and duties of the legislature in reference thereto, be referred to a committee to consider and report thereon.

4 Resolved, That so much of the Constitution as relates to the elective franchise—the qualification to vote and hold office, be referred to a committee to consider and report thereon.

5. Resolved, That so much of the Constitution as relates to the election or appointment of all officers other than legislative and judicial, whose duties and powers are not local, and their powers, duties and compensation, be referred to a committee to consider and report thereon.

Mr. BROWN asked the chairman of the committee, to which of the committees it was designed to commit that portion of the Constitution relative to the appointment or election of judicial officers? In the very brief opportunity he had had to look over these resolutions, he had not been able to answer to his own satisfaction the question he had put, and therefore he desired to get that information from the chairman, or a member of the committee of seventeen.

Mr. JONES replied, that the 5th resolution related to all the general officers of the State, other than legislative and judicial. But in reference to judicial officers of the State, and the judiciary system, it was intended that the resolution relating thereto (the ninth,) should embrace those subjects—every thing, in short, relating to the judiciary, the mode of appointment or election, and the tenure of office. It would be recollected that a gentleman from Herkimer, not now in his place (Mr. LOOMIS), made a proposition to raise a separate committee on that subject; but in the committee of seventeen, this matter was deliberated upon,

and it was concluded that it was wiser to leave every thing relating to the judiciary system, and the mode of appointing judicial officers, to one committee.

Mr. BROWN was not entirely satisfied with this disposition of this important point. He thought nothing should be left to speculation and therefore when they reached the 9th resolution he should offer an amendment to recognize the subject to which he had called attention as amongst the powers of the committee on the judiciary system.

Mr. RICHMOND observed that there was no provision for a committee to consider the subject of loaning the credit of the State to incorporations and to individuals. The gentleman (Mr. JONES) said there was, but he thought he could convince that gentleman that he was mistaken. The 3d resolution referred so much of the constitution as relates to canals, internal improvements, &c., and public debt, and the powers and duties of the legislature in reference thereto, to a committee to consider and report thereon. Now he wished to say to the Hon. Chairman of the committee of 17, that this subject is no part of the present constitution. He believed a large portion of the people were with him in these views that the constitution gave no power to loan the credit of the State to incorporations or to individuals. He knew he should be met with the argument that the legislature at various times, had granted such loans; but the legislature having done so did not make it part of the constitution, and therefore it was not within the scope of legislation. The exercise of such power had grown up incidentally in the legislature during the last few years; it was not derived from the constitution; and therefore he desired to have a separate committee thereon that the power of the legislature on that subject might be referred. To accomplish that object he submitted the following resolution:

Resolved, That the subject of loaning the credit of the State to corporations or individuals, be referred to a committee to consider and report thereon.

Mr. BROWN suggested the addition of the words "or moneys" after the word "credit."

Mr. RICHMOND accepted the amendment.

Mr. DANA suggested that the resolution should be offered as an addition to the 3rd resolution.

Mr. RICHMOND would be willing to comply with the suggestion, but he did not admit that such power was conferred by the Constitution and he was unwilling to admit it by implication even.

Mr. PATTERSON referred to the latter part of the resolution which spoke of "the powers and duties of the legislature with reference thereto."

Mr. RICHMOND: Yes it goes right back to the Constitution and I deny that such powers are constitutional.

Mr. JONES said the matter was fully discussed in the committee of 17, and the gentleman from Herkimer (Mr. LOOMIS) was satisfied that the resolution as reported was sufficiently comprehensive.

Mr. RICHMOND pressed his resolution and desired it to be made the 16th.

Mr. JONES to accomplish the gentleman's

object, moved to add the words "and laws of this state" after the word "constitution."

Mr. HOFFMAN suggested that the phraseology should be the *subject* of loaning the credit of the state. Then there would be no implication that the power was in the constitution—for that, he concurred with the gentleman from Genesee, would be unfounded and untrue. The amendment of the chairman of the select committee (Mr. JONES) would not steer clear of the difficulty. So much of the constitution and laws as relates to the canals, internal improvements, &c., and loaning the credit of the state, would only refer what it was entirely unnecessary to consider. These loans had been made—the credit of the state had in various ways been put into circulation. It had, in this very class of loans, as he had had the misfortune to know, been made the basis of the circulating medium. It had not been a question, when such loans had been made, and the credit of the state had gone forth—whether the acts authorizing them were constitutional and legal. By adding to this resolution very nearly, and he believed entirely, the words suggested by the gentleman from Genesee (Mr. RICHMOND,) this committee would have charge of this subject of loaning the credit of the state. And if the resolution could be properly amended further, he should prefer that some kindred subjects should be included—that is the power of loaning it to individuals, of making gifts—because, he should submit to the convention, unless anticipated, that this practice of making gifts had been pretty largely pursued, and had been most mischievous in its results. These gifts had been made in various ways—sometimes by pretending to pay a debt—and sometimes by granting what was called relief, but which was in truth only a gift. If the gentleman had time in the progress of this matter, Mr. H hoped he would devote his attention to all this class of subjects, and so word his amendment as to secure a full and ample consideration of the subject. Mr. H. believed it could be annexed to the resolution that had been passed over more conveniently than to any other, though he had not examined all the others.

Mr. SIMMONS said he was glad to see these propositions now spread before us. He was satisfied, on looking over them—this being the first opportunity he had to do so—that it was very well that we had come into committee, to perfect them—though he doubted whether it was a very fit place to originate such propositions. It might well be that many of these subdivisions might be subdivided advantageously. But he would like to see things called by their right names. It was very evident that the 2nd committee proposed by the resolutions, was charged with precisely the duty which the resolution now offered proposed to refer to another committee. The first of these resolutions referred to a committee so much of the constitution as related to the powers and duties of the legislature, except as to public debt. As to the powers and duties of the legislature, generally, he confessed that he had supposed that the constitution of this and of every other state, was after organizing the government, a mere system of restrictions—an enumeration of restrictions on powers which would otherwise

be left in the legislature, to be ascertained by general law—mere restrictions as to what the legislature should not do—just as the enumeration of powers in the U. S. constitution was a specific grant of what the general government might do. And he had supposed that it was impossible for a committee charged with the duty of considering generally the powers and duties of the legislature under the existing constitution, would for a moment suppose that they had performed their duty, unless they had considered the question whether the power to loan the credit or money of the state, whether to foreign states or to individuals or corporations, needed revision or limitation. The gentleman from Genesee suggested that this 2nd committee should be charged with only so much of the constitution as related to the powers and duties of the legislature. But that was an exceedingly broad duty. He apprehended the committee would construe it to mean all the powers and duties which the legislature had been in the habit of exercising, and what restrictions should be imposed—and would feel as if they were relieved from a part of their duty, if so much as related to the power of loaning money or credit were referred to another committee. Mr. S. had no objection to subdividing further, and taking away part of the duties devolved by the 2nd resolution—if the power of loaning money was deemed of importance enough to be separately considered—but as it now stood, that enquiry would devolve on the committee raised under the 2nd resolution. And what would this committee be expected to do, if that was withdrawn from their consideration which had been so generally regarded as likely to claim their first attention? Was the committee to be a mere formal thing, to make a sort of mechanical report, and were questions that public attention had been drawn to—especially this very important one—to be taken from their hands and given to another committee? But he rose barely to suggest that his duty fell under the powers of the 2nd committee, without any further addition or alteration.

Mr. RICHMOND explained. In his first remarks he expressed the belief that all these loans were unconstitutional. But he agreed with the gentleman from Herkimer, that there should be no disposition now to disturb those matters. They had gone by. Many interests had grown up under them, and he did not suppose that it was either prudent or wise, or that it was our duty to attempt to do any thing having reference to the propriety of what had been done. He alluded to these things only for the purpose of calling attention to what he regarded as important subjects. The gentleman from Essex thought this power of loaning the credit of the state was fully referred under the 2nd resolution. That, Mr. R. insisted, depended entirely on the views of the committee, when appointed, as to the question he had alluded to.—The resolution referred so much of the constitution as related to the powers and duties of the legislature, with one specified exception—and if the committee to whom this was referred should be of opinion that the constitution never gave such powers, how could they regard this subject as referred to them? A portion of

this body believed there was no such thing in the Constitution, and that this subject would not therefore be referred, under the resolution. But he should be content if the subject had a proper reference. He preferred, however, a separate committee; and he was the more inclined to urge it, from the fact that, on looking over the proceedings of the conventions that nominated many members of this body, he noticed that they passed a separate resolution on this very subject. He could name a great many counties—his own county, for one—where a separate resolution had been adopted against this very thing. And, all things considered, he believed it was proper and well to have a separate committee—and without any disposition to disturb what had been done under the present Constitution.

Mr. O'CONNOR said it had struck him that a slight modification of this third resolution would meet the object of the gentleman last up, and at the same time prevent us from running counter to the opinions of any gentleman here. That was to say—would involve no commitment of the body on any question as to the constitutional power of the legislature to do things heretofore done—nor involve a commitment of any gentleman to the proposition that the legislature had not the constitutional power. He had therefore drawn up an amendment, embracing, as he conceived, the idea contained in the resolution of the gentleman from Genesee, and which, if incorporated in the original resolution would present the whole matter in that. It was to insert, after the word "thereto," the words—

"And the propriety of imposing any and what restrictions on the action of the legislature in making donations of the public funds, and loans of the monies or credit of the State."

The suggestion was made to add "or property," after the word "funds."

Mr. O'CONNOR was willing to add that, though the word funds, he thought, covered it. He was willing to amplify by enumerating subjects—but it would rather confound and confuse than give strength to the proposition, [in reply to some other suggestion, not heard at the reporter's seat.] Perhaps some astute gentleman might conceive of an individual being not an entity or a corporation. He intended to make it generally applicable to donations to any body or thing—and his amendment would meet the object, unless the desire was to have two separate committees.

Mr. RICHMOND was not tenacious about the form, so the subject was properly referred.

Mr. HAWLEY held that the amendment was entirely unnecessary. The gentleman from Genesee objected to the third resolution, on the ground that it conveyed an implication that the action of the legislature heretofore had been constitutional in the respects mentioned. Now, in any view of this case, he held that the terms of the resolution were strictly proper. It was not a question of constitutionality, but whether it was proper to make these appropriations and donations of the public funds for private purposes, by a majority, or two-third vote. If they had been made by a two-third vote, the question of constitutionality never would have arisen.—He thought the third resolution covered the

whole ground, and that the amendment was entirely unnecessary.

The question was here taken on Mr. JONES' proposition to insert, after the words, "so much of the Constitution," the words "and laws"—and lost.

The question was then stated to be on Mr. O'CONNOR's amendment.

Mr. BROWN thought the committee would have to adapt the principle of the amendment of the gentleman from New-York, in some form or other. But it appeared to him that if the third resolution was amended, as proposed by that gentleman, leaving the second to stand, it would be committing to two committees the same subject matter—giving them the entire control over precisely one and the same thing. We should probably have conflicting reports.—He must be permitted to say here, that he trusted gentlemen would now see and feel the propriety of examining this subject in committee of the whole. It had occurred to him. (without pretending to any greater sagacity than resided in every other gentleman here,) from the outset, that no committee of sixteen or seventeen, would be able, without the benefit of the suggestions of others, to report a satisfactory arrangement or distribution of the business of the Convention; and what had taken place here now, was a perfect demonstration of the remark. The select committee had given their powers of mind, and all the attention at their command, to their duty. Still, when they came in here, and their report was subjected to the test of one hundred and twenty-eight minds, instead of seventeen, it was perfectly apparent that it was entirely defective. He hoped gentlemen would look into it, and if any thing occurred to them, that they would not be restrained from making suggestions; for it was their duty to do so. We stood here, not to perform a mere temporary duty, not to exercise legislative powers, in the belief that what was wrongly done this year, would be corrected next—but to form a Constitution which was to stand probably for the next quarter of a century. He hoped therefore gentlemen would make suggestions freely—without the slightest hesitation as to the consumption of time—for time spent upon this subject, could not be spent unprofitably. Mr. B. went on to examine the second and third resolutions in connection. The second referred all the powers of the legislature over the public property and revenue, except so far as that power was to be exercised for the mere purpose of creating debt, to one committee. The third resolution referred all the powers of the legislature in regard to canals, internal improvements, public revenues and property, and public debt, to another committee.—Now, he submitted that these subjects should go to one committee. The separation of them was entirely out of the question. The power of the legislature over the canals, internal improvements, the property and revenue of the state, were inseparable from its general powers, and must go to one and the same committee with them. A very intelligent gentleman (Mr. SIMMONS) supposed that sovereign power, except so far as it was restricted by the constitution, resided in the legislature—that it had complete, uncontrollable power over the property of the peo-

ple of this state. Mr. B. expressed no opinion now on this subject. But if that power resided in the legislature—if it had all power not expressly prohibited—if it could dispose of the entire property of the state, give it to corporations, to individuals, and, as had been suggested, to foreign powers—then it was time we knew it—time a committee was appointed to consider it—time the people of the country should know it. Another class of gentlemen supposed that the legislature had no power except what was expressly granted. Mr. B. expressed no opinion on that subject—because, if prepared to do so now, it would not be in order. He submitted that the powers of the legislature in regard to all these subjects, should go to one entire committee. Separate them—give to one committee all the powers of the legislature, except that to create debt—to another all the powers enumerated in the third resolution—and to another the powers specified in the proposition of the gentleman from Genesee—and we should have conflicting reports on the subject. He threw out these suggestions for consideration.—We must know—he, at least, desired to know, before he took one single step—what precise powers these committees were to exercise over this subject.

Mr. BASCOM said if he read aright, propositions two and three, they referred several distinct subjects to both committees. The second referred all the powers and duties of the legislature except as to public debt. The next classified distinct subjects which were embraced in the general designation in the first, to wit, internal improvements, canals, the public revenue and property—and the gentleman from Genesee proposed another which was embraced in both. Perhaps to strike out the exception in the 2d resolution, and making it an exception in the 3d, would meet the difficulty. But he should be better satisfied to have the word “constitution” struck out wherever it occurs and insert “business of the Convention”—so that the proposition should read “so much of the business of this Convention” as relates, &c. Then we should not be driven in ascertaining the duty of a committee to determine whether this or that power was in the constitution—and committees could direct their attention to the whole subject legitimately before them, under the references made and under the general duty with which we were charged, of making a new constitution. When in order, he should move the amendment he had indicated. He suggested also to the chairman of the committee of 17, the propriety of altering the exception in the resolution, so as to except all subjects specified in the 3d.

Mr. RICHMOND here suggested to Mr. O’CONOR, to engraft his amendment on the 2nd resolution instead of the 3rd.

Mr. O’CONOR had no objection, provided gentlemen who had given their attention most especially to the subjects embraced in the 3d, would assent to it. There were gentlemen who, in the course of our deliberations, had given us a foreshadowing of their views on the subjects embraced in the 3rd resolution, and plainly shown that they had extensively reflected on these matters. It struck him that his amendment properly belonged to the 3rd. But if the

gentleman from Herkimer (Mr. HOFFMAN) who had given his views once or twice on these subjects, was of opinion that it properly belonged to the 2nd rather than the 3rd, he was willing to present it as an amendment to the 2nd. Otherwise, he should be disposed to adhere to it as an amendment to the 3rd.

Mr. RUSSELL suggested, the printed resolutions having but just been laid before us, that it was almost impossible for any gentleman who had not made previous preparation, to propose in precise words, the amendments he might desire to make. To allow, therefore, a little more time for reflection, and to enable one of the gentlemen from Herkimer, a member of the committee of seventeen (Mr. LOOMIS), to be present when this matter was up, he moved that the committee rise and report progress.

Mr. RICHMOND, (Mr. RUSSELL having waived the motion,) explained. His reason for desiring that this amendment might be transferred from the 3d to the 2d resolution, was this. The third spoke of the power of the legislature to create debt. Various propositions would no doubt come in here, as to State debt. But all must agree that there must be power given to the legislature to raise money; either of themselves, or on a submission of a law to that effect, to the people. His proposition had in view a restriction of that power. A portion of this Convention, no doubt, desired to withhold altogether the power to loan the credit of the State to corporations or individuals, or to give away the public money or property. But no member probably wanted to restrain both legislature and people from borrowing or appropriating money to meet certain exigencies. The only question was, how money should be raised and appropriated. Hence it was that he preferred that the amendment should be changed from the third to the second resolution.

Mr. RUSSELL here renewed his motion to rise and report progress.

Mr. HOFFMAN asked him to withdraw it for a moment.

Mr. RUSSELL assented. He would withdraw it in full if any gentleman desired it.

Mr. HOFFMAN said it would undoubtedly be the desire of the convention to group together these subjects which were to be sent to standing committees, in such a way as that those that were very nearly allied, producing the same result or the same mischief, and originating in nearly the same causes, should go the same committee. So far as he had had experience in this or other states of the Union, the power of making gifts, of loaning credit, of contracting debt, had resulted very much from the same causes, and ended in the same mischief—and it was desirable that they should be considered together by the same rule of policy. If therefore, the power was inserted in either one of these resolutions, it was entirely proper that it should belong to the 3rd resolution, where the debt power was included, instead of the 2nd, where it was expressly excepted. One of his colleagues (Mr. LOOMIS) who had acted with the committee of 17, was now absent, and would be necessarily until to-morrow. He (Mr. L.) had devoted his attention to this subject, and Mr. H. desired, as strongly as any man could, that Mr. L.

should have the opportunity to present his views and opinions. Mr. H. did not know why the committee had made this separation between the 2nd and 3rd resolutions. But he would call attention to a few considerations connected with this subject, which might very strongly influence the decision of the committee. The executive government and the judicial government were employed in the execution and administration of the law. It was not necessary specifically to enumerate their duties. The legislature performed that function. But there was no law over the legislature but the constitution; and limitations that were not set by clear and definite terms, in a strong and direct manner, would scarcely be observed by the legislative body. It would seem therefore very desirable, and if we referred to the experience of our own or of other states, we might conclude that it was absolutely necessary specifically to enumerate the powers of the legislature. It was true of every constitution in the Union, that either for the want of time, or from some other cause, they gave the legislative power in mass—in general terms—and then sought to restrain it within the bounds of freedom and the rights of individuals, by express limitations. This was true of our own constitution, and of every other except that of the U. S. What constituted the legislative power—what the legislature might properly do, was itself a subject in some degree indeterminate—and the history of this and some other states and countries where a constitutional government existed, or as it had been called, a responsible government—legislation had attempted to perform, had performed very largely—not legislative duties, but duties approximating so nearly to executive, as to deserve a distinct and different designation—that of administrative—such as acts of attainder—various dispositions of property—relief to individuals on various subjects. All these had been treated as fit and proper for legislation. Perhaps, upon examination, it would be found that they were not legislative powers, nor fit to be made such. They were administrative duties, and should be performed, whether by the legislature or subordinates, under the scourge of law, by a fixed and iron rule, which neither interest, passion or feeling could change. The other mode of proceeding, instead of adopting a sweeping grant of power, and seeking by restrictions to make it safe for the rights of labor, property and persons—would be to adopt the course of specifying directly, and as far as practicable, affirmatively, what the powers of the legislature should be. After enumerating them in the best way the uncertainties of language would permit, then declare that the powers not granted are the residuary, reserved power of the people, not to be exercised unless they shall make an express grant of them. If the convention had gone into committee early, he should have felt compelled to have brought this question before it and to have asked its judgment—will you so apportion our labors, as that the committee to whom it is referred shall grant legislative power in the mass, and endeavor then to draw from it as much as may be necessary to the security of individual life, property and character—or will you adopt the other alternative, and so constitute your committees as

that some one of them shall be charged with the duty of attempting to specify the powers to be granted to the legislature, reserving all others to the people, until they shall be specially granted? Were there a reasonable prospect of success, he would have been compelled to inflict an argument to bring the Convention over to the latter course, and answer the common allegation of extreme difficulty, or of the impossibility of defining these grants of power. But after the Convention had given over this subject to the select committee, he supposed the only proper course would be to make their programme as full and definite as possible. As the programme now stood, if the 3d resolution was amended as proposed, the question presented now would be disposed of; and yet it would be competent for the committee charged with this exclusive question of the legislative power, to make an effort to enumerate as far as possible the powers to be granted, and if they should fail in that duty, with or without an intimation from the Convention, they should take measures necessary to secure in any future Constitution a perfect, full and fair enumeration of these powers. He submitted that it would clearly be in their power to report a provision, that, prior to any subsequent Convention, a commission should be charged with this duty, should be got up by the government, limited and confined expressly to the duty of arranging and specifying the subjects of legislative power—compel its submission to the legislature, and the Executive, and the public—compel the organized portion of the government to give their approval, or their objections, to any part of it, and show its imperfections and defects. If the committee and the Convention should leave this second committee as it was, he should feel it to be his duty, if none else did, to bring this subject before the Convention itself, by a resolution instructing the committee to inquire into the expediency of a special enumeration of these special and dangerous legislative powers. And if they could not succeed in that, to inquire into the expediency of making an enquiry on the part of the government, before any other Convention can be held, through a commission to be instituted, subject to the open and full examination of the public authorities, and the constituent body. Whether considerations like these had moved the select committee in their apportionment, he knew not. He had not the opportunity of looking at any programme, not even that of his colleague, nor of hearing his reasons for any part of this apportionment. It was to be hoped that this high duty of enumerating specifically the legislative powers, would be performed by the committee. It might be that considerations of this kind induced the select committee to single out and give us a committee for this purpose. If this 2nd committee should be left with the powers now proposed, there were other subjects which seemed to him entirely appropriate to refer to it. He did now now feel warranted in detaining the committee in hearing remarks which he should feel it his duty to make, in presenting them. He hoped the committee would rise and examine this programme in their rooms—for he confessed for one he had not had the opportunity to do so fully.

Mr. TILPEN desired to suggest an amend-

ment which he was inclined to think would meet the objections which several gentlemen had made regarding the classification of the resolutions.— Before doing that however, he would state that he inferred from a remark which had fallen from one gentleman that the committee to be raised under the second resolution was intended to consider the legislative power generally, the restrictions which should be imposed upon the legislature, and the various duties it should be enjoined to perform—a class of subjects that will be extensive and important and he apprehended somewhat multifarious—sufficiently so perhaps, to warrant the raising of a distinct committee to consider this other subject. The amendment which he was about to suggest, in regard to which he felt no special solicitude, was intended to meet some of the objections which gentlemen had made. One gentleman said and said truly, that in regard to some subjects the committees were to be raised to consider, there was no provision in the constitution, and yet only the subject matter of the constitution was to be referred to the committees. He apprehended however that the committees would feel fully warranted in considering the whole subject, as much so as if there was a special provision in the constitution relating thereto; but to obviate any objection he submitted the following amendment for the consideration of the Convention.

To prefix to the resolutions the words “Resolved, that standing committees be appointed to consider and report on the following subjects, and that the several parts of the constitution which relate to those subjects respectively, be referred to the same committees.” To strike out from the beginning of the resolutions the words “Resolved, that so much of the constitution as relates to,” and from the end, the words “be referred to a committee to consider and report thereon.” And also that the subjects be numbered from 1 to 15. If verbal accuracy was deemed necessary by gentlemen, he believed this would accomplish it.

Mr. STETSON said the gentleman from Herkimer (Mr. Loomis) who had been suddenly called home, expressed the hope before leaving this city, that the general identity of the first three or four resolutions would be preserved if practicable. As there appeared to be some little momentary confusion as to legislative power, he begged to call the attention of gentlemen to the second resolution, and they would see that it embraced legislative powers in full sovereignty, except as to public debt, so far as legislative power was derivable from a constitution, and saying nothing beyond that—a very formidable power certainly. They would find that the third resolution went beyond that exception. It was a subdivision of the legislative power; but it went beyond the exception. The second resolution excepted public debt; but the third, which was intended to provide for the exception, carried the subject of internal improvements, public revenues and property, and the powers and duties of the legislature, which were all associated with public debt. But in the 13th resolution there was likewise a broad exception to the legislative power. It embraced the organization and powers of cities, villages, towns,

counties and other municipal corporations; and especially their power of assessment, taxation, borrowing money and contracting debts.

Mr. RICHMOND inquired, taking the resolutions as they are, to which the gentleman from Clinton would deem his proposition the most appropriate amendment?

Mr. STETSON was understood to say that in the committee of 17 he did not feel that this point was well settled, but his opinion was that it belonged to the third subdivision. The only objection to that was, as intimated by the gentleman himself, that it was an unconstitutional power; but to obviate that it was very easy to adopt the amendment of the gentleman from New-York, (Mr. TILDEN.) The amendment of the gentleman from Genesee related to the loaning of the credit of the state; now he had supposed that public debt was almost equivalent to public credit. If a business man, and they had many there, put his name to paper, that in a certain sense he viewed as amounting to a debt; therefore he thought that public debt would include the loaning the credit of the state. Still it was very easy to change and enlarge the power of the committees so as to include all matters by generalities, for by special enumerations they ran great danger of leaving out something that they most desired to include.

Mr. RICHMOND did not understand the subject to which his resolution referred, as of the nature of the ordinary debt of the state, as the gentleman from Clinton seemed to imagine it to be. Nor did the people so understand it. He had particular reference to the loaning of the credit of the state to advance certain improvements and individual interests. There must be a way provided to meet and defray the state debts, but he saw a broad distinction between legitimate state debts and the loaning of the credit of the state to corporations for other purposes, and he desired to have a report on that subject. He trusted that such provisions would be made in the Constitution as would restrict the legislature from the creation of such debts. He did not wish to reflect on the resolutions of the committee of 17, for he believed the committee had done as much as it was possible for them to do; but he believed the Convention would see the broad distinction between state debt and loaning the credit of the state to individuals, and he hoped no gentleman would attempt to blend them. They were considered to be separate and distinct by the people, and they should be here. He knew some counties in their primary assemblies had passed resolutions on this subject, and it was desirable that it should be reported upon by a separate committee.

Mr. RHOADES said notwithstanding the gentleman from Clinton had informed them that the gentleman from Herkimer was desirous that the resolutions should stand substantially as they are, the gentleman from Orange had clearly pointed out that the resolutions were not consistent, and that the committees would come in conflict in considering the subjects that would be referred to them. While hearing the remarks of the gentleman from Genesee, he had drawn up two resolutions as substitutes for the two resolutions of the committee, in one of which he embraced such constitutional and legislative

powers as relate to internal improvements, public debt and credit, as well as the appropriation of the public credit for local and private purposes; and in the other the powers and duties of the legislature in relation to subjects not embraced in his first resolution. He thought these resolutions would be satisfactory.

Resolved, That so much of the Constitution and of legislative power as relates to the canals, internal improvements, public revenues and property, public debt and public credit, as well as the appropriation of public moneys or property, by way of gift or otherwise, or for local and private purposes, and the authority and duties of the legislature in reference thereto, be referred to a committee to consider and report thereon.

Resolved, That so much of the Constitution as relates to the powers and duties of the legislature in regard to the subjects not embraced in the foregoing resolution, be referred to a committee to report thereon.

Mr. O'CONOR said it struck him they should have a considerable number of amendments to the resolutions and the classification of subjects that were to come before them, and there was one proposition before the committee which it seemed to him, if adopted, would have such an effect on the other amendments as to require them to be varied at least. He alluded to the amendment of his colleague (Mr. TILDEN) which recommended a variation in the general structure of the whole set of resolutions, to wit, making them but one resolution, and numbering the committees, and at the same time getting rid of the repeated reference to the constitution, which gave rise to scruples in the minds of many members, as to the extent of the powers conferred on the committees. Many supposed this reference to the constitution tied down the commit-

tees to so much as was actually in the present written constitution. To get rid of all that difficulty, and to put the resolutions in the shape to receive the amendments which had been suggested, he recommended that the question should be taken on the proposition of his colleague to effect that general alteration, and then they could afterwards act on the specific amendments. To get at this alteration he withdrew the amendment which he had offered, which at present took precedence.

Mr. NICHOLAS, in confirmation of the views expressed by Mr. RICHMOND, said by many of their constituents it was not only looked upon as a doubtful power, but as unconstitutional to loan the credit of the state to corporations except by a two-third vote; and therefore he thought it would be a very proper subject for an exclusive committee. He thought this should be so for another reason. The committees which it was proposed to raise were to be standing committees, to continue in being during the sitting of this convention, and therefore he hoped they would not be burdened with anything which partook of the nature of special instructions.

Mr. W. TAYLOR presumed the members of that committee were not now prepared to vote on this amendment, and as it was about the usual hour of adjournment, he moved that the committee rise, report progress and ask leave to sit again, which was agreed to and leave given.

Mr. HOFFMAN moved that the various amendments be printed, which was agreed to.

Leave of absence was granted to Mr. POWERS for four days.

The Convention then adjourned.

TUESDAY, JUNE 9.

Prayer by the Rev. Mr. BENEDICT.

The minutes having been read were corrected on the suggestion of Mr. RICHMOND so as to embody his amendment, offered yesterday, and were then agreed to.

RULES AND REGULATIONS.

Mr. WARD, from the committee on rules and regulations, to whom had been referred the amendments of Mr. W. TAYLOR, prescribing the order of business, and an amendment of Mr. STRONG providing for the endorsement of resolutions, petitions and memorials, reported thereon, recommending the adoption of the proposed rules; and the report was adopted, after being amended on the suggestion of Messrs. CROOKER and KENNEDY.

STENOGRAPHERS.

Mr. CROOKER called for the consideration of his resolution for the employment of two competent stenographers to report the debates of the convention.

The PRESIDENT stated the question to be on taking up the resolution.

Mr. CHATFIELD was opposed to the resolution. He thought it unnecessary, and it might be unfair and invidious. There could be no doubt that the proceedings of the convention would be fully and fairly reported by the stenographers who were now engaged by the vari-

ous papers, and the result of their labors would stand as fair a chance of being properly appreciated as though the reports were sanctioned by a vote of the convention. He had confidence in the reporters here, and particularly those who report for the papers the editors of which have informed the community that they design to publish a volume of the debates of the convention. It appeared to him there could be no necessity for paying out the funds of the state for the employment of stenographers to report the debates of the convention, for those who had been hitherto reporting would furnish a volume as complete as could be furnished by reporters engaged by the convention, and they would furnish it as their own book. He would not therefore have reporters employed by the convention to come into competition with them, whose work would be furnished at as cheap a rate as it could be if furnished by the authority of the convention. He was entirely opposed to such an expenditure of the public money—there was nothing in the circumstances by which they were surrounded to call for it, and he would not be so liberal with the public money unless there was some other cause for it than any which now existed.

Mr. BROWN would like to have some information on this subject. He would ask the gentleman who offered the resolution to inform

him what object was to be attained by it? Was it desirable to apply any portion of the public money to the payment of these stenographers? And then was it desirable that the work when published should belong to the state? And if so, what disposition was to be made of it? He would go as far as any gentleman to procure a correct report of the proceedings of this convention, not only for our own benefit, but for the benefit of those who are to come after us; but when preparation has been made by papers to publish the debates, and while they went on so entirely to the satisfaction of every gentleman, he should like to hear some reason why the convention should select one or two reporters and give to them a preference over the others. He might give his support and sanction to this proposition, but before he did so he should like to have some information as to the plan that was to be adopted.

Mr. RHOADES enquired if the resolution was under consideration?

Mr. STRONG also objected that gentlemen were debating the merits of the resolution when the question was simply on taking it from the table.

Mr. CHATFIELD moved to lay the motion on the table.

Mr. CROOKER (Mr. CHATFIELD having withdrawn his motion) said he supposed when he made his motion to take the resolution from the table, that it was not debatable, or he should have stated some reasons for its adoption; but as gentlemen seemed to have gone into the merits of the resolution, with the leave of the convention he would give his views upon it. He had no other motive than to have the debates of the convention fairly and properly printed under its authority and sanction, regardless of the way and manner it was to be paid for. He cared not if it did take a small portion of the public funds for that purpose. His opinion was, that the gentlemen now reporting here would be employed. True, the resolution only contemplated the employment of a portion of them, a smaller portion than he had originally in his resolution, for he reduced it, as the larger number would have startled some of the gentlemen who have so peculiar a regard for the public treasure. He had no objection to the employment of all the reporters now here, and to giving them a small pittance over and above the profits of the book they were about to publish on their own responsibility. It did, however, appear to him that the debates should be published under the supervision and sanction of the convention. It was due to themselves that it should be so; and he did not believe that the additional expense would amount to a great deal. The reports should be published by order of this Convention, and in reply to the gentleman from Orange, Mr. C. said he would vote to give a copy of these debates to each of the members on this floor, as a matter of right; and he should not fear to go to his constituents under those circumstances. He would vote to give to himself, and to every member, a copy of the proceedings of the Convention, at its close; and he would also put a copy in every county clerk's office, for the benefit of the people of the entire State. Some gentlemen might think it desirable to go further, and put a copy in every

town clerk's office; and he believed the people of the State of New-York would justify them in doing so. If their debates were characterised, as he believed they would be, by great talent, it would be desirable that they should be placed within the reach of every citizen. All knew that when they looked back to the Convention of 1821, the Journal of that body was nearly unknown to nine-tenths of the people; and yet the debates furnished to them lessons of wisdom, and would do so in after times.— This Convention had provided for the publication of its journal, which he regarded almost as waste paper; if they had no peculiar associations beyond what arose here, they would have no regard for it. But the material matter—that which was vitally interesting to them all—was the debates, which would be the recorded opinions of all the convention and would be interesting to them and to their descendants after them. It was therefore desirable to spread these debates into every nook and corner of the state; and when they formed such a constitution as he hoped they would form, to last a little longer than the one we now have, it would be a more interesting volume to the public than was ever published by authority since the formation of the state. He, however, had offered his resolution without much reflection, and if it was desired by gentlemen, he was willing to let it lie on the table for a few days longer. The debates at this early period, were perhaps not so material as they would be when we came to those questions on which we should be widely divided, the debates on which he desired to see fully and fairly spread out on paper. He had offered his resolution for the purpose of exciting enquiry. He had no feeling, unless it was to have the very best reporters employed, come from where they might; he should not wish to be invidious nor should he regret if all were employed.— These were all the views he had now to offer to the convention, and they could now dispose of it as they pleased.

The resolution was then taken up by a vote of 56 to 34.

Mr. WARD said he should be equally gratified with the gentleman from Cattaraugus (Mr. CROOKER) to pass such a resolution, if he could bring himself to the conclusion that the Convention possessed the power to make such an appropriation. It however seemed to him that they possessed no such power. They certainly possessed power to direct the publication of the journal of their proceedings, and they had exercised that power, and that seemed to be all that was required of them. With respect to the present reporters who are now within the body of the Convention, he could say for one, from the experience he had had in matters of this sort, that there was not perhaps in the world a corps of reporters more accomplished, or a body of gentlemen so well qualified to report and publish the views of the gentlemen on this floor, as they. As had been said by the gentleman from Otsego, these gentlemen have been employed by the editors of various papers here, and these editors had given notice that they intended to prepare the debates and publish them in a volume for sale and distribution. If then at the close of our labors we should find we possessed the power and

authority to vote this money, we could order that volume; for gentlemen would agree with him, that so far as they had had opportunity to judge of the ability of these gentlemen, there could be no doubt but the reports would be accurately and correctly given. They could go beyond this and not only purchase copies for themselves, but send a copy of that work to the office of every town and county clerk in the state, if they possessed the power to do so.

Mr. SIMMONS could not vote for the resolution. It had been heretofore considered a matter of doubt whether members of the legislature, in the exercise of the ordinary powers of legislation, should take a copy of every thing the state might order to be printed. He alluded to the publication and distribution of the geological report, of which however he did not get a copy. At present these reports of the debates were matters of competition and he thought it questionable whether we had the power to make special provision for the publication of our speeches. He thought we should find no difficulty in getting ourselves understood and appreciated through the state.

Mr. CROOKER, supposing no more was to be said in opposition to the resolution, replied briefly. As to the power of the Convention to make this provision for the publication of its debates, Mr. C. confessed that he did not anticipate any objection on that ground—especially since the Convention had already transcended the precise grant of power contained in the Convention act, in the appointment of a Sergeant-at-arms. Nor did he believe that our constituents would find fault with that, or with any other provision we might make here, either for the preservation of order or for the dissemination of valuable and important matter, such as these debates would be to them. But if we were disposed to be technical, he insisted that his proposition came within the letter and spirit of the act. We were required by the act to keep a journal of our proceedings. The debates were as much a part of our proceedings, as the matter usually spread upon a journal; were as fully within the law as the journal itself, and much more important to a proper understanding of the reasons for the propositions set forth in it. As to the Geological reports to which the gentleman from Essex had alluded, all would remember that members of the legislature voted themselves not only one copy but twenty copies of that work, and received them—he certainly did—and he had yet to learn that that expenditure was not properly applied, for they were distributed, as far as they went, among the people and to their great benefit, no doubt. The distribution carried out the object of the survey, which was to diffuse useful information, and if the gentleman from Essex and his constituents did not receive their portion of them, it was their misfortune. But to return to the powers of this body. He disliked the rigid and straightened construction that had been put upon them.—The people of the state were here, through their representatives, in their sovereign capacity. We had full power to act as we conceived would promote their interests. With the power that we confessedly had, to tear the Constitution to tatters, and to make a new one,

to be submitted hereafter to the ordeal of the public judgment, it would be strange indeed if we had not the power to incur the little expense necessary to make the people acquainted with what was said as well as what was done here, and to furnish them in this way with the means of knowing the reasons why this and that proposition was offered—and on what grounds these propositions were rejected or adopted. It was true, members of the Convention could furnish themselves at the close of the session with a volume of the debates; but this would not answer the purpose he had in view, which was to diffuse information widely among the people, at their own expense, with information necessary, as he conceived, to a proper understanding of the instrument in all its parts, which we might adopt. Having given these reasons briefly, in explanation of his object, he should leave the resolution in the hands of the body, and should be content with their determination in regard to it.

Mr. LOOMIS opposed the resolution. We were already provided with an ample array of reporters, and with the discharge of their duties, he thought we had no reason to complain. He was able to bear testimony to the accuracy and faithfulness of the reported debates, so far as they had come under his observation. They were employed by those who sent us here—by the people themselves. They were their reporters, placed here not by this body, but by the people, to watch us, to give notice to them of what we said and did. They were paid by the people in their primitive capacity, and not through us. Allow the fullest and freest competition, and you would best subserve the public interests, and discharge your duty. Nothing could they be concealed that was done here—but every remark of importance made here, would be wafted, as on the wings of the wind, to the remotest corners of the state. It would be a mischievous precedent to adopt, if, followed by succeeding legislatures. The perfect freedom with which remarks were uttered here and reported by the press, without official patronage or preference, under the present arrangement, recommended it in his judgment, without change.

Mr. BROWN regarded the proposition as somewhat novel and extraordinary. He had no recollection of any legislative body having ever employed stenographers to report its debates. It was not the practice of the British Parliament, nor of either branch of congress, nor of the legislature of this state. Nor did the convention of 1821 employ reporters. And for very obvious reasons, in his judgment. If any thing could take away from the accuracy of these reports: if any thing could influence the reporters here—which he would not assume to make reports flattering or favorable to members, it would be the official character given to them by their selection by the vote of this body. Now, he desired that every gentleman here should stand upon his responsibilities; and if he undertook to utter opinions here that had no application to the subject in hand, and tending only to waste time, that he should take the responsibility of it, and should not be at liberty to go to the reporter, who perhaps might be

indebted to him for his place—and tell him to vary or gloss over what had been said. He wanted the debates to stand as they were uttered, precisely, if possible—and that was reason enough why we should adopt no such resolution as this. Let the reporters stand as now—under no inducement or influence whatever to present favorable or unfavorable reports of what was said here—but the debates as they occurred.—He admitted that it was very proper that the reasons given for and against propositions offered here, and adopted or rejected, should go the public—but this resolution would not effect that object. Because the proceedings which were to be published under it would not get abroad until the convention rose—and it was desirable that they should be spread before the public from day to day, that the public might judge of them as they transpired. Otherwise all the benefit proposed to be secured to the people, in passing upon the new constitution, would be lost. But if we were to spread these debates abroad, under our sanction, he should prefer to adopt the suggestion of the gentleman from Westchester—to wait and see what they were—whether they were or would be completed within a reasonable compass. Appoint these stenographers, and print their reports at the public expense and we hold out a direct inducement to them to make a ponderous and costly work of it, and without any check on our part on its character. He had no doubt we possessed all necessary power over this subject—and if he thought this proposition would result in any thing valuable, he would support it. The money we should expend in such a work would not be worth a thought—but looking at the consequences of the precedent, and under the considerations he had suggested, he could not vote for it.

Mr. CROOKER here amended his resolution so as to leave the number in blank, and

The question was then put upon it, and it was lost, ayes 5, noes 103.

THE LADIES' GALLERY

Mr. RUSSELL here offered the following:—

Resolved, That the President be authorized to appoint a door-keeper for the Ladies' Gallery.

Mr. RUSSELL said he trusted members were now satisfied that the appointment of this officer was necessary—our three door-keepers being absolutely necessary below. He had observed that ladies coming here had often been obliged to take the back seats of their gallery, because the front seat was occupied by gentlemen—and sometimes to take seats in the gentlemen's gallery. He had heard the remark from several ladies that they should be debarred the privilege of listening to the debates here, unless their gallery was protected from these intrusions. The high consideration in which the sex were held in this country, and should be every where, demanded that the privileges which they did enjoy should be fully secured to them.

Mr. PATTERSON thought a mere notice, hung up at the entrance, to the effect that no gentleman could enter unless accompanied by a lady, would meet the object more effectually than to employ a hanger on here at \$1.50 a day, to give the like notice. The mover of the resolu-

tion had no doubt represented truly the feeling of those for whom he spoke on this motion.—Mr. P. had not had the pleasure of conferring with any lady in the city on the subject. But if there were complaints in that quarter, the simple notice he suggested, and the setting apart of the ladies' gallery to their use, would remedy all these grievances. He was opposed to this useless expenditure, though a small one. He offered an amendment directing the sergeant-at-arms to affix the notice he had indicated on the door of the south gallery—adding that we had a sergeant at-arms who had nothing to do that Mr. P. knew of, and perhaps he might stand there and prevent intrusions. Mr. P. hoped that officer would not be obliged to put on his broadsword, and bring members in here in custody. The sergeant had been appointed without authority of law; and since we had got him, we might as well use him.

Mr. RUSSELL said that if gentlemen persisted in occupying the front seat of the ladies' gallery, when they saw ladies enter and take the back seats, the notice on the door would scarcely amend their manners. Nor even here, on this floor, directly under our notice, could we prevent intrusion, by a mere notice at the doors. Besides such a notice as the gentleman spoke of had been posted on the door of the ladies' gallery for years, and we saw the effect of it. He trusted a spirit of gallantry if not of justice would induce members to appropriate proper seats for the ladies and a proper officer to see that these seats were secured to them.

Mr. SWACKHAMER proposed to add to Mr. PATTERSON's resolution words authorizing the President to appoint a doorkeeper for the ladies' gallery.

Mr. PATTERSON remarked that that was the original resolution, which he proposed to strike out.

Mr. RUSSELL called for a division of the question.

Mr. RHOADES said the proposition of the gentleman from St. Lawrence came to him in such a form, that he found it impossible to resist it. He regarded it as a petition from the ladies, that a door-keeper might be appointed to superintend their gallery; and that they had chosen the gentleman from St. Lawrence as the organ through whom they chose to communicate with this house. He was only surprised that the gentleman from Chautauque (Mr. PATTERSON), should be found in opposition to it—a man who, ever since Mr. R.'s acquaintance with him, had been the admiration of all the ladies. [Laughter.] Mr. R. was as much surprised to hear that gentleman say that he had not talked with a lady on this subject. If Mr. R. had heard one, since he came here, he had heard a hundred ladies express their admiration of that gentleman. [Renewed laughter.] It did appear to him, that for the mere purpose of saving the small sum of \$1.50 a day, we should not refuse the application of the ladies to appoint a door-keeper for their gallery. And he hoped, before the President exercised the discretion proposed to be vested in him he would be careful to select some person acceptable to the ladies themselves.

Mr. CROOKER interposed a plea for the gentleman from Chautauque. His seat happened

to be under the gallery, and that placed him out of the range of vision from and to it. If its location were on the other side of the hall, he ventured to say, the resolution would command his support also.

Mr. PATTERSON said it made little difference to him whether he was located there in Greenbush, as he was, or in any other part of the house. He desired that the ladies should have suitable accommodations when they came here; but he doubted whether even the gentleman from Onondaga had received the petitions of one hundred ladies that a door-keeper should be—

Mr. RHOADES: Will the gentleman permit an explanation?

Mr. PATTERSON: Certainly, sir.

Mr. RHOADES: I said if I had heard one, I had heard one hundred ladies—not say anything about a gallery—but express their admiration of the gentleman from Chautauque. [Roars of laughter.]

Mr. PATTERSON: The gentleman commenced with a very important word, though a small one—if he had heard one, he had heard one hundred ladies, &c. [Renewed laughter.] Mr. P. continued—It was entirely immaterial to him whether the ladies accorded the higher meed of approbation to the gentleman from Onondaga, or the gentleman from St. Lawrence, or the gentleman from Chautauk, as the gentleman from Orange (Mr. Brown) would say, [alluding to his pronunciation of Chautauque.] He did not object to having the ladies' gallery properly taken care of; but he did object to employing another man to do it. If it was necessary to send an officer there, send the sergeant-at-arms, who as yet had had nothing to do. We had more officers here now than we wanted—more messengers than could be employed. They were in each others' way. Send one of them there, if necessary.

Mr. BASCOM thought, after we had voted down, so unanimously, the proposition to spread the debates of this body before the people—to place in every county clerk's office a volume of real utility, which would not get there without such provision being made for it—though we had taken pretty good care of ourselves in the matter of newspapers and manuals, and officers, and what not—we had better not so soon go into this further expense. He was not satisfied that the ladies felt particularly the want of such an officer—and he believed an occasional intimation from the Chair, that the ladies' gallery was intended for them, would have more effect than all the officers or notices we could put there, and perhaps would be more complimentary to them. Nor did he believe that the ladies would care particularly to listen to debates of the character of those that had thus far signalized this body. He certainly was not anxious that that portion of our constituents should be witnesses of these debates on trivial, technical and unimportant matters. He hoped, at all events, that the effect of the notice proposed would be tried.

Mr. STRONG differed with his friend last up as to the character of the debates here. He thought they had been quite interesting—never more so than this morning. He confessed that

though opposed to this proposition in the outset—and from the belief that it was unnecessary—he had now changed his mind, and should vote for the resolution, on condition that the person to be appointed was inserted in the resolution itself. There was a lad here who was precisely the person to suit the ladies, and he suggested the insertion of his name in the resolution. He was an active, fine looking lad, and about the right age. His name was Geo. C. GILL.

Mr. BRUCE preferred the amendment of the gentleman from Chautauque. He was somewhat suspicious of this new-born zeal of certain gentlemen, veteran members of the legislature, on behalf of the ladies. He preferred, so long as we had this superfluity of officers, to employ some one of them, when necessary, to preserve order in the gallery. Here was our Sergeant-at-Arms, with little or nothing to do—who on certain occasions—in cases of extreme necessity—girded on his sword and put himself in battle array. Why not, when the rights of the ladies were invaded, send him up there with his sword on, to vindicate their rights?

Mr. RUSSELL replied that this was no new-born zeal on his part, nor was this officer so unusual as he had been intimated. For the two last sessions, there had been two doorkeepers appointed for the gallery.

Mr. SHEPARD suggested this substitute for the entire resolution.

Resolved, That the seats under the gallery be appropriated to the use of the ladies and gentlemen accompanying them, and that the whole of the gallery be appropriated to the use of gentlemen.

Mr. S. remarked that this would bring the ladies immediately under the protection of the door-keepers of the house.

The Convention here refused to strike out, as moved by Mr. PATTERSON, 43 to 49.

The question then recurring on Mr. SHEPARD'S proposition,

Mr. PERKINS moved the previous question, and

There was a second, and the main question ordered to be now put—which was first on Mr. SHEPARD'S amendment (under the rule)—and it was lost.

The original resolution of Mr. RUSSELL was then put and carried—ayes 61, noes 47—as follows:

AYES—Messrs. Angel, Bouck, Boyd sh, Brown, Cambreleng, D. D. Cammell, R. Campbell jr., Clark, Cneely, Cook, Cornell, Crooker, Cuddeback, Danforth, Dodd, Dorlon, Dubois, Gebhard, Greene, Hart, Hoffman, Hotchkiss, Hunt, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kennedy, Kingsley, Kirkland, Loomis, Mann, McNeil, McNitt, Maxwell, Murphy, Nicoll, O'Connor, Parish, Perkins Porter, Rhoades, Riser, Russell, St. John, Sanford Shepard, Simmons, Stevens, Stetson, Stow, Swackhamer, Taft, W. Taylor, Tilden, Townsend, Tuth II, Vague, Ward, J. Young—61.

NO'S—Messrs. Allen, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Brayton, Bruce, Bull, Burr, Candee, Chatfield, Dana, Flanders, Gardner, Harrison, Hawley, Hunter, E. Huntington, Korman, Marvin, Miller, Nicholas, Patterson, Penniman, Richmond, Salisbury, Sears, Haver, Shaw, Sheldon, E. Spencer, W. H. Spencer, Stanton, Strong, Tallmadge, J. J. Taylor, Warren, Waterbury, White, Willard, Wood, A. Wright, Yawger, A. W. Young—4.

THE COMMITTEES.

Mr. JONES now moved that the Convention go into committee of the whole, on the report of the committee of 17, which was agreed to.

Mr. TALLMADGE (in the absence of Mr. RIGGLES) was called to the chair.

Mr. SHEPARD proposed to amend the 3rd resolution, so as to refer in addition to the subjects of "the canals, internal improvements, the public revenue and property, and the public debt, and the powers and duties of the legislature in reference thereto," the following:

"And all the proposed modes to secure the future safe-keeping and disbursement of the public revenue."

The CHAIR announced the question to be on Mr. TILDEN's proposition to reduce the resolutions of the committee of 17 to this form:—

Resolved, That standing committees be appointed to consider and report on the following subjects, and that the several parts of the existing Constitution which relate to those subjects respectively, be also referred to the same committee:—

1. The apportionment, election, tenure of office and compensation of the Legislature.
2. The powers and duties of the Legislature, except as to public debt.
3. Canals, internal improvements, public revenues and property, and public debt, and the powers and duties of the legislature in reference thereto.
4. The elective franchise—the qualification to vote and hold office.
5. The election or appointment of all officers other than legislative and judicial, whose duties and powers are not local, and their powers, duties and compensation.
6. The appointment or election of all officers whose powers and duties are local, and their tenure of office, duties and compensation.
7. The militia and military affairs.
8. Official oaths and affirmations, and oaths and affirmations in legal and equity proceedings.
9. The judiciary system of the State.
10. The rights and privileges of the citizens of this state.
11. Education, common schools and the appropriate funds.
12. Future amendments and revisions of the Constitution.
13. The organization and powers of cities, villages, towns, counties and other municipal corporations; and especially their power of assessment, taxation, borrowing money, and contracting debts.
14. The currency, banking business and incorporations.
15. The subject of the tenure of landed estates.

Mr. TILDEN explained the purport of his amendment and said it was introduced to obviate the objections of some gentlemen, in which however he confessed that he did not share.

Mr. RICHMOND said the amendment of the gentleman from New-York would not materially affect the proposition which he had submitted, which he thought had precedence over all others. He alluded to the amendment respecting the loaning of the credit of the state, which he proposed to make the 16th of the classification of subjects.

Mr. SIMMONS was of opinion that the amendment of the gentleman from New-York was desirable. It admitted, he found on a careful examination, the stating of the other resolutions in a little better form; and it would admit also the compacting of the first three resolutions into two. It seemed to him that it was desirable to lessen the number of the committees; and if the amendment of the gentleman from New-York was adopted he proposed so to consolidate the three first into two, as to make them distinctive and to avoid encountering and overlapping each other, and preserve to each its own landmarks. The amendment would be in this shape:

1. The constitution of the legislative department, with its general powers and duties.
2. The particular powers and limitations of the legislature concerning canals and rail-roads, the public property, and revenues, and the public debt and credit.

Mr. HOFFMAN said the motion was to strike out a very substantial part of the *projet* of the committee of 17, and it would certainly be competent and very proper that those who drew the *projet* in committee, after hearing the opinions of gentlemen here, should make the matter sought to be stricken out, as perfect as possible. He had only had the *projet* laid on his table yesterday, and he attempted to study it here while the Convention was in committee of the whole. He afterwards took it to his room and there submitted it to the best reflection in his power.—He came here this morning scarcely knowing what the amendments amounted to, having to study them here to-day as yesterday, he studied the *projet* while in committee of the whole. He believed, however, that it was entirely in the power of the committee that had in this matter in charge, without any very serious change in form, to correct any slight inaccuracies in the substance of the *projet*; and before the motion was put to strike out he hoped that course would be adopted. It seemed that the *projet* was not entirely artistic in a certain sense; and if that were so, it would seem that the committee had devoted less attention to form and more to the matter that was to be subdivided. The principal objection he heard yesterday was one that he thought was very properly taken; it arose from the doubtful sense, in which the word "Constitution" was commonly applied. It might mean the written Constitution of the country, and perhaps the gentlemen who objected took it in that sense; or it might mean, in a much broader sense, all the parts of a responsible government that were deemed unchangeable and were usually unchanged. He would, therefore, suggest to the committee if the word "Constitution" occasioned any difficulty—and perhaps it would in 12 or 13 of the resolutions—the addition of the words "and government." It would then include that which was actual with that which they contemplated in their minds, and relieve the difficulty. It would then give a full and fair reference of the subject, whether it be in the old constitution or only actual matter in the existing government. Amongst the matter proposed yesterday there was a proposition to transpose two or three of the resolutions. He (Mr. H.) was not able to see the necessity for such a transposition. The committee to be appointed on the second resolution would be one of the most important committees of the convention. He had yesterday found occasion to say something of the duties it would have to perform. Now, whether that committee would engage in the heavy undertaking of making a specified enumeration of legislative powers, it must in the very nature of things consider the question of a limitation of legislative powers and a prescription of legislative duties; and it must strike the mind of every one that there must be many propositions to set such safe limits to legislative power as would make the rights of property and labor secure—and to make those limits such as would be safe to a free government. If there were any ob

security in the resolutions of the committee of 17 it could be cured by amending the exception in the 3d resolution. An amendment was moved by a gentleman from New York to the 3d resolution which was in reference to that in the action of the government which must necessarily be considered together. He thought the consideration of the debt, finances, and state credit could not well be separated. In the actual action of the government he knew not any one thing which had been so frequently substituted for another, and he was bound to say that this giving away of the credit of the state was not the worst. The committee would excuse him if he called their attention to a case that would illustrate this matter. The legislature of the State passed an act requiring the Canal Commissioners to examine and certify whether it would be beneficial to the State to purchase a canal—he believed it was called the Oneida canal—a canal devised by individuals to open a communication between the Oneida lake and the Erie canal.—The bill further provided that if they gave that certificate, the State should pay the owners \$50,000. The Commissioners did examine, and they gave the certificate. In the course of his official duties, a question came up, which he was obliged to decide upon. He could not suppose that the certificate had been given, and he refused to allow it unless the paper was shown, and the paper was produced. The State, however, gave no money; but it gave its credit for \$50,000, in scrip. After possessing itself of this advantageous speculation, it went on and collected a revenue of several hundred dollars, but paid out by thousands. It assumed the form of a purchase and payment, but it was in fact a gift. He spoke of this, to illustrate what he meant when he said that the one committee must be charged with all the ways and means by which revenue can be obtained, or a debt created. He then went on to say that he thought these resolutions were about as full as they could now be made. There must and would be additions; but of those additions he did not feel at liberty to speak. When the committee who had this in charge, had made it as perfect as they could, if the gentleman from New-York (Mr. TILDEN) then desired to take the question on striking out, he would have no objection; but until they had had time given them to amend both in form and substance, he supposed the question on striking out would not be pressed. If the amendment of the gentleman from New-York were pressed, then those gentlemen who desired a separate committee on State credit, would resist it, because it would give them an opportunity to add a sixteenth resolution, as proposed by the gentleman from Genesee, (Mr. RICHMOND,

Mr. JONES adopted the amendment suggested by the gentleman from Herkimer, to add the words "and government" after the word "constitution" in each resolution.

Mr. RICHMOND believed the question was on his amendment which was a separate proposition. The others had arisen as amendments to the report of the committee. His proposition affected neither the amendment of the gentleman from Herkimer nor those of the gentlemen from New-York; he therefore hoped it would be un-

derstood that whatever disposition was made of his, no effect would be produced on the others.

The CHAIRMAN (Mr. TALLMADGE) stated the secretaries were in some difficulty in consequence of the position of things under these amendments. He was of opinion that as the amendment of the gentleman from Genesee was ordered as a 16th resolution, it was not in order until they had disposed of the fifteen. He explained the position of affairs, placing Mr. TILDEN's amendment in the foreground and even that to be irregular in the shape in which it was. The committee was upon the 3rd resolution, and Mr. TILDEN might move to strike out certain words as a compact and separate amendment, but he could not offer an amendment which would extend over the whole series of resolutions, otherwise they would find it difficult to take any action whatever.

Mr. RICHMOND enquired if it would relieve the committee from its difficulty if he withdrew from the resolution its number?

The CHAIRMAN said his impression was that it would, or the gentleman might offer it as an addition to the 3rd resolution.

Mr. RICHMOND modified his amendment as indicated, leaving its location without a designation.

Mr. PATTERSON said then it was not an amendment to the 3rd resolution and could not be entertained. The CHAIRMAN was right in the position he had taken. The gentleman from Genesee had given them a deal of trouble with this amendment—at one time it was an amendment to the 2d resolution—then to the 3d; at another it was a 16th resolution, and now it was nowhere.

The CHAIRMAN said if the gentleman would only say where it was to come in they should know what to do with it.

Mr. RICHMOND said he was willing to let it lie on the table until the 15 resolutions had been disposed of and then he would call it up.

The CHAIRMAN assured the gentleman from Genesee that it should be taken care of. The question then recurred on Mr. TILDEN's amendment.

Mr. TILDEN restated and explained his amendment and expressed his willingness to have the vote taken fifteen times if the rules required it, instead of striking out all at once that he proposed to strike out.

Mr. PATTERSON moved that the committee rise and report progress and ask leave to sit again, which was carried, and the committee rose.

The PRESIDENT put the question on granting leave.

Mr. NICHOLAS said it appeared to him the experience of a few days must have convinced many gentlemen that it would have been better to have adopted the report of the committee of 17, and to have permitted the several committees to be appointed. If they had done so, perhaps by this time they would have had a report from some one of those committees, and then the Convention would have had work to do. He thought even now the Convention should again take the control of this matter, by refusing leave to sit again. If when they got reports from the several committees any omissions should be discovered by gentlemen, it would be competent

for any of them to offer a resolution, proposing the appointment of a new committee. He hoped the Convention would refuse permission to sit again.

Mr. LOOMIS thought the time spent in debate on this subject, resulted in the presentation constantly of new views, and was not misspent, either yesterday or to-day. It would not be a misuse of time to go into the same discussion

to-morrow. Better take the usual course.— Other suggestions were to be made no doubt, which it was desirable to hear. Take the time necessary—for it was more important that this thing should be done right, than done quick.

Mr. CHATFIELD here moved an adjournment, and the Convention

Adj. to 11 o'clock to-morrow morning.

WEDNESDAY, JUNE 10.

Prayer by the Rev. Mr. BENEDICT.

The minutes of yesterday's proceedings were amended on motions by Messrs. STRONG and KENNEDY, and were then approved.

BUSINESS OF THE CONVENTION.

Mr. CHATFIELD rose to make a motion which he hoped would meet the general approval of the Convention. They were now in the third day of the second week of the session, and as yet they were not prepared to enter upon the more important and substantial business of the Convention. He moved that all the previous orders of business be passed over, and that the Convention proceed to consider the unfinished business of yesterday.

The motion was agreed to, and the unfinished business of yesterday was taken up. The pending question was on granting to the committee of the whole leave to sit again on the report and resolutions of the committee of 17.

Mr. BERGEN hoped the Convention would refuse leave to sit again. It appeared to him that a great deal of time had been consumed unnecessarily. They had better keep this business before the Convention, where amendments could be made as well as in committee of the whole, and by doing this, much would be accomplished. They had been eight days in session, and they had made but little progress.— It would be admitted by all that it would be better to get at the work itself, than to consume time in preliminaries.

The question on granting leave was put and lost—ayes 48, noes 50.

Mr. WARD moved that the resolutions be now taken up in the Convention, and considered separately, each being taken up by itself for amendment.

Mr. MANN moved that the resolutions be taken up in numerical order, and each acted upon and completed separately.

Mr. TILDEN hoped they would not be taken up separately. The pending amendment, as well as those of the gentleman from New York, the chairman of the committee (Mr. JONES,) as those offered by himself, proposed some little amendment and modification, running through all the resolutions, and it would be as well to have the question taken on those amendments to all the resolutions together.

Mr. NICHOLAS thought the question was on the adoption of the report of the committee of 17.

Mr. KIRKLAND said the motion of the gentleman from New York did not affect the report of the committee of 17 in substance; but any

gentleman who read it would agree with him that its phraseology was more appropriate, and that it avoided much verbrage, while the substance was preserved. He hoped therefore the question would first be taken on the amendment of the gentleman from New York, which all understood, and which not only possessed the merits he had specified, but avoided all those scruples respecting which gentleman had spoken.

The PRESIDENT said the question was on the motion of the gentleman from Westchester, to take up the resolutions in their order.

Mr. KIRKLAND desired the gentleman from Westchester to waive that, and to let the question be taken on the amendment of the gentleman from New York, (Mr. TILDEN.)

The PRESIDENT said the motion of the gentleman from New York (Mr. TILDEN) would not be in order, until the motion of the gentleman from Westchester was disposed of.

Mr. CHATFIELD thought the Chair was in error, inasmuch as the 14th rule provided that "amendments proposed in committee of the whole, shall be deemed pending in the Convention, if called for by a member;" and that such amendments could not be over-ruled by any but a privileged motion, which that of the gentleman from Westchester was not.

Mr. TILDEN called for the consideration of his amendment.

Mr. WARD thought the gentleman from Otsego (Mr. CHATFIELD) in error. It was true the amendments offered in committee of the whole could be offered in convention, but the amendment of the gentleman from New-York was not first offered here. He explained the practice in the house of representatives and in the senate of the U. S., where bill were taken up section by section for amendment, before amendments were offered to the whole. He desired, therefore; that they should now proceed in order with each resolution in succession, and thus dispose of the amendment of the gentleman from New York.

Mr. TILDEN contended that the question came into convention just as it was pending in the committee of the whole. Under the general parliamentary law this was not so, but it was under a special provision of the convention.

Mr. WARD felt anxious that the convention should proceed to the consideration of the resolutions, and he contended that his motion was first in order, as the gentleman from New-York did not call for the consideration of his amendment until after his (Mr. WARD's) motion was made.

Mr. MURPHY submitted that the Chair was right. We had no report from the committee of the whole, except that they had had these resolutions under consideration. We had refused them leave to sit again. Hence we had before us none of the amendments offered in committee—and hence the first motion made here must have precedence. He suggested however to the gentleman from Westchester to allow us to take a question on the substitute proposed by the gentleman from New York (Mr. TILDEN)—for it was rather in the nature of a substitute for the whole scheme of the committee of 17. And all must admit that it was drawn with much more skill and art than that of the committee of 17, and more susceptible perhaps of such amendments as gentlemen might desire to propose. Whilst therefore he thought the gentleman from Westchester was right, as to the point of order, Mr. M. thought he would do the House a service, under its embarrassment, if he would allow the motion pending in committee of the whole, to be renewed here, and a question taken on that first.

Mr. WARD had no objection, and waived his motion.

Mr. TILDEN then renewed his amendment. [Published yesterday at length.]

The CHAIR: That is to amend all the resolutions of the committee of seventeen, by one vote.

Mr. JONES remarked, as the proposition was to strike out from each of the original resolutions, the words "so much of the Constitution as relates to," and the words "be referred to a committee to consider and report thereon"—it was competent for him now to make as perfect as possible the matter proposed to be struck out. He renewed therefore the amendment suggested by the gentleman from Herkimer, and others, to insert in each of the resolutions, after the word "Constitution," the words "and government;" and this proposition took precedence. As he had already stated, he did not consider it material to amend at all; for the word Constitution meant not only the written Constitution, but all subject matters connected therewith. But as others thought differently, he would make the phraseology conform to their wishes. As to the amendment of his colleague (Mr. TILDEN), he had but a word to say. We had met here, charged with the duty primarily to amend and revise the Constitution. He desired, therefore, that this should appear upon the face of these resolutions of reference. The amendment or substitute of his colleague made the amendment of the Constitution a secondary matter—his proposition being that committees be appointed on certain matters and things in general, and then that so much of the Constitution as related to them should be referred to them respectively. It was a mere question of form, however, and it was, after all, a matter of form throughout.

The PRESIDENT here remarked that, ordinarily, in legislation, when a bill, for instance, containing a number of sections, was under consideration—it was taken up by sections. This brought the attention of the body to the particular section in hand, and had been found in practice to be the best and safest course. The Chair regarded these resolutions of the committee of

seventeen as analogous to a bill containing several sections, and that the usual parliamentary course should be adopted in acting on them—that is, that they should be taken up separately. In this view of the matter, the motion to amend all the resolutions at once, was not in order—nor the other proposition, (Mr. JONES') which was of the same general character. Therefore, unless overruled by the Convention, the Chair should direct the first resolution of the committee of seventeen to be read for amendment.

Mr. TILDEN then modified his amendment so as to make it apply to the first resolution only. That would test the sense of the Convention.

Mr. MARVIN suggested that the gentleman should move his entire amendment as a substitute for the original resolutions. If accepted as a substitute by the Convention, then it would be the proposition before the Convention, and open for amendment. This was often the case in legislative bodies, that one whole bill was substituted for another, and became in turn the subject of amendment.

Mr. PATTERSON thought much time might be saved if gentlemen would consent at once to have the question taken on the first resolution of the committee of 17. It was a plain, simple proposition, referring to a committee so much of the Constitution as related to the apportionment, election, tenure, and compensation of the legislature. All the talk we had had, amounted to nothing. We had consumed two or three days in talking, and had now got back to where we started. Suppose we stuck on the preamble of the gentleman from New-York (Mr. TILDEN), how would that improve this simple proposition? He regretted that a gentleman who was so particular about terms and language had not been on the committee of 17 that he might have fixed this up to suit himself. The original resolutions were on the journal, and well enough. Why not take them up and act on them, like men of common sense, and see if we could not do something. We had talked long enough.

Mr. MARVIN said his suggestion was intended to bring the Convention to a vote now on the question whether we would take up the substitute of Mr. TILDEN for amendment, instead of the original resolutions. The substitute was offered, as he understood it, to relieve some gentlemen of a difficulty or misapprehension as to the language of the original resolutions—they imagining that by the word constitution the committee of 17 meant simply to refer parts of the present constitution, and excluding all other matters connected with it. Many preferred to refer specified subjects—and under these suggestions, the substitute was drawn up and submitted. It was immaterial which of these plans we took up—but he confessed he liked the arrangement in the substitute the best. If that was accepted for amendment, then we could take up each subdivision separately and dispose of it.

Mr. NICOLL believed the sense of the Convention was in favor of the substitute, as a matter of form; and he suggested that a motion to lay aside the original report and take up the substitute would be in order.

Mr. TILDEN suggested that a vote on his proposition to amend the first of the original resolutions would dispose of the whole.

Mr. LOOMIS sustained the Chair on the point of order—and remarked that we had only to come to a vote on the pending motion, to settle the principle as to which of the two we would take up. Mr. L. said, that as one of the committee of 17, he gave his assent to these resolutions in the form in which they were; but it was due to himself to say that he had a preference for the form proposed by Mr. TILDEN—for that gentleman's proposition was substantially, in form, like that he (Mr. L.) submitted a day or two ago. He did not therefore feel bound so far by his assent to the report of the committee of 17, as to prevent his voting according to his original views of the matter.

Mr. MORRIS enquired whether if this substitute of his colleague was accepted, it would be in order to amend it.

The CHAIR replied that such was the understanding.

The question was then put on Mr. TILDEN's motion to strike out the first original resolution of the committee of 17, and insert:—

Resolved, That standing committees be appointed to consider and report on the following subjects, and that the several parts of the existing Constitution which relate to those subjects respectively, be also referred to said committees:

1 The apportionment, election, tenure of office and compensation of the legislature.

Mr. MORRIS said he had read, since he had taken his seat here, the compilation of his learned associate from New York, and he preferred it decidedly to the original resolutions of the committee of seventeen. But it struck him that the substitute still required amendment. The intention of it, no doubt, was to refer several distinct classes of subjects to separate committees; but as he understood it, there might be a doubt whether each particular subject mentioned, without reference to the classes under which they were arranged, might not be referred to as many committees. Mr. M. therefore moved to amend, so that the resolution would read:

"Resolved, That a committee be appointed to consider and report on each of the following classes of subjects," &c.

Mr. TILDEN remarked, that his phraseology was the same as the standing rules of the two houses in that respect. Mr. T. read the fifty-third rule of the Assembly, to show that his substitute was in exact conformity with it. He did not think the amendment would make it any more perspicuous or definite.

Mr. MORRIS' amendment was adopted.

Mr. MARVIN suggested that we should not take the question on each of these subdivisions separately; but take them up, one by one, and amend them, if necessary, until we had got through—so that we might turn back to either, and change it, if subsequent alterations should make it necessary. And he moved, in order that we might have the whole subject before us, that the entire substitute of Mr. TILDEN be accepted for amendment. This he believed would meet the views of the gentleman from Herkimer, to whose great parliamentary experience, Mr. M. was willing, however, to defer.

Mr. HOFFMAN remarked, that the practice alluded to was the settled practice in every legislative body in the Union, in committee of the whole, except in the legislature of this State—

that is, the committee of the whole, like any other committee, proceeded only by way of amendment—passing over, without finally adopting, propositions as they came up, with or without amending them—and going back to any proposition that had thus been passed over and amending it; and it was in that case that a measure could be passed, amounting to what was called a substitute. But no such practice existed in the house, in any legislative body whatever. It could not be done here; and hence, in the beginning he wanted this project perfected in committee, where we should be disentangled of this rule. But the house having taken the course it had—having indulged the committee of the whole one day, and twenty minutes another, he had no desire to see it go back again into committee. The house had now adopted the formal part of this substitute; and they would find no serious difficulty in getting through with all sorts of amendments to it, if gentlemen would only be a little patient. There appeared to be a great anxiety to get on with serious, constitutional legislation, whilst yet so little disciplined to the rules, that we could scarcely manage, with tolerable success, to get through these fifteen propositions. If the question was now put on this first proposition, then it would be competent for gentlemen to propose amendments to suit their present or prospective views; and for this body to dispose of it. That done, we must take up the second proposition, and dispose of that. He advised that we should adhere to this rule in the house; and if we wanted to dispense with it, the only course was to send it to a committee of the whole, or a select committee.—With a little patience, we should no doubt be able to get through with it to-day.

Mr. LOOMIS acceded rather with the views of the gentleman from Chautauque (Mr. MARVIN.) As we were acting, though in the house, as in committee of the whole, we had better take the usual course in committee—that is, take up these propositions separately, and if no amendments were proposed, or if made and adopted, lay it aside, and take up the next.—When we got through, if they all matched, then adopt the whole of them.

The first branch of Mr. TILDEN's proposition as amended, was adopted.

The second subdivision was agreed to thus:

2, The powers and duties of the legislature, except as to matters otherwise referred.

Mr. TILDEN then asked the unanimous consent of the convention to amend all the resolutions, in accordance with the amendment of the preceding resolutions, to avoid taking a separate vote on each proposition, all being to the same in effect and purpose.

The suggestion was adopted, and the words stricken out, thereby making Mr. TILDEN's amendment, or substitute, assume the place of the report of the committee of 17.

To the third subdivision, which was in these words,

3. Canals, internal improvements, public revenues and property and public debt, and the powers and duties of the legislature in reference thereto.

Mr. O'CONOR's amendment was offered, to add the words,

"And the restrictions, if any, proper to be im-

sed, on the action of the legislature in making donations from the public funds, and in making loans of the moneys at the credit of the state."

Mr. LOOMIS said there was no objection on his part to the principle of this amendment, for he considered it embraced in the language of the subdivision; his only objection was to the tautology and repetition which it would occasion. The terms "the powers and duties of the legislature in reference thereto," must necessarily embrace the powers and duties of the legislature in relation to loans, property, funds and everything appertaining thereto. If however any difficulty could arise from the language in its present shape, it could be avoided by adding the word "credit" after the word "debt." In his judgment the committee to be raised by this subdivision was a proper committee to treat on the subject proposed by the amendment; and it was not necessary to raise a separate committee on the proposition which had been submitted in reference to loaning the public credit or funds to incorporations or individuals. The day for that had gone by. All parties were opposed to it. If therefore he voted against this amendment, it was not because he desired a separate committee, or that he was opposed to its principle, but because he deemed it unnecessary. He moved to put in the word "credit" as he had suggested.

Mr. TOWNSEND spoke briefly in opposition to the amendment of his colleague from New York, believing that such a clause was surplusage.

Mr. RHOADES was in favor of the amendment and he hoped it would be adopted even if it involved some tautology, for it would direct the attention of the committee explicitly to the subject. He saw no difficulty that could arise, and if there should be a redundancy of expression, what particular objection could there be, as these provisions were for their own use and convenience to guide their deliberations; and when they had done with them they would be of no use to any one. Severe criticism was perfectly unnecessary.

Mr. TILDEN hoped the amendment would be adopted.

The amendment was adopted.

Mr. STOW moved to strike out the third subdivision.

Mr. TILDEN said that object could be attained by voting down the third subdivision.

Mr. STOW said the object of his proposition was, as the Chair would perceive, to strike out the third subdivision, leaving the second as it had been adopted. It was with great reluctance that he rose to take part in the debates of the Convention at this early period of the session. Unaccustomed as he was to parliamentary proceedings, he felt unwilling to take part in a discussion of matters of form, nor should he have arisen now but that he conceived in this was involved a point of substance. The natural diffidence which he felt, and which any man must feel who was placed in the position in which he stood, was increased by the reflection that he found himself differing from many gentlemen here who were accustomed to such proceedings. But he had this consolation that he was sustained by an authority, which, the Convention would pardon him when he said, was

quite as respectable as any that could be quoted at this time—namely the proceedings of the Convention of 1821. The committee by which these resolutions were reported had differed from the course pursued by the preceding Convention, and he trusted the committee would pardon him for saying that it had been inconsistent with itself. How so? The Convention of 1821 put the entire legislative department together; but this committee proposed to make a separation, thereby essentially differing from what was deemed expedient by the last Convention. He had already said that he considered the committee had been inconsistent with itself. The committee on looking at the constitution had undoubtedly endeavored to contemplate the great and essential purpose of government. They saw that all governments were naturally and necessarily divided into executive, legislative, and judicial departments. And when they came to consider the executive department, the committee said in substance that it should be placed with one committee to consider its powers, duties, tenure of office, and compensation; dividing from the others that element of Government. The same thing had been said in regard to the judiciary, by putting the whole subject together—by saying as they had said by their resolutions, that the manner by which judges shall be selected, their compensation and the tenure of their office, were fit subjects to be united and should all go to one committee. And he agreed with the committees in relation to the Executive; and he agreed also in the views taken of the judiciary; but he thought the department principle had been laid down and should be applied also to the legislative. In his judgment it was more essential that it should be applied to the legislative department than to any other. How so? It would perhaps be said that the powers and duties of the legislature are multifarious, embracing a vast extent, and a great variety of subjects on which the legislative power must act. He admitted this to be true; and hence the necessity that they should not confuse the subject. It was for this very reason that they here appointed committees when subjects were multifarious to arrange and digest them. So in this matter he would have one committee because the subject was too multifarious; let it come before us in a systematic form. Do not let us have presented here by one committee the power and duties, and by another, restrictions on them. How would such a distribution practically work? He appealed to gentlemen of more experience than he possessed. One might report that the legislature possessed certain power and the other that it should not possess the power, and where should they stand on that subject? He was of opinion that it would be impossible for the committee under the second resolution to act wisely and prudently without having the subject embraced by the 3rd resolution before them. He would illustrate this position. He would suppose that to one committee was referred the question to consider how long the legislature should hold office, and what should be the powers vested in that particular department of the Government. And suppose it was the province of another to consider whether the executive should possess a qual-

lified veto power. How was the one committee to determine whether there should be a restriction or an abolition of the veto power of the Executive unless they knew that the legislature was going to be invested with the power which that course would render requisite? In another point of view—he would notice this subject for the sake of illustration. In his opinion it was utterly impracticable to refer to these several committees, different branches of the same subject; it was found impracticable in this Convention, as had been made manifest by the doubts which had been expressed by gentlemen who did not understand whether certain subjects were in the resolutions; and if that were so how would the case stand by and by, when every gentleman came to propose his own peculiar ideas to the Convention. He would submit by way of illustration, another view. Suppose he proposed that the present restriction in the constitution to guard against lotteries, should be continued in the constitution, to which of the committees would it be referred?—He knew gentlemen might say it belonged to the revenue department, and that it would naturally go to that committee; but he submitted that so far as the prohibition of lotteries was concerned it was much more a matter of police. It was so understood by the last convention. It was a matter of morals rather than of finance. He mentioned this simply by way of illustration. Suppose again he were to introduce a proposition to prohibit the sale of the product of state prison labor except by auction, would this belong to the subject of state prison discipline? He could in short illustrate this by many propositions, but they would all lead to the same conclusion that they should not separate that which was not susceptible of division. All these branches were but parts of one great whole, and it would not be wise or prudent, or safe to adopt these different propositions. All should go into the hands of one committee; one committee should have all the parts of the subject before them, so that all might bear a proper reference to each, and each bear a proper proportion to all.

Mr. LOOMIS said there were a large number of these propositions that related to the powers and duties of the legislature, and if all these were referred to the same committee it appeared to him the Convention would devolve on that committee two-thirds of the business of the Convention. That, as he understood it was the proposition of the gentleman, who seemed to think that the several committees would find it difficult to define the dividing line of their duties. There were many subjects respecting which doubts might arise and on which different committees might report, but if they did, where was the harm? Surely the Convention would not be embarrassed by the several reports; they would be the more likely, by the aid of additional information, to arrive at correct conclusions. He was not strenuous as to the propositions which had been reported, but they did appear to him to present the natural divisions which would enable the committees to define their lines of separation.

The motion to strike out was then put and lost.

Mr. SHEPARD moved to amend the third

by inserting after the words "public

revenues," the words "and the safe keeping and disbursement thereof." He said he would not have called the attention of the Convention to this if he had not deemed it of considerable importance. He did not know how it was in those parts of the state represented by other gentlemen in the Convention, but in New-York there was a clear, distinct, and decided feeling on this proposition; its signification was clearly understood and its purposes sought to be achieved.—When he heard one gentleman say the propositions of every member should go to the committees, and that it would be better to endure the evil, if evil it could be called, of surplusage, than that any should be shut out, it struck him it was perfectly proper that he should send up the proposition then before them. It was very clear that the terms of the third proposition did not embrace it; and it was also clear that it was desired by a large proportion of the people of this state that the Convention should consider it. For the purpose then of procuring the judgment of a committee and of the Convention upon that subject, he submitted the amendment.

Mr. TOWNSEND concurred in the views expressed by his colleague as to the fixed public sentiment on this subject.

Mr. WORDEN said before they voted on the proposition, he should be glad if the gentleman from New York would define its meaning. It seemed to him perfectly unintelligible; it was without any meaning whatever. He would enquire of the gentleman from New York if he supposed there was to be no power in the legislature in regard to the safe-keeping or disbursement of the public revenues, and if he deemed it necessary for this Convention to frame a special clause to confer that power? If the gentleman had that idea, he had no very enlarged or just notions of legislative power. If the gentleman supposed that this Convention was to adopt a rule and insert it in the Constitution, by which for all time to come, and under which for all time to come, the public money and revenues of this state are to be governed and controlled, he would like that that gentleman should bring it forward more definitely and clearly than he had done in this amendment which he had sent to the CHAIR, which was a proposition with no meaning—a proposition that was wholly unintelligible. If the gentleman proposed that they should adopt a rule—a constitutional provision—which was to govern in this respect, and supersede all legislative power, he (Mr. W.) should like to see it submitted in a tangible shape or in a manner that would lead them to see that such was the gentleman's design.

Mr. SHEPARD did not entertain any such absurd notion as that the same constitution which creates the Legislature—which gives it the power to draw from the people all the revenues that may be necessary for the government—would not give even by implication, if not in express terms, the power to keep and disburse these revenues. He supposed the power to collect implied the power to keep and disburse.—It was then not with the view of conferring any new, unheard of power on the legislature, that he had offered his amendment to the third proposition which came to them from the committee of 17. He did suppose, and he said it in an

swer to the gentleman from Ontario, that within the last ten years some change in public opinion may have taken place as to the mode of safe-keeping and disbursing the public money. He did suppose that there was a clear and decided opinion entertained by a large and respectable number of the voters of this state on that subject; and he supposed a reference of this amendment to the committee would direct its attention to the subject of the safe keeping and the disbursement of the public money—that it would lead them to examine any proposition that might be offered by any large number of the individuals of the state. It was not so much to instruct the committee to report some plan, as it was for the purpose of calling the attention of the committee explicitly to the subject, in order that it might not be forgotten in the multiplicity of their labors. The committee was charged with a vast amount of labor. The first proposition included in many respects the most important features of our government; and he (Mr. SHEPARD) was desirous in the consideration of all these great questions that this should not be lost sight of. The gentleman from Ontario complained that his proposition was put in an abstract form. Why that was precisely the form in which it ought to be put.—He did not desire to instruct the committee to do any particular thing. He did not desire to express his own views, for gentlemen would remember that they were not discussing substantive principles, but the mere order and distribution of business. He desired this subject to go to the committee, that they might report thereon, as they deemed expedient. He would add this other consideration—that he so offered his proposition from motives of delicacy towards all, some of whom might differ with him in opinion on the subject. The gentleman from Ontario knew that this was a matter that must be considered by some committee, and where could be the harm of submitting it? If it were even a matter of personal gratification to a single member of the Convention, it was one of those things which there could clearly be no impropriety in referring. He therefore said again to the gentleman from Ontario that in the first place it was put in an abstract form to avoid an appearance of instruction to the committee; and next to avoid an indelicate expression of opinion on his part; and therefore he put it in an abstract form, because these propositions merely relate to the distribution of business, and it was desirable that this subject should be included in those matters that were to be referred. He hoped this explanation would be satisfactory.

The question was then taken on Mr. Shepard's motion and it was lost—39 voting in the affirmative and 41 in the negative.

The third subdivision as amended was then agreed to.

The fourth proposition was agreed to without amendment, thus:

4. The elective franchise—the qualification to vote and hold office.

Mr. CHATFIELD introduced a proposition which he submitted as a fifth subdivision, thus:

5. The election, tenure of office, compensation, powers and duties, except the power to appoint or nominate to office, of the Governor and Lieut. Governor.

He said he thought that was a sufficiently important subject to raise a committee upon separately, without leaving it in the *omnium gatherum* of another subdivision.

The proposition was agreed to, and thus the numbers of the remaining subdivisions necessarily became changed.

The next subdivision was amended by the addition of the words "Governor and Lieut. Governor" after the word "judicial," to make it conform to the new subdivision submitted by Mr. CHATFIELD. It then stood thus:

6. The election or appointment of all officers other than legislative and judicial, and the Governor and Lieut. Governor, whose duties and powers are not local, and their powers, duties, and compensation.

The subdivision, as amended, was agreed to.

The next subdivision was as follows:

7. The appointment or election of all officers whose powers and duties are local, and their tenure of office, duties, and compensation.

Mr. TILDEN suggested two verbal amendments, which were agreed to, viz. after the word "office" to insert the word "powers," and for words "powers and duties" in the first and second line to insert the word "functions."

That subdivision was agreed to as amended. The 8th was agreed to without amendment thus:

8. The militia and military affairs.

The ninth was as follows:

9. Official oaths and affirmations, and oaths and affirmations in legal and equity proceedings.

On motion of Mr. NICOLL, the words "competency of witnesses" were added after the word "affirmations," where it first occurred, and the subdivision as amended was agreed to.

The next was as follows:

10. The Judiciary system of the state.

On motion of Mr. TILDEN, the words "system of the state," were struck out.

Mr. BASCOM moved to add the following, "And the appointment and election of judicial officers, and their tenure of office,"

which was adopted, with the addition of the words "and compensation," on the motion of Mr. CHATFIELD.

The subdivision, as amended, was then agreed to.

The 11th subdivision was then read as follows:—

11. The rights and privileges of citizens of this state,

Mr. KENNEDY suggested that this ought to include persons other than citizens—foreign witnesses for instance. They were now incarcerated, if they had no friends. There were a number now in prison in New York, as witnesses to assaults at sea—when the parties perhaps had gone to sea again, and these witnesses had to await their return in prison. He was not prepared with an amendment, but he should be glad to see these cases provided for.

Mr. BASCOM suggested the addition, after "citizens," of the words "and persons within the jurisdiction" of this state.

Mr. MORRIS suggested that in designating these committees and their general jurisdiction, we could not specify every thing that might come within it. Having raised the committees, gentlemen could then send to them any proper subject of enquiry. He intended himself, when

this was done, to send to this committee an enquiry into the expediency of giving to married women the enjoyment and control of their individual property. He suggested that course to his colleague.

Mr. KENNEDY waived his proposition for the present

The 11th subdivision, as proposed to be amended by Mr. Bascom, was adopted.

The 12th and 13th, were adopted as follows:—

12. Education, common schools, and the appropriate funds.

13. Future amendments and revisions of the Constitution

The 14th was then read as follows:—

14 The organization and powers of cities, villages, towns, counties and other municipal corporations, and especially their power of assessment, taxation, borrowing money, and contracting debts.

Mr. BAKER thought there was in this and in the 7th a double reference. He proposed, to obviate this by inserting after the word corporations, "including their power of legislating on local subjects."

Mr. RUSSELL suggested the separation of this subdivision into two parts—confining one committee to the powers of these *quasi* corporations, as they were called: cities, villages, towns and counties—and raising another committee on municipal corporations, created by legislative charter. It appeared to him, after listening to the eloquent remarks of the gentleman from Kings, (Mr. MURPHY) the other day, that the subject of municipal corporations, particularly cities, presented a field large and important enough for the undivided labors of a separate committee. He threw out the suggestion, that gentlemen from the cities might avail themselves of this opportunity to amend, if they saw fit.

Mr. TOWNSEND suggested three separate committees—one under the 7th, and two under this head.

Mr. JONES suggested to the gentleman from Washington (Mr. BAKER) that his amendment would more properly attach to the 7th subdivision—and that this 14th proportion be restricted as suggested by Mr. Russell, to the subject of cities and villages. He was not sure that any thing was necessary here in regard to towns and counties; but that every thing in relation to them was included now in the 7th subdivision.

Mr. BAKER would not insist on his amendment, if he believed the Convention, or the committee to be raised under the seventh subdivision would construe that clause as the gentleman from New-York did. Perhaps the phraseology of the seventh was broad enough, however; and, upon reflection, he would withdraw his amendment.

Mr. RUSSELL here suggested that time should be allowed to the President to appoint the committees already designated; but under some manifestations of a disposition to continue a session—went on to say that the division of this fourteenth proposition might require more time than we had now. He desired also to divide the next succeeding proposition—so as to have a committee exclusively on the subject of banking and the currency. But he would not press a motion to adjourn, under the circumstances.

Mr. CHATFIELD here proposed to divide 14th subdivision into two, as follows:

14. The organization and powers of cities and incorporated villages, and especially their power of taxation assessment, borrowing money, contracting debts, and loaning their credit.

15 The power of counties, towns, and other municipal corporations, except cities and incorporated villages, and especially their powers of local legislation, taxation, assessments, borrowing money, and contracting debts.

Mr. LOOMIS thought these subjects should go to one committee. Both these classes of corporations were nearly akin in their nature, exercising powers of government in particular localities. The complaint was, that cities and villages exercised their power to excess, and on the other hand, that the legislature had taken the power of towns and counties too much into their own hands—or that towns and counties did not exercise the powers they had, sufficiently. Now it seemed to him that the committee whose attention was called to the abuses of power in cities and villages, ought at the same time to have control over the subject of extending like powers to towns and counties; and that the whole subject was connected, and should be considered together.

Mr. TOWNSEND differed with the gentleman last up; and urged briefly the two committees suggested by Mr. CHATFIELD—which, with the seventh committee, would make the subdivision most proper, in his judgment.

The subdivision of the 14th as moved by Mr. CHATFIELD, was adopted.

The 16th was then read, as follows;

16. The currency, banking business and incorporations.

Mr. RUSSELL moved to divide, as follows:

16. The currency and banking.

17. Corporations other than banking and municipal.

Mr. RUSSELL said the subject of banking alone would require the undivided attention of an able committee for a considerable portion of the session, if they did justice to the subject. Here then were rail road, insurance and manufacturing corporations—and all them essentially different from moneyed or banking corporations, and differing in their character and objects among themselves. Perhaps three committees on these subjects might not be too many for the dispatch of business; but upon consultation with members he had concluded to propose two only.

There propositions were adopted.

18. The subject of the tenures of landed estates.

Mr. TILDEN moved to strike out "the subject of."

Mr. WORDEN suggested to his friend that having abolished tenures in this state 60 years ago, and there being no landed estates here held on tenures, as the word was understood, the proposition should read

18. The creation and division of estates in land.

The amendment was adopted.

Mr. BAKER now moved that the Convention adjourn to 9 o'clock to-morrow morning

Mr. WARD (the motion being waived) moved that each of these committees consist of seven, except that on the judiciary—which he moved should consist of 13.

There was some conversation as to the number 13 for the judiciary—Mr. LOOMIS suggesting 9, when

Mr. TILDEN remarked that other commit

tees might be ordered, and the number ought not therefore now to be decided.

Mr. WORDEN thought also it would be well enough to know first whether we had parcelled out all the business of the Convention. He had been looking anxiously for some proposition in regard to the Executive power of this government. Various propositions had been submitted tending to circumscribe and limit the legitimate action of the popular will through the only organ by which the popular will acted—the legislature—composed of the immediate representatives of the people. Especial pains had been taken, in that respect. But he had seen no indications of a disposition as yet manifested in any quarter, even to interfere with, or enquire about, the still greater power lodged in the Executive department of the state—and before this question was finally disposed of, he trusted some gentleman would bring forward a proposition to that effect. It struck him with surprise—whether the public or not, he could not say—that we should have omitted entirely even to have adverted to the question of Executive power—to the power of the state officers—to that delegation of legislative powers which had from time to time been vested in the public officers of the state. But without going into this matter further now, in order that we might look through these propositions and see if any thing had been omitted, or should be taken away, he moved that they be printed and that the question on the number of each committee be deferred until printed.

Mr. CAMBRELING called for the reading of the 5th and 6th propositions, and

They were read.

Mr. PERKINS nevertheless thought we had better defer fixing on the number of each committee until it was known whether any new committees were to be raised.

Mr. WARD's motion on that subject was here put and carried.

Mr. BOWDISH sent up, to be laid on the table and printed, a resolution, offered he said on behalf of his colleague, now absent, as follows :

Resolved, That a committee be appointed to consider and report on the expediency of giving to females the right to hold and transfer, after marriage, all property real and personal, acquired by them before, or by gift, devise or bequest after marriage, and of making them and their property liable for their debts contracted before or after marriage, and in case of the inability of the husband, liable for the support and maintenance of their families.

Mr. MORRIS moved the reference of the resolution to the committee on the rights and privileges of citizens—which was done.

Mr. WHITE laid on the table the following :

Resolved, That a committee be appointed to inquire into the expediency of providing in the Constitution, that no law or laws shall be enacted by the legislature, or by any corporation or other municipal authority, restrictive of the principles of trade or commerce, or the right of the people to follow any business, calling or employment whatsoever—whereby one branch of industry shall be subjected to a tax from which others are exempted—and that said committee report thereon.

Mr. STRONG objected that resolutions were not now in order. But as the dinner hour had come, he moved an adjournment.

Ajd. to 11 o'clock to-morrow morning.

THURSDAY, JUNE 11.

Prayer by the Rev. Mr. BENSON.

MEMBERS' SEATS.

Mr. BOWDISH submitted the following resolution, which was agreed to :

Resolved, That the Secretary call the names of members, and as their names are called that they announce the number of their seats, and if any changes have been made since the original drawing, that the diagram be made in conformity therewith.

The SECRETARY called the roll accordingly, and corrected the list, several changes having been made since the original drawing.

IMPRISONMENT OF WITNESSES.

Mr. KENNEDY offered the following resolution, which was adopted :

Resolved, That it be referred to the committee on the rights and privileges of citizens of this state, to consider and report on the propriety of securing the rights and privileges of persons other than citizens, who may be under the jurisdiction of this state.

BOARDS OF SUPERVISORS.

Mr. FORSYTH submitted the following resolution :

Resolved, That so much of the constitution and laws of this state as relates to the powers and duties of the boards of supervisors of the several counties of this state, be referred to a committee to inquire and report thereon.

He said in connection with the subject of county expenditures, the powers and duties of

the board of supervisors had attracted much attention and he thought the subject worthy of a separate committee.

Mr. CHATFIELD said he did not wish to embarrass any gentleman's resolution, but he was of opinion if this resolution were adopted, that it would be necessary to reconsider the 15th subdivision of the resolution adopted yesterday. As he understood it the boards of supervisors of counties represented pretty much the sum total of the corporate capacity of the counties, and that was all embraced in the 15th subdivision of the resolution; but if this were passed, the committee to be appointed under the 15th subdivision would have nothing to act upon, nor anything to report to the convention. He suggested that the gentleman should allow this resolution to go to the committee to be appointed under the 15th subdivision.

Mr. FORSYTH adopted the suggestion of the gentleman from Otsego.

Mr. PATTERSON suggested to the gentleman so to modify his resolution as to provide that so much of the constitution as relates to the board of supervisors be referred to the committee on the 15th subdivision.

Mr. FORSYTH agreed to that suggestion, and the resolution as amended was adopted.

SINGLE DISTRICT ELECTIONS.

Mr. MORRIS offered the following resolution which was agreed to, and it was committed to the committee on the 2d subdivision.

Resolved, That the appropriate committee consider and report upon the subject of a division of the State into single districts for the election of members of the Senate and Assembly.

A REGISTRY, &c.

Mr. HARRISON offered the following resolution :

Resolved, That the committee on the elective franchise &c enquire into the expediency of so amending the constitution as to secure to the people of this State, an annual registry of the names of all legal voters previous to an election; and further inquire into the expediency of so amending the constitution, that citizens from other states, and every person hereafter naturalized, shall reside one year in the state after naturalization, before he shall be permitted to exercise the right of suffrage.

Mr. HUNT moved to strike out the words "persons hereafter naturalized."

Mr. WARD, while not disposed to express any opinion in advance on any of these propositions, was desirous to hear the propositions which gentlemen might have to offer, that they might go to the appropriate committee. They were not then settling principles, and could not be compromised by any proposition that they might refer. He hoped therefore that every gentleman might be permitted to submit his proposition in his own words, that they might all know what was desired.

Mr. O'CONOR did not like the precise shape in which that proposition was about to be sent to a committee. The resolution, if it should be adopted, would to a certain extent be an expression of the sense of the Convention that it was expedient to enquire whether we ought to impose a year's residence within this state after admission to the right of citizenship, of persons who may be admitted by the ordinary process of naturalization. Now he would avoid any expression of the sense of the Convention upon a subject so important as that, before the matter shall have been, to some extent, debated before this body; and at the same time, he had no desire to prevent, nor should any gentleman desire to prevent, any subject of this kind, though it may have but a single advocate on this floor, being presented and considered. In this view of the matter, to avoid the scruples that arose in his mind, he moved that the resolution be referred to the committee on the elective franchise.

After some explanations by Mr. SHEPARD and Mr. PATTERSON,

Mr. SIMMONS said they could not disguise the fact from themselves, that there were many worthy and respectable people who held different opinions on this subject; and as they recognized the right of petition, they should also recognize the right of resolution in a convention assembled as they were. They could not expect petitions to flow in very fast, perhaps not at all; it might be very proper, therefore, to adopt the suggestion of the gentleman from Westchester, (Gen. WARD) to let every gentleman have the opportunity to offer his resolution, as it was a quasi petition from their constituents, and should be heard, however wrong it might be. There could be but one right, but both sides should be

heard. The policy of the gentleman from Westchester, was the true policy for all parties.—These questions must be met. They could not be got round nor over; they must be met by able and learned reports. That was the way to meet all moral subjects—with reason. It was not sanctioning any peculiar opinions, if the convention received them. It was but as the reception of ordinary petitions; if they should not do so, these resolutions in one half hour could be made to assume the shape of petitions, and be brought in. He would prefer that gentlemen should make their propositions freely, and then we should not be liable to misinterpretation.

Mr. KIRKLAND thought the gentleman from New York misapprehended the effect of a vote on a mere resolution of enquiry like this. It did not commit a single member who voted for it in the slightest degree. Hence he concurred with the gentleman from Essex, that we should let all these matters of enquiry go to committees, as presented from different quarters. Were the question now on adopting the principle embodied in this resolution, he might give a different vote from that he intended to give on referring it—as, if it were a petition presented by the mover, as suggested by the gentleman from Essex. And he wanted it understood now, that in voting for these resolutions of enquiry, he in no way committed himself to the principle embodied in them.

Mr. TALLMADGE expressed his great gratification that we had now begun in some measure to develop and draw forth the motives and views that stimulated us. He repeated, he was glad, now that we had become fixed in our seats, that we were soon to take an attitude equally known to the public. This proposition was merely to refer to a committee a certain subject of enquiry. And since the idea seemed to be entertained that the reference was in some measure a matter of courtesy, he insisted that his friend's resolution should be referred as matter of right, on the same footing as the enquiries of other gentlemen. What was almost the first step in our proceedings? It was to take up the great and leading divisions of the constitution, the legislative, the judicial, the executive, and so on, running through the instrument—and referring them without committing any body to any thing, to committees—with the understanding that individual members should have the right to send their propositions to these committees with perfect freedom. But now when this understanding came to be carried out—when gentlemen came forward with their propositions in the shape in which they desired to have them—oh no—that would'n't do! It was too loose—too loose. The blade flew off the handle! It would'n't do! We had passed nearly a fortnight in discussing unimportant propositions, and here we stood, just where we were on the second day of the session, though in a condition perhaps to proceed to the more important business before us. What next? The moment these little resolutions of enquiry began to come in, ah! then these resolutions had a meaning, and it would'n't do to trust the committees with them! This, he admitted, had a momentous meaning. What was it? That every citizen from another state before being entitled to vote, shall have

resided a year in the state. And what objection was there to making that a part of the constitution which was now the law of the land, and a part of the election oath? What further? Why that aliens should before voting have resided one year in the state after naturalization. If that was not made part of the constitution, citizens of other states, coming among us, would not be on a par with foreigners. Whereas an alien, coming here on the day before an election, and then naturalized, might vote. Why not require of him the same period of residence as citizens of other states? Were it in order, he could go into some of the commercial regulations adopted by congress, where by an inadvertence similar to this, alien ships had an advantage over our own. Why were gentlemen so sensitive on this subject? Here were a great many of us that wanted a registry. Let the convention order the enquiry. It committed us to nothing. And on the other hand, all we wanted was an enquiry into the propriety of placing naturalized aliens on a footing with native citizens from other states.—That struck him as very reasonable, and for one he rejoiced that opinions had begun to develop themselves—and if this went on, we should very soon find our relative connections and associations. He hoped this reference would be made. It should have been made in silence.

Mr. CHATFIELD moved to alter the form of the resolution, so as to make it a resolution of reference merely.

Mr. O'CONOR acquiesced in Mr. C's proposition and withdrew his own.

Mr. HUNT also withdrew his, and adopted that of Mr. CHATFIELD, which was—

Resolved, That it be referred to the committee &c., to enquire, &c.

Mr. TILDEN suggested to gentlemen desirous of bringing their views before the convention, for reference, that they should give such form to their resolutions as to express affirmatively their opinions, and then move a proper reference—and thus avoid any implied expression of opinion. That was substantially the form suggested in this case.

Mr. HARRISON accepted Mr. CHATFIELD's modification of his resolution.

Mr. MURPHY had no objection to this mode of proceeding. He concurred, so far as that point was concerned, with the gentleman from Dutchess (Mr. TALLMADGE.) But in the remarks which that gentleman submitted on that point, he had also gone somewhat into the merits of this question, and Mr. M. rose to protest for one, against the doctrines of that gentleman. Mr. M. denied that under the laws and constitution of this state, any advantage was given to the alien over the native born citizen. It was not, according to Mr. M's understanding of the constitution of this state, that aliens could vote at our elections without having been residents of the state for one year. Now the effect of such a proposition as that contained in this resolution, would be, to require of an alien a six years' residence before being entitled to vote, instead of five years, as now. And believing, as he did, that five years was enough, to develop the intention of an alien to become a citizen of this country, and that being the only question of principle involved in the naturalization law, he

repeated that he protested against the doctrine which required a six year's residence, as manifested by the remarks of the gentleman from Dutchess. Having risen simply because he could not allow the remarks of that gentleman to go out without expressing the opposition to their tenor which he honestly entertained, he had nothing more to say.

Mr. TALLMADGE had only a word of reply to his learned friend. Mr. T. stated the case of an alien, residing for several years at Hoboken, going over to New York to-day, becoming naturalized there, and going to the polls and voting to-morrow. [Several voices "no sir," "no sir," "he can't do it."] Whereas, citizens of other states, must have resided here a year before they could vote, by law, as he understood it, not by the constitution. That was the difficulty; and as his friend would have him speak, he must state, that he and those who thought with him, sought under this resolution, to prepare the way for the repeal of a law which placed aliens on a different footing from native citizens. But this reference would commit us to nothing. Let the committee enquire and report on the subject—on the propriety of some constitutional enactment on this subject. It was the law of the land that we, when our votes were challenged, should swear that we had resided one year in the state [several voices "It's in the constitution."] He did not understand it to be in the constitution. [A voice "Yes it is."] Possibly he was mistaken—if so, he had been led into the error by the remark of a friend near him, who had acted often as inspector. But, it certainly was not in the constitution or laws that an alien should have resided in the state one year after naturalization. And one of the very points of enquiry presented was whether aliens should be permitted to vote after a five year's residence, when citizens of other states, born here, had to wait a year. But there was another point of view in which this question presented itself. And it certainly was worthy of enquiry whether citizens of Europe—of Gaul of Holland, Italy—who came here subject to none of the requisitions upon our own citizens, should in five years acquire the right to vote, which our own sons, born here, could not have until they were twenty-one. Yet they were subject to militia duty from the age of 18. Why should these be excluded, when foreigners coming here ignorant of our language and unacquainted with our laws and institutions, were allowed in a few years comparatively, to become voters? Why should not foreigners, who were brought up perhaps under a monarchy, be required to wait at least one year after naturalization before being permitted to vote? Perhaps this committee might be of opinion that naturalized citizens should wait as long as our own children, after becoming liable to militia duty, to become acquainted with our institutions and to vote intelligibly. He could not see, why we should not let the committee take up the subject, without discussion here—for nobody wanted to discuss it—nor to say what we should vote for or what not. The enquiry committed nobody.

Mr. MURPHY certainly had no objection—

Mr. CHATFIELD (who rose at the same

time) remarked that the gentleman had spoken twice.

Mr. HARRISON would like to say a word, if in order.

Mr. MURPHY had but a word to say.

M. CHATFIELD yielded the floor.

Mr. MURPHY only rose to say, that he had no desire to provoke discussion on this subject. If he correctly understood the course of proceeding on this question, the discussion had been invited by his venerable friend from Dutchess. Mr. M. wished to separate the question of reference from the merits. He had not the least objection to the reference. He hoped every question connected with the policy or government of this state, might have a reference. He would let every opinion, every sentiment, every doctrine, entertained by citizens of this state, have a reference to an appropriate committee, if a member here was disposed to facilitate such a reference by proposing it here. He would let these opinions and doctrines be as broad as the state itself. But on the merits of this question, which the gentleman from Dutchess had gone into and invited a discussion of, Mr. M. differed from him *toto calo*.

Mr. TALLMADGE said his remarks were in reply to objections to the reference. He invited no discussion—did not intend it.

Mr. MURPHY continued. It was undoubtedly a constitutional provision that no citizen, native or naturalized, could vote unless he had resided one year in the state, next previous to the election. Now the effect of this proposition, he repeated, would be, to require an alien to be here six years instead of five, before he could vote—thus in a measure nullifying the law of the federal government, which gave him the right of citizenship at the end of five years.—Take the gentleman's own illustration—the case of our own children—who could not vote until they were 21—the principle of this resolution, applied to that case, would require that they should not vote until one year after they came of age, or until they were 22. Against that doctrine he protested, and having protested, he had no more to say.

Mr. HARRISON had no idea, in offering this resolution, of committing the convention to the principle embodied in it. Nor had he now.—His object was an inquiry, and that only—that if possible, some constitutional provision might be made by which we should hereafter be secured from many irregularities that now took place at the polls. He had no disposition to strike at the rights, privileges or immunities of any citizen of this state, or of any alien who might hereafter come among us. But he did contend, on the merits of the proposition, that it was no more oppressive for an alien, after being naturalized, to be restrained from voting one year, than for citizens of neighboring states who had been forty years citizens of the United States, to be restrained for the same length of time.—To illustrate this by a fact in relation to himself: He was a native of New-Jersey, but had resided in New-York more than forty years. If he had lived that length of time in his native state, and had moved into this in April last, he could not vote in November next, being prohibited by the law of the state from voting until the

year was up. Was it more oppressive to exact this from strangers and foreigners, than from native citizens, who had lived in a neighboring state for 40 years? But he did not propose now to go into the merits of the resolution, but hoped that it, with the others, might be referred to the proper committee.

Mr. PATTERSON had supposed, under all parliamentary usage, that on a mere question of reference, the merits of the matter to be referred were not debatable. He supposed so still. But it seemed others had taken a different view of the subject, and the Chair had permitted them to go into the merits, and discuss the principle involved. For one, he should not go into the merits of this question at all. But he rose now merely to protest in his place against any distinction being drawn between naturalized and native citizens. He could never assent to any such distinction. He had no objection to the reference. He was willing that any gentleman should have any subject referred that he wished to have considered by a committee. He repeated, he rose only to enter his protest against any distinction being drawn here or elsewhere, between natural born and naturalized citizens.

Mr. HARRISON's resolution, as amended, was then adopted.

PETIT JURORS.

Mr. HART offered the following :

Resolved, That it be referred to the committee on the judiciary to consider and report on the propriety and expediency of reducing the number of petit jurors to eight, in trials of civil causes; and especially whether in their opinion the due administration of justice would in any way be impaired thereby.

Mr. NICOLL moved to add an enquiry into the expediency of dispensing with jury trials, by consent of parties, in common law proceedings—but subsequently said he would embody this proposition in a distinct resolution.

Mr. TOWNSEND suggested that it should be an enquiry into the expediency of reducing the number of jurors, without specifying any number.

Mr. HART preferred that the gentleman should offer his own resolution, separately.

The resolution was adopted.

JURY DUTY.

Mr. BERGEN offered the following, which was adopted:—

Resolved, That it be referred to the committee on the powers and duties of the legislature, except &c. to take into consideration and enquire into the expediency and propriety of limiting the power of the legislature in exempting individuals from jury duty.

APPOINTMENTS BY JUDICIAL OFFICERS—THEIR FEES—THE COURT OF ERRORS.

Mr. KIRKLAND here said that some days would probably elapse before we should have reports of committees to act upon. Meanwhile, we might be usefully employed in discussion and in interchanges of sentiment—and thus bring back to us, perhaps, through the press, the sentiments of our constituents, which could not be otherwise than valuable to us. There was no way of arriving at this result, except through resolutions of instruction, and with that view he had drawn up two or three, which he proposed to have read, laid on the table and printed. They were in the form of instructions. He had put them in that form under the belief

that they would meet with pretty general concurrence. Mr. K. sent up his resolutions.

Mr. STRONG said a serious question arose here—whether one gentleman had a right to offer more than one resolution at a time. If that was so, one member might offer them in gross, and block up the way, so that gentlemen who were somewhat diffident, as he was, [a laugh] might not have a chance.

The PRESIDENT replied that more than one might be offered perhaps, to be laid on the table; though they should be separately considered.

Mr. STRONG thought the fact that they were only offered to be laid on the table, ought not to make any difference as to the number—for being there they could be called up at any time.

Mr. KIRKLAND'S resolutions were read as follows:

Resolved, That the judiciary committee be instructed to report an amendment to the constitution depriving judicial officers of all power of appointment to office.

Resolved, That the judiciary committee be instructed to report an amendment to the constitution prohibiting all judicial officers, except justices of the peace, from receiving any fees or perquisites for official services.

Resolved, That the judiciary committee be instructed to report an amendment to the constitution abolishing the Court for the correction of Errors, as now organized.

Mr. TALLMADGE called for the reading of the latter part of the second resolution, to see if it covered all the ground intended.

The resolution was read again.

Mr. TALLMADGE was going on to make a suggestion, when

Mr. CHATFIELD enquired if there was any question before the Convention?

The PRESIDENT stated the question to be on printing.

Mr. TALLMADGE said that question being debateable, he would state why he would not print it as it was now. [A laugh]. He alluded to the words fees and perquisites for official services.

Mr. KIRKLAND did not know what words he could use that would more fully express what he intended.

Mr. TALLMADGE said this did not cover the case, where the fees of the clerk were worth a good deal more than those of the judge—and the judge was in the habit of adding to his salary by dividing with the clerk. That was not official duty. He wanted to cover that case.

Mr. KIRKLAND said that might be a case of corruption. He intended the legitimate fees for official services, not the fees of official corruption.

The printing of the resolutions was ordered.

DISTRICT ATTORNEYS.

Mr. BRUCE offered a resolution directing an enquiry through the Secretary, calling on the several district attorneys for the fees and compensation charged and received by them in the year '45.

Mr. BERGEN suggested that in many counties—Kings, for instance, the district attorney was a salaried officer.

Mr. BRUCE replied, that the word compensation would cover such cases.

Mr. STETSON said all the information sought could be obtained at the office of the Secretary of State, if the district attorneys had done their duty. The enquiry should be limited to those who had not, if any.

The resolution was laid on the table, with the consent of the mover.

THE COURT OF ERRORS—COURT OF CHANCERY.

Mr. SWACKHAMER offered the following, which was referred to the judiciary committee:

Resolved, That the committee on the judiciary be requested to enquire into the practicability of abolishing the court for the correction of errors, and the court of chancery—and the establishment in lieu thereof of a court of law and equity, divested of legislative functions, harmonizing with the present enlightened public sentiment, and strictly in consonance with our liberal institutions—and of fixing a limitation as to the time within which decisions shall be made by the courts of this state, restricting suitors to one appeal, and on the expediency of establishing a court of conciliation.

THE PUBLIC REVENUE

Mr. SHEPARD said he had a resolution, which in the present good temper of the Convention, he would send up—hoping that it was in such shape as to be acceptable to the gentleman from Ontario (Mr. WORDEN).

Resolved, That the propriety of providing for the collection of the public revenue of this state, in the current coin of the U. S. be and hereby is referred to the committee on the public revenues.

The resolution was adopted.

DIRECT TAXATION.

Mr. LOOMIS offered the following:

Resolved, That it be referred to the committee on the powers and duties of local officers to enquire into the expediency of making constitutional provision to equalize direct taxation, and to make it proportionate to the actual value of the estate of the individual taxed, regardless of the distinction between real and personal estate.

Mr. LOOMIS explained—that individuals were now taxed on the full value of their real estate, regardless of their liabilities; whereas in regard to personal estate, they were only assessed on the amount in possession, less the amount of liabilities. By this means, the farming interest bore an undue portion of the public burthens. A large share of the farms and real estate in the country, and lots in cities and villages, were under mortgage or other liens. Yet they were assessed on their full value. He desired a report on the subject, without intending to express any opinion.

The resolution was adopted.

Mr. MORRIS offered the following:—

Resolved, That members, in presenting subjects for the consideration of the Convention, present them as the proposition of the member;—and that the President shall refer them to an appropriate committee, unless some other reference be ordered by the Convention.

Mr. MORRIS said this would assimilate these resolutions to the petition in legislation, and relieve members from all embarrassment in voting on questions of reference.

Mr. TALLMADGE suggested that it would still farther simplify the proceeding, if members were to send these enquiries to the Chair, and let the Chair refer them.

Mr. NICOLL objected that this would compel members to come out affirmatively for a proposition,—and to commit themselves to it, before an enquiry and report,—and without perhaps

the opportunity to sustain it before reference.

Mr. W. TAYLOR could see no necessity for the adoption of such a resolution. It was objectionable too because it would throw the burden on the CHAIR to decide to what committee a proposition might belong. He could conceive a great many subjects which would involve a doubt as to the committee to which they should be referred. It appeared that as the rule now stood each gentleman could present his proposition in the shape of a resolution and then name its reference to some particular committee; and it might go there, unless some gentleman objected, without the formality of a question.

Mr. STEPHENS objected to the proposition of his colleague (Mr. MORRIS), for it would make it imperative on every member to assume the proposition he might offer. But gentlemen might feel it to be their duty to submit propositions of enquiry in regard to which they might not wish to commit themselves; such a rule then would strike at the root of the freedom which it was desirable they should enjoy. A few days since he received a letter from a gentleman, whom he highly valued, asking him to make a suggestion to the Convention, with which he might comply without taking the burden of sustaining it, because he was not convinced of its propriety. But under the resolution now before the Convention, he should be unable to submit such propositions, and they would be cut off from participating in the advantages which might ensue if they were to hear freely the suggestions of their constituents.

Mr. HOFFMAN hoped his friend (Mr. MORRIS) would withdraw the resolution, otherwise it might become a rule, and all rules were ropes around the necks of members. If the rule should continue to stand as at present, it would be competent for any gentleman to submit naked matters of enquiry, which might go from the house to the committees, or members would be left at liberty to take such other parliamentary course as their judgments might suggest to be the proper one. If, however, they adopted this rule, they would be straightened in their action; for a gentleman could not offer a resolution where he had a doubt—where his mind was not made up—as he would not be able to say, “I think so.” And next, by the very form of the order, every resolution would be made to go to the Chair, where it would be under the influence of the rule that commits it to a committee.—Now the question was to be determined by the Convention, shall it go to a committee? But adopt the gentleman’s resolution, and they would have no possible mode of keeping it before the Convention, even until its mover could explain his reasons for offering it, which he thought would be carrying the abridgment of our rights further than the gentleman from New-York intended it should go. If any proposition should be submitted there, which it might be improper to receive, it would be easy to raise the question of reception. He thought that the ordinary parliamentary practice was sufficient, without the limitation of the present proposition. The Convention would also find it convenient, and safe, and perhaps indispensably necessary, to adopt no resolution which would

operate as a rule, until they had a day or two to consider it.

Mr. MORRIS consented that his resolution should lie on the table for the present, and it was laid on the table accordingly.

ASSISTANT SECRETARY.

Mr. HART submitted the following resolution:

Resolved, That Thomas T. Loomis be and he hereby is appointed an assistant secretary to this convention.

Mr. BERGEN moved to lay the resolution on the table.

Mr. PATTERSON, had hoped that two secretaries would be as many as the business of the Convention would require. He thought if two experienced individuals had been selected, they could have done all the business; but he was not now quite certain how they were to get along without some additional help. One of the secretaries, he understood, was out of health; the other, he had no doubt, with experience enough, would make a good secretary: but from what he had seen from the commencement of the session, he was pretty well convinced that they were not to get along without some additional help in that department. In the organization of the Convention, the Chair would bear him out in saying that, for one, so far as the election of the regular officers was concerned, he took no part; nor did those acting with him on this floor, constituting a minority of the Convention, take any part in that proceeding. It was left to the majority of the Convention, who selected their own officers, though he had supposed that, in the organization of a Convention like this, the majority would have deemed it expedient to elect as one of the secretaries, an individual entertaining the views of the minority of the Convention. In this he confessed he had been disappointed; and now he appealed to the majority, and he would inquire of them, if they were to appoint an additional secretary, whether in courtesy to the minority, we ought not to have him from amongst us? He submitted to the majority, whether out of the minority they could not get a competent man to do this duty? He did not ask it as a favor to himself, for he had no favor to ask; but if the minority should present the name of an individual who was pre-eminently qualified, would it not be just and proper that such a man as that should be appointed? He therefore moved to strike out the name of Thomas T. Loomis—an individual of whom he had no knowledge, of whom he had never heard till this moment—of whose experience therefore he knew nothing, though if he were experienced, he (Mr. P.) presumed he should have known him—and insert the name of Philander B. Prindle of Chenango county, than whom no man was better qualified to discharge the duties of the office. He would not say that Mr. Prindle was superior to all other men, but he would say that no man was superior to him. He had long experience as a clerk of the Assembly; for two years he was deputy clerk and two years he was clerk, and he (Mr. P.) appealed to gentlemen who were here when Mr. Prindle acted as clerk, to bear him out in saying that no man could better discharge the duties than Mr. Prindle. He would not only appeal to gentlemen of the majority but of the ma-

jority also; he asked any and every one of them if they ever knew an officer discharge the duties with greater ability and more to the satisfaction of the house than Mr. Prindle? He appealed to them with entire confidence; and if they were to have another secretary, he hoped they would be allowed to have a man who was known to be competent. Let them not blunder on, but let them have a man abundantly qualified, and then the business would progress rapidly. He had no feeling for one man over another; he could name many men from amongst his friends who would discharge the duties well, but he knew none that could discharge them better than Mr. Prindle.

Mr. WARD hoped the mover of the resolution would allow it to be acted upon in blank, that the sense of the convention might be taken on the question of appointing an additional secretary. If the convention were willing to decide that they should have another, they could proceed to the election either by ballot or *viva voce*. He was free to state for one as a member of the convention, that he did think there was a necessity to have further aid there, and he would much rather that such aid was given by a direct vote of the convention, than that the secretaries should be constrained to employ a clerk themselves and pay him out of their own pockets, as they had now no authority to employ aid for the convention. The secretaries were manifestly not able to discharge the arduous duties that devolved upon them. They had all seen to-day thirty or forty resolutions offered to the convention, and it was not in the power of any man or any two men to go on and make up the journal. The secretaries had employed a person, whom they must pay out of their own pockets. It was due from the convention, therefore, that they should say they would have further aid, and that they would elect another secretary, leaving the resolution blank as to the person to be employed until the primary question was settled.

Mr. HART consented to leave a blank for the name of the person to be elected.

Mr. SHEPARD said this was a matter which required some little deliberation and he moved to lay the resolution on the table.

The motion was negatived.

Mr. CROOKER moved to strike out the word "Assistant," desiring that they should come within the meaning of the act. Some gentlemen had heretofore cautioned them to keep within their expressed authority, and as the Convention act gave them power to elect Secretaries but not "Assistant" Secretaries, he made his motion to strike out.

Mr. ANGEL moved as a substitute, the following:—

That this Convention will proceed on Monday next, at 12 o'clock M., to elect an Assistant Secretary.

Mr. A. W. YOUNG, thought it was very desirable that they should proceed to an election without delay.

Mr. RHOADES asked the gentleman from Allegany if he expected the election to be by ballot.

Mr. ANGEL was understood to say he did; and as he was not acquainted with the candidates, and he supposed this was the case with

other gentlemen, he desired to have a little time to enquire who was the best qualified and suitable to be appointed.

Mr. WATERBURY made some observations which were not distinctly heard.

Mr. STRONG said as there had been some talk here he also wished to say a word or two. Gentlemen seemed to be alarmed lest they should appoint some one who was not competent to do the duties of the office. Now whether gentlemen came to that conclusion from the appointments they had already made, it was not for him to say; but he appealed to the gentleman from Kings (Mr. SWACKHAMER) whether he did not know from experience (which was the best schoolmaster) that Philander B. Prindle, as a clerk, had not his equal in the empire state? Why, he will do more business in one hour than we do now in two.—He is the most ready man at reading writing—and sometimes I have thought he could read where none existed—that I ever saw. (Roars of laughter.) Why, he will read any man's hand writing, if it is but "quail tracks" or a lawyer's, which is nearly as bad as "quail tracks," (laughter), he will always read it right; if gentlemen did not write it right, he would read it right (renewed laughter). If, then, the majority had the magnanimity to allow the minority to be represented by a secretary that was competent, there would be no difficulty in the selection, nor need it be put off a moment. He trusted the majority did not intend to have the whole. He had too high an opinion of the democracy of this Convention to suppose they did. If then, the majority had not determined to have one of their own party, it might be necessary to look around for a man that was competent; and he asked them, and he asked it with a good deal of confidence, to let them have Mr. Prindle, the very man that they wanted. He was not of the political creed of the majority, but his creed would not interfere with the discharge of his duties.

Mr. SWACKHAMER rose to reply to the very strong appeal which had been made to him by the gentleman from Monroe, and with respect to the person spoken of he would say that Mr. Prindle was a perfect gentleman, and as a Secretary an abler man he had never known; he was fully equal to the duties of Secretary of the Convention or any other body of men. There might be his equals in the state, but he (Mr. S.) had never met with them yet. With respect to the Secretaries who had been elected by the Convention, he took occasion to say that he appreciated them as much as any member could, both as gentlemen and as scholars; but it required peculiar qualifications as readers to a body like this, which very few possessed, and therefore he remarked, democracy or no democracy, he would not vote for any man of whose qualifications he had not had an opportunity to judge. He conceded to the minority of the Convention that it would be magnanimous and right in every point of view to appoint such a Secretary as he had described, but up to the present day with but a few exceptions, they had had no allusion to party in this Convention. He hoped they should so proceed that party and faction would not be heard of at all, but that their business

would be so conducted as to produce the good and happiness of all the people of the state, for whom, with all due respect, they were to act, minority and majority. He would willingly concede to so very respectable a minority as they had in that Convention, when they could present such a man as Mr. Prindle, so able as he was but he thought there were others who also were fully qualified, and for qualified men only would he vote, amongst whom there were Mr. Rose, Mr. Seger, Mr. Loomis, and Mr. Prindle.

Mr. CHATFIELD said inasmuch as the gentleman from Oswego (Mr. HARR.) had offered the resolution on his solicitation, he desired to say a few words in relation to its adoption. He commenced with an expression of his regret that any gentleman on that floor should have so far forgotten the usual courtesies of life as to cast reflections on the present secretaries of the Convention. So far as he had observed he was free to confess that the gentlemen who had been appointed had fully answered his expectations; and he had no doubt they would discharge the duties which devolved upon them with fidelity and so as to facilitate the business of the Convention. It could not be expected that gentlemen coming from other avocations to be secretaries to a body like this, would come fully qualified to discharge the duties with rapidity at once; but he had no doubt they would soon discharge them with facility. Nevertheless it was apparent that the Convention required more strength in that department, and he thought the objection of the gentleman from Chautauque (Mr. CROOKER,) was but hypercriticism. He had yet to learn that an assistant secretary was not a secretary within the meaning of the act. The person named had claims upon them. He came before them as a candidate for the place of Secretary, but when he found that there were other candidates that were better qualified, he cheerfully withdrew his name. In that he was magnanimous, and in view of that magnanimity and his desire to avoid distracting their counsels, he (Mr. C.) was disposed to think he had claims for this appointment if they appointed any body. With respect to the remarks of the gentlemen from Chautauque and Monroe, (Mr. PATTERSON and Mr. STRONG), he remarked that they had appealed to the magnanimity of the majority to yield them this Secretary. Now if those gentlemen were in the majority here, and responsible for what would be done, would they make such concessions on the ground of magnanimity? When the Constitution shall have been formed and sent to the people for confirmation, and the gentlemen opposite take the stump for or against it, would they not hold the present majority responsible for it? He (Mr. C.) knew enough of political action to be satisfied that if there should be any thing in it that could be tortured into an obnoxious aspect, the responsibility would be cast on them. In this view of the case, as they as a party would be required to take the responsibility, he would have a Secretary of their own choosing, and not a man whose responsibility they should not be willing to bear. But the gentleman from Monroe had given them the best reason why this man Prindle should not be appointed—he could read

writing that had not been written. Perhaps the gentleman from Monroe made the statement from his own knowledge of the fact. He (Mr. C.) had been here with that clerk, and perhaps he might add that he could not only read writing where it was not written, but count votes which did not exist on a division. He (Mr. C.) had had occasion to challenge the count of that clerk, and on a second count the result was different. Now he wanted no man so to count there; he wanted no man that they could not trust, and therefore he was opposed to yielding his election on the ground of magnanimity.

Mr. SIMMONS did not think the subject worthy of so grave a debate, nor should he have risen to make any remarks, were it not for those that had fallen from the gentleman from Otsego in reference to Mr. Prindle. He had the honor of a seat on that floor during three successive sessions of the legislature, and he was not aware during that period, of any unfairness or dishonesty on the part of Mr. Prindle, and he was really sorry that it had been deemed necessary gravely to make such a suggestion in this body. He was satisfied the gentleman from Otsego would not have done it if he had not been almost provoked to it by the indiscreet suggestion of the gentleman from Monroe. In regard to the gentlemen who had been selected as their secretaries, he considered that all reflections, by implication or otherwise, were undeserved. He had long been acquainted with one of the secretaries, who was not now present, and for a short time with the other, and he had seen nothing but that of which he approved in those secretaries. A few words more and he had done. He did not hold that a gentleman because he had well filled a place several years, should be necessarily continued. He believed in rotation in office. If a man had held an office for several years and done well, his pay and his honor did very well for him and they should try others.—However, after all it was good to have an experienced man, and he approved of the plan adopted in the election of inspectors where one was given to the minority. This was prudent, as it had a tendency to keep all parties free from suspicion.

Mr. STETSON was happy to hear the disclaimer of the gentleman from Essex; but he had heard with considerable surprise the remarks of the gentlemen from Chautauque and Monroe, in which they had appealed to the magnanimity of a portion of the Convention, when their title to it was founded almost on an act of discourtesy. The remarks of the gentleman from Chautauque were a direct reflection on the present secretaries; and yet, for that reason, the election of a secretary was to be yielded to them! With reference to political magnanimity, he referred to the election law passed in 1842, by the party now in the ascendant, which conceded to the minority an inspector of election.

Mr. PATTERSON replied, disclaiming all reflections on the present Secretaries. He had no doubt if their Secretaries had had the experience of even one session of the legislature they would make very good secretaries, but at present one was sick and the other was without experience. A statement of these facts was no reflection on the Secretaries. He also entered

into a statement of the course pursued by the legislature when the party with which he acted was in the majority, in relation to the appointment of a minority of their opponents on the committee to examine the treasurer's accounts, as a claim to the merit of being magnanimous. He also stated that during all the years he had been in the legislature, he had never heard a lisp against the character of Mr. Prindle; the different result on a second count was in itself no reflection on the Clerk, as a different number might have voted. If, however, the majority should appoint all the clerks he would not complain, though he had thought that minorities had rights.

Mr. STETSON said it was due to the gentleman from Chautauque to say, that all Mr. S. intended to say before, was that the appeal to the magnanimity of the majority was not very much commended to their acceptance by the reflections which he thought were insinuated against the Clerks. Mr. S. did not pass upon the rights of the minority. The general course of the gentleman's remarks had gone far beyond the legitimate bearing of any one of his own. But he would not dwell on this; nor contribute, even by his humble example to political discussions here. But it should be known abroad, after what had occurred, that the manner of keeping the journal was different from what it was in the Convention of '21—in Congress or in our own Legislature. Here every thing was recorded—even rejected propositions—and all those made in committee of the whole—throwing an immense amount of clerical labor on the Clerks. As to experience, he believed we had it, at least, in the one from Rensselaer, (Mr. Strong.) He had been a Senator four years, was an accomplished scholar and gentleman, and distinguished in his profession—with the ability to discern and the power to execute his duty. Having said this much, he should leave this matter with the Convention—without intimating his own course in relation to it.

Mr. RHOADES did not understand the gentleman from Chautauque as saying any thing derogatory to the character and qualifications of the clerks, in other respects than that one was absent from ill health, and the other lacked experience. He did not listen to the remarks of the gentleman from Monroe (Mr. Strong), but he thought he knew him well enough, his good feeling and good nature, to know that he would not stand up here, in presence of the Convention, and of the secretaries, who could not defend themselves, and call in question their qualifications.

Mr. STETSON said he should have said, when up before, to his friend from Chautauque, under his disclaimers, that Mr. S. must have misunderstood him; and that he imputed no intention to disparage the clerks, since it had been disavowed.

Mr. RHOADES went on to say, that with one of the secretaries (Mr. Strong) he had the pleasure of an intimate acquaintance, having had a seat with him in the Senate for four years. He regarded him, in every thing except health,

as fully competent to his duties. With the other he had no acquaintance, but from what he had seen of him, he had exhibited only a want of experience, but all other requisites of a competent secretary. Nor did he believe that any one of his party here (if we must talk about party) would publicly or privately attempt to disparage either of these officers. Mr. R. said he had no appeal to make to the magnanimity of the majority for a secretary. He had seen, indeed, but little to indicate that there was any party here—except what he had seen in the room above, before the Convention opened.—The gentleman from Otsego said something about a majority being here, who were responsible for what was done.

Mr. CHATFIELD:—That was in answer to the appeal to us, as a majority.

Mr. RHOADES did not believe the people or the minority here intended to hold the majority responsible for any thing. We met here as a convention of the people—and he put it to gentlemen to say if it was not expected by many of their constituents—if they did not hear the matter talked of at home, and the wish expressed that this body might be organized without there seeming to be any political party here.—This convention was not called for by a party—was not voted for by the party claiming to be in the majority here, as a party. The people called for it, and without reference to party.—The position of some of us here, showed that the people did not carry party politics into the election. The county of Greene had sent here two delegates—one of them known at home as a whig, and the other as a democrat. So the vote in Chemung, showed a similar absence of party views.

Mr. CROOKER here suggested Onondaga.

Mr. RHOADES was going to allude to Onondaga, and his own position. Though he professed to be a whig, he did not stand there as the representative of that party particularly. He was first nominated by the whigs—and then by a convention calling themselves reformers—the next by a convention calling themselves liberty men. And when voted for he had good authority for saying, that he was voted for by whigs, by reformers, by liberty men, and—he appealed to his colleague from Onondaga over the way (Mr. TAYLOR) to bear him out in the assertion—by more than 200 of those who called themselves barn-burners [laughter]—and he might add that this climax was sprinkled and garnished by some from the old hunkers. [Renewed laughter.]—He did not come here to represent a party, and he had seen little among those of his party to indicate that they came here to make a party constitution. He thought the appointment of a secretary from the minority would be very salutary to the feeling of this body, and of our constituents—and that nobody would find fault with it. He appealed therefore to the Convention itself—not to the magnanimity of any portion of it, to appoint one whom even some of the majority had conceded to be admirably qualified.

On motion of Mr. WILLARD, the Convention Adj. to 11 o'clock to-morrow morning.

FRIDAY, JUNE 12.

Prayer by the Rev. Mr. BENSON.

STANDING COMMITTEES.

The PRESIDENT announced the committees on the subdivisions of the resolution of the committee of 17 as amended by the convention, as follows:—

1. *On the apportionment, election, tenure of office and compensation of the Legislature.*—Messrs. W. Taylor, R. Campbell, Salisbury, White, Burr, Sanford, W. B. Wright.

2. *On the powers and duties of the Legislature, except as to matters otherwise referred.*—Messrs. Stetson, Powers, Miller, St. John, Harrison, J. J. Taylor, Mc Nitt.

3. *On Canals, internal improvements, public revenues and property, public debt, and the powers and duties of the Legislature in reference thereto; and the restrictions, if any, proper to be imposed upon the action of the Legislature in making donations from the public funds, and in making loans of the moneys or credit of the State.*—Messrs. Hoffman, Tilden, Getchard, Hunter, W. H. Spencer, Greene, Richmond.

4. *On the elective franchise—the qualifications to vote and hold office.*—Messrs. Rouck, Gardiner, Kennedy, Dodd, Dorton, Wood, E. Huntington.

5. *On the election, tenure of office, compensation, powers and duties (except the power to appoint or nominate to office), of the Governor and Lieutenant Governor.*—Messrs. Morris, Porter, Hyde, Kingsley, Penniman, Clark, Waterbury.

6. *On the election or appointment of all officers, other than legislative and judicial, and the Governor and Lt. Governor, whose duties and powers are not local and their powers, duties and compensation.*—Messrs. Chatfield, Perkins, Kemble, Strong, Nicholas, Danforth, Shaver.

7. *On the appointment or election of all officers whose powers and duties are local, and their tenure of office, powers, duties and compensation.*—Messrs. Angel, Jones, Archer, Dubois, Maxwell, Hawley, Shaw.

8. *On the militia and military officers.*—Messrs. Ward, Chamberlain, McNeil, Bruce, Stanton, Kerman, A. Wright.

9. *On official oaths and affirmations; and the competency of witnesses, and oaths and affirmations in legal and equity proceedings.*—Messrs. Rhoads, Baker, Forsyth, Cornell, Brundage, Hayton, Hotchkiss.

10. *On the judiciary—and the appointment or election of judicial officers, and their tenure of office and compensation.*—Messrs. Ruggles, O'Connor, Kirkland, Brown, Jordan, Loomis, Worden, Simmons, Bascom, Hart, Stephens, Patterson, Sears.

11. *On the rights and privileges of the citizens of this state.*—Messrs. Tallmadge, Ayrault, Swackhamer, Parish, D. D. Campbell, Witbeck, Yauger.

12. *On Education, common schools, and the appropriate funds.*—Messrs. Nicoll, Munro, Bowditch, A. W. Young, Tatbill, Willard, Hunt.

13. *On future amendments and revisions of the Constitution.*—Messrs. Marvin, Riker, Vache, Cook, Nellis, Graham, J. Young.

14. *On the organization and powers of cities and incorporated villages, and especially their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit.*—Messrs. Murphy, Allen, Stow, Mann, Crooker, Van Schoonhoven, Sheldon.

15. *On the power of counties, towns, and other municipal corporations, except cities and incorporated villages, and especially their power of local legislation, taxation, assessment, borrowing money and contracting debts.*—Messrs. Brown, K. Campbell, F. F. Backus, Smith, Taft, Flanders, Candee.

16. *On the currency and banking.*—Messrs. Cambreleng, Russell, Dorton, Townsend, E. Spencer, Cuddeback, Taggart.

17. *On incorporations other than banking or municipal.*—Messrs. Loomis, Shepard, Bergen, Dana, Connelly, H. Backus, Warren.

18. *On the creation and division of estates in lands.*—Messrs. Nelson, Harris, Flanders, Bull, A. Huntington, Hutchinson, Clyde.

ASSISTANT SECRETARY.

Mr. JORDAN rose for the purpose of making a motion to modify the amendment which was pending at the adjournment yesterday, which he hoped would meet the approbation of the mover (Mr. ANGEL.) If he understood the business of the convention aright they adjourned yesterday on the pendency of a motion made by the delegate from Allegany, so to amend the resolution of the gentleman from Otsego, as to provide that the convention shall proceed on Monday next to appoint an assistant secretary. He now moved to amend the amendment by striking out the words "on Monday next," and inserting the words "forthwith by ballot." If this met the views of the mover of the amendment he should be pleased, and he thought it would be the means of disposing of this somewhat vexed question which it was advisable to do without further delay.

Mr. ANGEL accepted the modification.

Mr. CHATFIELD said he believed the resolution was yet under the control of the mover, no question having been taken thereon, and as it was offered at his instance, he now desired to withdraw it.

Mr. HART withdrew the resolution, and it was withdrawn accordingly.

QUALIFICATION OF VOTERS.

Mr. GREEN offered a resolution which was adopted, thus:—

Resolved, That the committee on the elective franchise be directed to enquire and report as to the expediency of requiring some constitutional provision whereby every person who shall hereafter become a voter, except in case of physical inability, shall be required to be able to read and write.

ASSISTANT SECRETARY

Mr. JORDAN said the resolution which he had previously moved to amend, having been withdrawn, he supposed it was in order to offer the amendment as an original resolution, notwithstanding the withdrawal of that first offered. He therefore moved the following:

Resolved, That this Convention will proceed forthwith by ballot to elect an Assistant Secretary of this Convention.

Mr. CHATFIELD moved to amend so as to provide that the President and Secretaries of the Convention be authorized to employ an assistant Secretary.

Mr. PATTERSON, on reference to the Convention law, which authorized the Convention to elect a President by ballot out of their own number, and to appoint one or more Secretaries—doubted their authority to delegate the power to appoint a Secretary to the President and existing Secretaries. If they were to have another, he thought the appointment should be by the Convention.

Mr. CHATFIELD said there could be no doubt of the power of this body to appoint the necessary Secretaries to transact the business of the Convention, nor that what the Convention directed to be done was in fact done by it. One of the most familiar principles of the common law met with in the books, was that whatever was done by a primary through a second was done by the primary itself. If this were

not so, the keeper of the gallery and the messengers employed here were here improperly.—

The Convention could make its appointments in such a mode as they might deem most convenient to carry out the law and contribute to their own usefulness. He preferred the amendment, because he thought the President and Secretaries would be the better judges of the qualifications of the person or persons to be employed than the Convention. It might be necessary that two assistant Secretaries should be appointed; at all events there should be a limit, and therefore he modified his amendment so as to provide that the appointments should not exceed two.

Mr. WARD entertained the opinion that the power to appoint the secretaries was with the Convention. If he entertained any other opinion, he should be willing to confer it on the president and present secretaries; but on this subject the Convention act was very clear. His friend from Otsego yesterday caused a resolution to be offered for the appointment of an additional secretary, and it was apparent from the tenor of the resolution, that the gentleman then entertained the same opinion he (Mr. W.) now expressed. He was still satisfied there was not force enough at the clerk's desk, for the transaction of their business. The Convention had but little to do to-day, and they might as well go on and dispose of this matter, and select the most competent man they could get to discharge these duties. He repeated, that he hoped they would proceed at once to do this business, for to-morrow some of the committees might be ready to report.

Mr. JORDAN had no disposition to take up the time of the Convention with this or any other subject unnecessarily; but he had offered this resolution, after the original resolution was withdrawn, because he supposed it was advisable to put that question at rest, and that they should have the competent number of Secretaries and a complete organization, before they got to the main business of the Convention. He had no feeling one way or the other, how the thing was done. Whether they appointed an additional Secretary by name, or it were done by the Secretaries, was a matter of perfect indifference to him. He was constrained however to disagree with his worthy friend from Otsego as to the principle of the common law, which he supposed would govern them in cases of this sort. It was a true maxim that he who does an act by another does it by himself; but that was true only where they acted of their own volition. In cases of delegated authority, by a special power of attorney, or by statute, or other mode, he apprehended the power did not extend to make a sub-delegation of a delegated power.

The question was then taken on the amendment and it was lost. The question then returned on the resolution.

Mr. SWACKHAMER suggested an amendment—to strike out "Assistant" and insert "additional" Secretary.

Mr. JORDAN assented to the amendment.

Mr. CHATFIELD proposed another amendment, to strike out the word "ballot" and insert at the close the words :

And each member as his name is called shall rise in his place and openly nominate a person to fill the said place.

Mr. CHAMBERLAIN called for a division of the question, so that the vote might be first taken on striking out.

Mr. CHATFIELD said in all bodies where the open vote could be as conveniently given as any other, it would be better that it should be adopted. He preferred it here for two or three reasons. One reason was, and that alone was sufficient, that it was the more expeditious, and the more easily got along with. In a delegated capacity he was always willing to take the responsibility of his actions, and he had never been placed in a situation where he was at all afraid to assume that responsibility. Such a course of voting at all times put the constituent in a position to know if the representative had acted with fidelity.

The question was then taken on striking out and negatived.

The original resolution was then adopted.

The ballot resulted as follows, Messrs. MORRIS and NICHOLAS acting as tellers :—

Philander B. Prindle	50	Wm. H. Grant	2
Francis Seger	21	Clarkson F. Crosby	1
Thos. T. Loomis	19	Wm. W. Dean	1
Jas. R. Rose	14	Joseph Rose	1
E. S. Marsh	3	Blank	1

113

Mr. TALLMADGE understood the Clerk to announce that there were but 112 ballots where-as there appeared to be 113. He only alluded to it as a comment on what was said yesterday, of the liability of these accidents, under any circumstances—and he availed himself of this occasion—it having been his lot to preside—

Mr. CHATFIELD interposed—asking if it was in order to debate this matter?

Mr. TALLMADGE only wanted to say that it was always the usage, on a ballot, for the clerk to check the names, as members came up and voted, and announce the number before the ballot-box was touched.

There being no choice,

The Convention then proceeded to a second ballot—with the same tellers—which resulted thus :—

Francis Seger	42	J. T. Disosway	1
P. B. Prindle	65	E. S. Marsh	1
T. T. Loomis	9	Blank	2
Jas. R. Rose	4		

114

Previous to canvassing this vote,

Mr. MORRIS (one of the tellers) announced that the ballots counted out 114—though the Clerk announced before counting them that there were 112—but on revising his list, 113.

Mr. WARD suggested that the Clerk call the roll again, to ascertain if he had checked all that had voted.

Mr. RUSSELL said probably members had voted out of their order, and thus escaped the notice of the Clerk.

Mr. JONES had no doubt 114 had voted; but if there was any doubt about it, by calling the roll as suggested, the error, if any, might be discovered.

Mr. BASCOM suggested that this would not do—as some who voted, had gone out.

Mr. DODD moved that the tellers proceed to canvass the ballots—which was agreed to.

There being no choice on the second ballot, (as above) the Convention proceeded to a third ballot, with the same tellers—which resulted as follows:—

Francis Seger	55	Blank	1
P. B. Prindle	53		—
T. T. Loomis	4		114
Jas. R. Rose	1		

No choice having been effected,

Mr. CHAMBERLAIN offered the following:

Resolved, That Francis Seger is hereby declared duly elected one of the Secretaries of this Convention.

Mr. C. said he offered the resolution, as Mr. Seger had a plurality on the last ballot. He called for the ayes and noes on the resolution.

The PRESIDENT remarked that the resolution adopted by the convention was to proceed by ballot to elect a secretary. The convention had proceeded thus far, by ballot, without having made a choice. The chair was of opinion that it was not in order to proceed in any other mode to elect a secretary, without reconsidering the resolution directing the election to be made by ballot.

Mr. CHAMBERLAIN inquired if it was not competent to alter the mode of designating at any time when the convention saw proper? He thought the body might at once revoke the former order and adopt another without this formality of reconsidering.

Mr. PERKINS here moved that the next ballot be confined to the two highest on the last—and that blanks and ballots for persons other than the two highest, be not taken into consideration; but that the person having the greatest number of votes be elected.

Mr. PATTERSON doubted the power of the majority to dictate who the minority should vote for. Here were four votes for Mr. Loomis. He doubted the power of the Convention to compel those voting for Mr. L., to vote for one of the two highest or lose their votes. He thought the largest liberty would be given here.

Mr. HARRIS thought we had spent time enough in balloting—as much as would be found profitable. He apprehended there could be no doubt as to what the result of another ballot would be; and to dispose of the question, he moved a reconsideration of the vote directing a ballot—in order that the resolution of the gentleman from Allegany might be in order afterwards.

The vote ordering a ballot was reconsidered, 56 to 42.

Mr. MURPHY rose to a point of order—quoting the 18th rule—by which a motion to reconsider could not be taken on the same day on which the vote to be reconsidered was taken, unless by unanimous consent.

Mr. JONES insisted that unanimous consent

was impliedly given—and the vote on reconsidering taken.

Mr. MURPHY: No sir, there was a strong vote in the negative.

The PRESIDENT ruled the objection well taken had it been stated before the question was put and the result announced. Now, it was too late.

Mr. WORDEN moved to amend the resolution by striking out the name of Mr. SEGER and inserting the name of Mr. PRINDLE—and called for the ayes and noes.

The aye noes were ordered.

Mr. SHEPARD called for a division of the question.

Mr. WORDEN then called for the ayes and noes on striking out, and they were ordered.

The question on striking out was put and negatived, ayes 49, noes 65, as follows:

AYES—Messrs. Arcler, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bratton, Bruce, Bull, Burr, Candee, Cook, Dana, Dodd, Flanders, Forsyth, Gorbard, Graham, Harris, Harrison, Hawley, Hoffman, E. Huntington, Jordan, Kennedy, Kirkland, Marvin, Nicholas, Parish, Patterson, Pennington, Porter, Rhoades, Richmond, Salisbury, Shaver, Simmons, E. Spencer, W. H. Spencer, Stow, Strong, Tallmadge, Tutill, Van Schoonhoven, Warren, Waterbury, Woden, A. Wright, A. W. Young—49.

NAYS—Messrs. Allen, Angel, Bergen, Boeck, Bowditch, Brown, Cambreleng, D. D. Campbell, K. Campbell Jr., Chamberlain, Hatfield, Clark, Clyde, Cornell, Danforth, Dubois, Gardner, Greene, Hart, Hatchiss, Hunt, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kernan, Kingsley, Loomis, Mann, McNeil, McNitt, Maxwell, Morris, Murphy, Nicoll, O'Connor, Perkins, Powers, Riker, Enggles, Russell, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Stanton, Stevens, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Tilden, Townsend, Vache, Ward, White, Willard, Wood, Yawger, J. Youngs, the President—65.

The question was then announced to be on Mr. CHAMBERLAIN'S resolution.

Mr. WORDEN hoped the gentleman from Allegany would now withdraw the call for the ayes and noes on his resolution—for, from the state of the vote just taken, as well as other indications, he apprehended we should find no difficulty now in hitting on the name of Mr. Seger. Mr. W. should vote for him with great pleasure, as one of the Secretaries of this Convention.

Mr. CHAMBERLAIN withdrew the call for the ayes and noes, and

The resolution appointing Mr. SEGER was adopted, with but one or two dissenting voices.

The PRESIDENT thereupon announced the appointment of FRANCIS SEGER as one of the Secretaries of the Convention.

Mr. DODD offered the following:

Resolved, That when this Convention adjourns, it will adjourn to meet on Monday morning at—o'clock.

Mr. PATTERSON moved an adjournment. It was about dinner time.

The Convention adjourned, 54 to 52, to 11 o'clock to-morrow morning.

SATURDAY, JUNE 13.

Prayer by the Rev. Mr. BENSON.

RIGHTS OF CITIZENS, &c., LAW OF LIBEL.

Mr. O'CONOR submitted the following which was adopted:—

Resolved, That it be referred to the committee on the rights and privileges of citizens of this state, to consider the propriety of securing to members of this state, by constitutional provision, the following rights and privileges, to wit:—

1st. A right to the accused in all criminal cases, and in all actions or proceedings for penalties or forfeitures, to waive a trial by jury and submit himself to trial by the court.

2nd. A right to the accused in all impeachments, criminal cases, and actions or proceedings for penalties or forfeitures or for misconduct in office, to make a final reply to the prosecutor on all questions of law or fact.

3rd. The right of peremptory challenge to persons drawn as jurors to the extent now allowed by law; and a like right to the accused in all criminal cases, and in all actions and proceedings for penalties or forfeitures to the extent of five challenges, and a like right to each party in all other civil causes, to the extent of one challenge.

4th. The exemption of every person from being compelled to be a witness against himself in any case, for the purpose of subjecting him to a penalty or forfeiture, or any loss or deprivation in the nature of a penalty or forfeiture.

Resolved, That it be referred to the same committee to consider the propriety of amending the last sentence of the 5th section of the 7th article of the constitution of this state, so that the same shall read as follows:— "In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true and was published with good motives and for justifiable ends, the party shall be acquitted—and in favor of such acquittal, the jury shall have the right to determine the law as well as the fact.

SURROGATES.

Mr. J. J. TAYLOR, the following, which was adopted:—

Resolved, That it be referred to the committee on the judiciary to enquire into the expediency of making the office of surrogate a salaried office, and of transferring to that officer in the several counties jurisdiction of chancery foreclosures of mortgages in cases not contested—applications for leave to sell real estate of infants—the care of the estates of lunatics, idiots and habitual drunkards—and such other powers of the court of chancery as may be properly, and more cheaply or more expeditiously, exercised by a local judge.

INDIAN SUFFRAGE.

Mr. RICHMOND, the following, which was adopted:—

Resolved, That the committee on the elective franchise, be and they are hereby instructed to enquire and report on the subject of extending the right of suffrage to the Indians residing in this state.

LOCAL OFFICES.

Mr. ANGEL, the following, which was adopted:—

Resolved, That the Secretary of State be requested to furnish for the use of this Convention, so far forth as he may be able, a full statement or list of all offices in this state, the duties of which are local, their respective tenures and the respective powers, duties and compensation of their incumbents.

PERSONAL LIABILITY.

Mr. SHELDON, the following which was adopted:—

Resolved, That it be referred to the committee on banks to enquire into the expediency of making it a constitutional provision that the stockholders of banks and other moneyed incorporations shall be individually liable for the debts of their respective corporations.

Mr. RUSSELL moved the printing of ten times the usual number of the list of standing committees. Agreed to.

THE SALT SPRINGS.

Mr. RHOADES submitted the following, which was adopted:—

Resolved, That it be referred to the committee on canals, &c. to inquire into the expediency of amending the constitution in relation to the powers and duties of the legislature in regard to the lands belonging to the state contiguous to the salt springs.

CLERGYMEN.

Mr. BOWDISH, the following, which was adopted:—

Resolved, That the committee on the elective franchise, &c., be directed to enquire into the expediency of extending to clergymen all the political rights, privileges and immunities that are enjoyed by other citizens of this state, and of imposing on them an equal proportion of the taxation necessary to the support of government.

THE TWO-THIRD CLAUSE.

Mr. ALLEN, the following, which was adopted:—

Resolved, That it be referred to the committee on incorporations, to enquire and report on the expediency of abolishing the two-third vote on incorporations, and substituting therefor a majority of all the members elected.

ASSESSMENTS OF PERSONAL PROPERTY.

Mr. RUGGLES, the following, which was adopted:—

Resolved, That the committee on the powers of counties, &c., be directed to enquire into the expediency of requiring the legislature to make further a more effectual provision than now exists, for ascertaining the value of the personal estate of each individual by the assessors for the purpose of taxation,

PRIVILEGES OF ELECTORS.

Mr. STOW offered the following:—

Resolved, That the committee on the elective franchise, &c., be instructed to enquire into the expediency of securing to every elector the privilege of holding a certain amount of real estate, owned by him, or in which he has a permanent interest, of not less than ——— dollars in value, and not more than ——— dollars in value; that such property be described and registered; and that the same shall not be incumbered by or for any debt contracted or created by such elector after such registry and a reasonable publication or notice thereof.

Mr. STOW explained. It was not a new qualification, which he suggested for reference, but a privilege—not with reference to present debts but to debts contracted after description and publicity.

Mr. KENNEDY suggested that it should go to the committee on the rights and privileges of citizens.

Mr. STOW understood himself better. He did not propose to confer this privilege on all, but to make it a mark of honor, of character, and distinction, between the electors of this republic and those who were not either from choice or infamy, voters.

Mr. STRONG apprehended, when he first heard the resolution read, that it was in the nature of a reform he had heard of—that the farmers should give off a part of their farms to the lawyers. [A laugh.] But he presumed now that was not the mover's intention. If such a proposition was brought in, he should like the

privilege of saying a word or two on it. He did not know that he should be against it. He would not promise.

Mr. STOW would relieve the gentleman on that point. He proposed to give him (Mr. STRONG) a little law on this subject.

Mr. Stow's resolution was adopted.

THE SALT DUTY.

Mr. W. TAYLOR offered the following, which was adopted:—

Resolved, That it be referred to the committee on canals, &c., to enquire into the expediency of providing that the duty on salt shall not exceed one cent per bushel as now fixed by law.

RIGHTS OF WIDOWS AND ORPHANS.

Mr. WATERBURY, the following, which was adopted:—

Resolved, That the rights and privileges of widows and orphan children be referred to the 11th committee (on the rights of citizens) to report thereon.

RATE OF INTEREST.

Mr. DANA, the following, which was adopted:—

Resolved, That the committee on the powers and duties of the legislature, except, &c., inquire into the expediency of making it a constitutional provision that the rate of interest in this state shall not exceed six per cent.

NEGRO SUFFRAGE.

Mr. A. W. YOUNG, the following, which was adopted:—

Resolved, That it be referred to the committee on the elective franchise to inquire into the expediency of extending to colored citizens the right of suffrage, and of abolishing entirely the property qualification.

THE CANALS.

Mr. CHAMBERLAIN, the following, which was adopted:—

Resolved, That the committee on canals, &c., report to this convention whether in their judgment it is expedient to make constitutional provision for the completion of the unfinished canals of this state, including the Erie canal enlargement—and if they should advise that such provision is inexpedient, that they report what action would be necessary for this convention to take in relation to said canals.

TAXATION OF FOREIGNERS—BUSINESS OF THE COURTS—NON-IMPRISONMENT FOR DEBT.

Mr. MORRIS offered the following:—

Proposed, That there be incorporated into the constitution, authority to appoint a special commission to dispose of the unfinished business that has accumulated in the courts of law and equity.

Proposed, That there be incorporated in the constitution the principle of taxation on foreign residents, after they shall have resided in this state for a time sufficient to become citizens.

Proposed, That the principle of non-imprisonment for debt, be incorporated in the constitution.

Mr. MORRIS said the first proposition was intended to reach certain worthy gentlemen who passed their whole lives in this country, accumulated large fortunes, and contributed nothing to the support of the government. The second was designed to clear away the business that had accumulated in our courts—that the new courts to be organized might not be broken down by it in the onset. He moved the appropriate reference of these propositions severally.

Mr. MARVIN suggested that the form of the propositions ought to be changed, to avoid a committal of the body, on a vote of reference.

Mr. MORRIS replied that the propositions were his own, and offered on his own personal responsibility—not to be adopted by the Conven-

tion, but for reference merely to committees. It was the form he preferred, and had suggested in a resolution he offered the other day.

After some further conversation, the propositions were referred.

EXPENSE OF REGISTRATION.

Mr. KENNEDY offered the following, which was adopted:—

Resolved, That the secretaries address a communication to the Comptroller of the city and county of New York, requesting him to transmit a statement of the expense incurred by said city and county, during the years '40 and '41, under the act of 1810, providing for a registry of the voters of said city and county.

THE SALT DUTY.

Mr. St. JOHN, the following, which was adopted:—

Resolved, That the committee on canals, &c., be instructed to inquire and report on the expediency of entirely abolishing the duty on salt.

CONTRACTS WITH THE STATE.

Mr. CHATFIELD, the following, which was adopted:—

Resolved, That it be referred to the committee on canals, &c., to inquire into the expediency of requiring all contracts made with the people of this state to be in writing, and prohibiting the state agents and officers from altering or varying the same unless authorized so to do by a law specifying the alteration; and prohibiting the annulling or surrender of any such contract, except by a judicial determination or decree. And also of prohibiting all extra allowances, gifts or compensation beyond the prices specified in such contracts, except by the judgment or sentence of an appropriate judicial tribunal.

USURY LAWS.

Mr. CONELY, the following, which was adopted:—

Resolved, That it be referred to the committee on the powers and duties of the legislature to inquire into the propriety of prohibiting the legislature from passing usury laws.

BETTING ON ELECTIONS.

Mr. ANGEL, the following, which was adopted:—

Resolved, That the committee on the elective franchise be instructed to inquire into the expediency of checking by constitutional provision the practice of betting on elections, by suspending the right of every person to vote who shall have a bet in any form pending on the result of the election at which he offers to vote; and that said committee do also inquire into the expediency of disqualifying every person from voting at elections and from holding any office of trust or profit, who shall have been duly convicted by a jury of the country of bribing any elector to vote, at any presidential, congressional, state, county, city, ward or town election.

THE DUTY OF COMMITTEES.

Mr. BAKER submitted the following:—

Resolved, That in the opinion of this Convention, it will be inexpedient for the several committees on the constitution, to accompany their reports with written explanations of the reasons which may have influenced them in agreeing thereto.

Mr. SWACKHAMER moved to lay the resolution on the table. The motion was lost, 29 to 35.

Mr. TALLMADGE hoped the matter would be left to the discretion of the committees. It would not be advisable, in all cases, to have elaborate reports on the propositions that committees might adopt, as gentlemen on the committee might have diverse reasons for coming to the same conclusions, and so might members of the Convention, when they came to act on them.

He was the first member of the Convention of 1821, to make a report, and he adopted the course of not accompanying the proposition reported with reasons for its adoption.

Mr. BROWN thought the resolution ought not to be adopted and he expected it would not. He did not mean to discuss it at length. He presumed that there was a general sentiment prevailing in this Convention against accompanying subjects that might be brought before them, with elaborate reports, and gentlemen would see the propriety of this; but still he thought they should reserve the right to report or remain silent as they pleased. Suppose a case of this kind. Suppose the committees should differ as to the propriety of the provisions reported. Should the minority and the majority of the committee be precluded from assigning reasons for this difference? Would it not be better to leave it open to the committees to give the reasons or not as they pleased which led them to their conclusions? Now here was the judiciary committee—a large and important committee, having subjects committed to them of a diversified and important character; so far as he had yet been able to learn, it would not surprise him if that committee should report unanimously; still, it would not be surprising, if by and by they should be found to differ, and the gentlemen on that committee should choose to submit two distinct propositions—one by the majority and another by a minority. Would it not in such a case be proper and advantageous to the Convention, to know the reasons which led them to differ on questions of such importance? If this resolution were to pass, he should take it as a clear intimation that the Convention expected no reasons to be given, and he desired that it should be left to the discretion of the committees; because he believed they would be the better able to exercise a prudent discretion if it were left to them, than if they were embarrassed by an expression of the opinion of the Convention. But there was another point of view of which he trusted gentlemen would not lose sight. It was this—that the action of the Convention in regard to constitutional amendments would not be conclusive. They did not settle the matter. Ours was not like a legislative act which went abroad with the force of law in full vigor, and remained so until repealed by a future legislature. All we should ultimately propose must be submitted to the people; and he trusted if any committee reported important amendments to the constitution, that they would feel it incumbent on them either to accompany their proposition with a report or with such an explanation on this floor as would clearly elucidate the change proposed, and the reasons which prompted it. Although he would not encourage elaborate and lengthy reports in all cases, in his judgment the committees should be left to their own judgment. If they could give their reasons better on paper than in a speech on this floor, he hoped they would be left at liberty to do so. There were a great many gentlemen there who were not accustomed to debating, and whose ability lay in committing their thoughts to paper and in the use of the pen; and if those gentlemen could better assign their reasons in the form of a report, it was their duty to do so, and let

them go forth so that the people might see the reasons and arguments which led them to their conclusions.

Mr. PERKINS did not wish to debate this matter, but he would take occasion to say that there were some committees that would arrive at their conclusions by the aid of statistics, and unless these statistical details could be brought before the Convention in an official form, they would be passed by, unless some paper should choose to publish them, and they could thus be got before the Convention. He apprehended there would be some statistical details which the Convention might feel it to be its duty to publish and thus throw them before the public as the reasons for their action. Elaborate reasoning from a committee would not perhaps be desirable; but he hoped they would not be cut off from the publication of matters of fact and statistical details from official sources, for the information of the people.

Mr. WORDEN confessed that before his friend from Orange entered upon his argument he was inclined to oppose the adoption of the resolution; but a suggestion fell from that gentleman, which operated to change his mind on the subject. The remarks of the gentleman from St. Lawrence had also tended to strengthen that conclusion. It was true that the result of their deliberations was to go forth to the people who were to judge finally upon the Constitution to be framed; and in reference to the facts and reasons to which allusion had been made, if they were to be of any sort of importance to the public—if they were to be gathered together and sent forth for any practical purpose, it was to influence the public mind in regard to the result of the deliberations of this Convention. Now he had too much regard for the public intelligence to suppose that the people could not for themselves investigate all necessary facts that affect the conclusions which the Convention should present. If they should send forth facts of an erroneous character, and statistics that were not altogether true in point of fact, or inferences that were not legitimately to be drawn from those facts, it might, instead of leading the public mind to correct conclusions, lead to most erroneous ones. He did not understand that it would be necessary for the public to come to them for facts to enable them to make up a judgment, and he did not wish to take a position here in the outset that would show that we thought it necessary to fortify our conclusions with facts in support of the constitution which we should present for adoption. He apprehended this mode of reporting, and of publishing facts, to go forth with our endorsement would lead rather to mischief than anything else. He would give to the people the result of our deliberations, calmly; and he would leave to the public mind the formation of its own judgment on the constitution they should present. He would not stand here in an attitude of distrust of the people, nor would he seek to fortify the result of our deliberations by a species of *ex parte* argument or a statement of facts. For these reasons he thought it would be neither wise nor expedient that their reports should be accompanied with written arguments and statements of fact, for they would

necessarily be one sided. He did not assert that they would be party-wise, but they would partake of *ex-parte* and one sided views of the case. They would not be documents that would present, perhaps a full view. They would be the arguments of individuals in favor of their own conclusions, and they ought not to be endorsed by the Convention and sent forth as the facts and arguments on what they acted.

Mr. CHATFIELD felt constrained to differ with his friend from Orange (Mr. BROWN).— Even before this resolution was offered, he had embodied the same views in a resolution which he had intended to offer. He was persuaded that the better and the wiser course was, to leave all the arguments that would be embodied in these reports, to be made here in debate, in which all who desired might participate, and where all would have an opportunity to judge between the conflicting views that might be presented. The gentleman from Dutchess (Mr. TALLMADGE) had presented some conclusive reasons why this resolution should be adopted; and there was a strong argument also to be found in the consideration that the Judiciary to be organised under the new Constitution, would be influenced in their opinions by the arguments that might be sanctioned here, when they came to give a construction to the Constitution hereafter. Now he should like to have the Constitution go down to the judiciary, without such an interpretation as the reports of committees might give to it. There was at all times more or less authority in the report of a standing committee, which it was difficult to resist. He would therefore give no authority to the committees to give, in detail, through the medium of a report, views and arguments, to influence the minds of either the members here, or the people elsewhere. There had been an allusion made to the judiciary committee—a committee composed of the strongest minds and the most towering intellects. Any conclusion to which that committee might come, would derive force almost irresistible, from the standing and position of that committee, without giving them the additional advantage of presenting here a written report. If, when they presented the result of their labors to the Convention, any members of that committee desired to sustain or explain their conclusions, let them do it with the sole advantage of their speaking talent. It was not true that gentlemen would not in that way be able to make themselves fully understood on both sides. There was no gentleman here who would not be able to give a reason for the hope that was in him. If, however, they distrusted themselves, let them write out their remarks in the form a speech, and submit them to the Convention; for any gentleman who could write a report, would find no difficulty in writing a speech. But the gentleman from Ontario had alluded to another reason—that these reports should not go to the people under the sanction of this Convention, with the view of influencing their action in adopting or rejecting the Constitution. At the time of the adoption of the federal constitution, from the then state of public opinion it was extremely doubtful whether it would be adopted by a majority of the states; but the strong minds, tongues and pens of the

nation, put forth Herculean efforts to secure that desirable result, and the luminous and conclusive expositions of the various parts of that instrument by Madison, Hamilton and Jay, were subsequently collected into a volume, and compose the *Federalist*. He desired that the same course might be taken here—that the constitution which we should form might be left to the advocacy of the people, and that its expositions might be drawn from its context, uncontrolled by the reports of committees, and the people left at full liberty to adopt or reject it, judging it by its own merits. Believing this resolution right in principle, he felt constrained to give it his support.

The question was then taken, and Mr. BAKER's resolution was adopted.

ELECTION DISTRICTS.

Mr. BAKER submitted the following, and it was adopted—saying that neither the map before the Convention, nor the returns in the Secretary's office, furnished information as to the population of the election districts:—

Resolved, That the Secretaries be directed to request the county clerk of the city and county of New-York to furnish this Convention with a statement of the separate population of each election district therein, together with a description of such district by boundaries.

JUSTICES' COURTS—APPEALS.

Mr. RICHMOND offered the following, and it was adopted:—

Resolved, That it be referred to the committee on the judiciary to enquire into and report upon the propriety of having all appeals from judgments in justices' courts amounting to \$50 or under, where the parties reside in the same town, finally decided by an appeal to a town court to be composed of all justices of the peace of said town.

RENT CHARGES, &c.

Mr. JORDAN offered the following, and it was adopted:—

Resolved, That it be referred to the committee on the creation and division of estates in lands, to enquire into the expediency of prohibiting by constitutional provision, the future creation of any estates in lands, reserving rents in fee, or for life, or for any longer term than — years; also, all covenants for quarter or ten h sales, and all other covenants in restraint of alienation, and of forfeiture.

DISTRICT ATTORNEYS.

Mr. HAWLEY offered the following and it was adopted.

Resolved, That the Secretaries of the Convention be requested to call upon the District Attorneys of the several counties of this state for answers to the following interrogatories:—

1. What is the amount of bail bonds and recognizances forfeited in your county in the Court of Oyer and Terminer and of General Sessions, during the year 1845
2. What is the amount of recognizances upon which suits were commenced by you during the year 1845.
3. What is the aggregate amount which has been recovered in such suits,—the aggregate amount of damages and costs being separately stated.
4. What is the aggregate amount which has been collected in such suits from the defendant therein.
5. What is the aggregate amount of costs and counsel fees connected with such suits which has been paid by or charged to the county or to the people

RETROSPECTIVE LEGISLATION.

Mr. RHOADES offered the following and it was adopted.

Resolved, That it be referred to the committee on the Judiciary to enquire into the expediency of amending the constitution so as to prohibit the legislature from passing any law which shall suspend or alter any of

the legal or equitable remedies for the collection of debts and the enforcement of contracts so as to operate retrospectively.

JUDICIAL DISTRICTS, &c.

Mr. GARDNER submitted the following, and it was adopted:—

Resolved, That the committee on the judiciary inquire into the expediency of dividing the state into judicial districts, locating in each district a proportionate part of the judiciary of the state—providing for the election of all judicial officers of the state by constituting the boards of supervisors of the counties in each district a board of electors for the purpose, requiring the majority of the whole for a choice, and creating a board of canvassers to be composed of a delegation from each board of supervisors, and in case of no choice, such board of canvassers to have power to elect from the whole number voted for by the supervisors.

COUNTY OFFICERS—SHERIFF, &c.

Mr. GARDNER offered the following, and it was adopted:—

Resolved, That the committee on the election and powers of local officers be directed to inquire into the expediency of abolishing the office of sheriff, under sheriff and deputies, superintendents of the poor and common schools, and of providing for the election of a single officer in each county charged with the duty of the office so abolished, and with such other powers and duties as may be conferred by law, and to have the aid of the constables of the towns in the service of process, and as the general peace officer of the county.

Mr. RUSSELL here gave notice that he should on Monday, the 22d inst., move a reconsideration of the vote adopting Mr. BAKER's proposition in regard to the reports of committees.

PAY OF THE LEGISLATURE.

Mr. TOWNSEND offered the following, and it was adopted:—

Resolved, That the first standing committee be instructed to enquire into the expediency of giving to the members of the legislature a stated annual salary in place of a per diem allowance.

Mr. J. J. TAYLOR offered the following, and it was adopted:—

Resolved, That it be referred to the committee on the apportionment, election, &c., of the legislature, to enquire into the expediency of encouraging short sessions of the legislature by reducing the pay of the members after a session shall have continued a stated period of time.

COURTS OF EQUITY

Mr. BASCOM offered the following, which was laid on the table and ordered to be printed:—

Resolved, That the committee on the judiciary be instructed to report such a judiciary system as will render unnecessary the further continuance of tribunals of exclusive equity or chancery jurisdiction.

Mr. O'CONOR here rose, saying that he held in his hand a proposed judicial system for the state, which had been sent to him by one of the most distinguished of our constituents, and which Mr. O'C. desired to present under the authority of that citizen's name—not as his own, in all respects. He offered the following:—

Resolved, That the plan of a judicial system herewith presented, be printed for the use of the Convention, and referred to the committee on the judiciary.

Mr. MORRIS doubted whether it would be best to commence printing all these plans that might be presented. He had three or four at his room, from highly respectable gentlemen; and there was scarcely a clever man in any part of the state who had not fully matured a judicial system. Certainly until the committee had examined it, it should not be printed.

Mr. PERKINS suggested that others besides the committee might like to look at these plans.

Mr. RUSSELL took a similar view of the question—urging that individual members of the Convention ought to have before them also, matured plans of this sort, and from such high sources, which went to the committee.

Mr. MORRIS waived any objection of his own to the printing of the plan.

Mr. RUSSELL only added that as a matter of economy; it would be better to have the paper printed than read from the desk.

Mr. BAKER suggested that if we printed this plan, without knowing whose it was, we could not well avoid printing all the plans of the 30 or 40 gentlemen in and out of the convention, who had busied themselves in adjusting a judicial system—and this would only lumber up our desks and add vastly to the expenses of this body.

Mr. PATTERSON suggested that every thing presented in the manner in which this was would have to be spread out on the journal of course, else it would not appear what the paper accompanying the resolution was, or what was ordered to be printed. Again, having thus gone on the journal at length, to order the printing, as proposed, would carry it on the documents also, and thus we should have it printed twice over, or in two forms. He suggested that the paper should be presented as a petition—then the substance of it would go on the journal, and the paper itself go to the judiciary committee.

This suggestion, after some conversation between Messrs. MARVIN, PATTERSON, LOOMIS and O'CONOR, was substantially accepted.

Adjourned to Monday morning at 9 o'clock.

MONDAY, JUNE 15.

Prayer by the Rev. Mr. BRITTON.

RETURNS FROM COUNTY CLERKS, SURROGATES, AND CLERKS OF SUPREME COURTS.

The PRESIDENT stated that the Secretaries had received many returns from county clerks, surrogates, and supreme court clerks, in answer to interrogatories which had been sent, in obedience to a resolution of the Convention; and others might be expected to come in daily. It

would be therefore necessary to make some provision for their disposition.

Mr. CHATFIELD thought it would be advisable to raise a standing committee, to whom these returns should be referred, for the purpose of arranging them, and preparing an abstract thereof for the use of the Convention. He therefore moved that a committee of five be raised, to whom the returns now received, and

those hereafter to be received, shall be referred.

Mr. PERKINS said these returns all related to the judiciary system, and therefore they should go to the committee on the judiciary.— They were desired for the use of that committee, and should take that direction, where they could be digested, or that committee might direct the Secretaries to digest them. But a committee not connected with the judiciary committee, would scarcely know for what uses or purposes these returns would be wanted by the committee on the judiciary.

Mr. PATTERSON suggested that they should go to the seventh standing committee, on the appointment or election of officers, whose powers and duties are local.

Mr. KIRKLAND said these returns were not for the exclusive use of the judiciary committee as the gentleman from St. Lawrence seemed to imagine, but for the entire Convention. The judiciary committee he was of opinion would have enough to do without arranging these papers, and hence he was in favor of the motion of the gentleman from Otsego, to raise a special committee whose business it shall be to put them in proper form so that they shall be intelligible to the Convention.

Mr. JORDAN thought as these returns, as received, would be in an unmanageable form for the judiciary committee, that the special committee should be appointed as was suggested to prepare a digest of them and give to the committee in a compact form all the information which those returns might contain.

The motion was agreed to.

NON-IMPRISONMENT FOR DEBT BUT FOR FRAUD.

Mr. TALLMADGE offered the following resolution, which was referred:—

Resolved, That it be referred to the committee on the judiciary, to consider and report on the expediency of incorporating into the constitution the principle of non-imprisonment for debt, and providing the right, in any suit for the collection of debt, to charge that there had been deception or fraud in the creation or contracting of the demand; and upon conviction thereof, the party defendant shall be liable to imprisonment, or such other personal liability as shall be provided by law.

JUDICIARY SYSTEM.

Mr. TALLMADGE said he had received from a gentleman of great respectability in a western county of this state a new system of judiciary, which, without reading, he would ask to have referred to the committee on the judiciary.

A conversation arose respecting the manner in which such papers would appear on the journal—whether at length or the endorsement only—in which Mr. STRONG, Mr. TALLMADGE, Mr. JONES, Mr. HOFFMAN, Mr. WORDEN, Mr. MARVIN, Mr. HAWLEY and Mr. PATTERSON took part. The paper was then referred.

JUDICIAL DISTRICTS.

Mr. TALLMADGE submitted the following, which was adopted:—

Resolved, That it be referred to the committee on the judiciary to inquire into the propriety of adopting as a principle in the judiciary system that the state be divided into four districts; that a supreme court be established in each, of not less than three judges; jurisdiction, law and equity; the judges to hold circuits; the term of office to be not less than 7 nor more than 10 years; to be ineligible to hold or take any other office or commission during the term; or to have the

power of appointing any other officers, or to receive pay or fees other than the salary allowed by law.

If a separate court of chancery be established its chancellor to hold for the same term, of not less than 7 nor more than 10 years; and to be subject to like ineligibility to hold or take office during the term, and the like restrictions as the above judges. The judges or chancellors to be elected in the state or district of their jurisdiction.

A court for the correction of errors to be established, to consist of 7 judges; the jurisdiction, appeals and writs of error; the term of office to be 7 years; ineligibility and restrictions as above stated. The judges to be appointed by the Governor and Senate.

The county courts to be continued. A judge to hold for a term of 4 years; several counties may be embraced in his jurisdiction. Also, to try issues referred from supreme court. The same ineligibility and restrictions as before mentioned. To be elected in the county or district of his jurisdiction.

PRIVATE ROADS AND BRIDGES

Mr. NELLIS offered the following resolution which was adopted:

Resolved, That the committee on the rights and privileges of citizens be directed to consider and report on the propriety and necessity of incorporating in the constitution some provision authorizing private roads and bridges to be constructed on just compensation being made to the owner or owners of the lands taken for these purposes.

FREEDOM OF CONSCIENCE.

Mr. CORNELL offered the following, which was adopted:

Resolved, That it be referred to the committee on the rights and privileges of citizens of this state, to inquire into the expediency of making constitutional provision to secure the practical enjoyment of perfect liberty of conscience, opinion and belief to all persons within the jurisdiction of this state, and to prohibit all political and civil disabilities on account thereof or in connection therewith.

EDUCATIONAL FUNDS—COMMON SCHOOLS.

Mr. R. CAMPBELL offered the two following, which were adopted:

Resolved, That it be referred to the committee on education, &c., to consider and report as to the propriety of constitutional provision for the security of the common school, literature, deposit and other trust funds, from conversion or destruction by the legislature, and the establishment of such a system of common schools as will, by taxation, bestow the facility of acquiring a good education on every child in the state.

TAXATION.

Resolved, That it be referred to the committee on the powers and duties of the legislature, except, &c., to consider and report as to the propriety of requiring by constitutional provision, that all property within this state protected by its laws, except that which belongs to the people of this state, shall be assessed for taxation equally and at its intrinsic value.

PRACTICE OF COURTS.

Mr. STOW offered the following which was adopted:

Resolved, That the judiciary committee be instructed to inquire into the expediency of providing for the appointment of a commission to revise the system of practice and proceedings of the courts.

BIENNIAL SESSIONS.

Mr. CORNELL offered the following which was adopted:

Resolved, That it be referred to the committee on the apportionment &c. of the legislature, to inquire into the expediency of providing for biennial sessions of the legislature.

PRACTICE OF THE LAW.

Mr. STRONG offered the following which was adopted:

Resolved, That the committee on rights and privileges be instructed to inquire into the expediency of reserving to the people their dormant right of freely choosing their counsel and attorneys in all courts of law, with the like freedom from state interference that they now enjoy in the selection of their spiritual advisers, and of their legislators, delegates and governors; so that the anti-republican usage by means of which a close and gainful monopoly of the legal practice has hitherto been secured to a well organized order of licensed advocates and solicitors to the exclusion of the rest of community, may speedily cease.

SINGLE SENATE DISTRICTS.

Mr. CHATFIELD offered the following which was adopted:

Resolved, That it be referred to the committee on the apportionment, &c of the legislature, to inquire into the expediency of increasing the number of senators to 48 and dividing the state into single districts—the senators to be elected biennially and to hold their offices for two years.

JOURNALIZING OF PAPERS PRESENTED.

Mr. HAWLEY offered the following rule to settle the practice of journalizing papers, projects, and documents, which had already occasioned some discussion this morning and on a previous occasion:—

Resolved, That every member, previous to presenting a petition, memorial, or proposition for an amendment of the constitution, shall endorse on the same the substance thereof, and add his name; and on the reception or reference of such petition, &c, the endorsement only shall be entered on the journal.

COMMITTEE ON RESOLUTIONS.

Mr. SHAW offered the following resolution:

Resolved, That for the purpose of expediting business and producing uniformity, that a committee of five be appointed by the President, to which shall be referred all resolutions intended for the standing committees, and whose duty it shall be to adjust and arrange them and refer them to the appropriate standing committees.

Mr. RICHMOND hoped the resolution would not be adopted. He thought all resolutions should go to committees directly from this body. He was not willing to give such a power to any committee.

Mr. TOWNSEND concurred with the gentleman from Genesee. He hoped every facility would be given to gentlemen to present their plans and views here rather than discourage them by restrictions. By such a course the Convention became possessed of the reforms which gentlemen contemplated and of much valuable information.

Mr. SHAW said probably another resolution which he intended to offer, if read, would explain his purpose and remove the objections of gentlemen.

The Secretary read it as follows:—

Resolved, That all resolutions and propositions intended for standing committees be sent to the President, read by the clerk, and referred to the select committee of five, without motion or debate, if no objection is made.

Mr. STRONG said the last resolution was descriptive of what they had been doing and he thought was unnecessary; but to the first resolution he objected because it would give to the committee of 5 power to reject papers and thereby prevent their going to committees. This was too dangerous a power to be vested in any committee. It was not democratic—and he professed to be democratic—(laughter)—and therefore he could not give it his support. He hoped

the Convention would not sanction a resolution which was contrary to all principles of justice, freedom, and right.

The question was taken on each resolution separately and they were negatived.

COMPLETION OF CANALS.

Mr. AYRAULT offered the following, and it was adopted:—

Resolved, That it be referred to the third standing committee to enquire into the propriety of making constitutional provision for the completion of the unfinished canals, by appropriating the revenues arising, and to arise, from said canals.

RAILWAY ASSOCIATIONS.

Mr. LOOMIS presented a plan for forming railway associations, by a citizen of this state, which on his motion was referred to the committee on incorporations, &c.

PRINTING OF DOCUMENTS.

Mr. A. WRIGHT called the attention of the Convention to the propriety of ordering the printing of a greater number of the documents of the Convention than they now received, and he offered a resolution, which was amended on the motion of Mr. PERKINS and then adopted as follows, after a conversation in which several gentlemen took part:

Resolved, That the usual number of reports of committees and propositions of amendments to the constitution, for the purpose of printing, be fixed at 300; and whenever more than the usual number is ordered to be printed, the specific number shall be mentioned.

ABOLITION OF CAPITAL PUNISHMENT.

Mr. CONELY offered the following and it was adopted:—

Resolved, That it be referred to the committee on the powers and duties of the legislature, to inquire into and take into consideration the propriety of making constitutional provision for the abolition of capital punishment.

THE PARDONING POWER.

Mr. CONELY offered the following which was adopted:

Resolved, That it be referred to the 6th standing committee, to take into consideration the propriety to vesting the pardoning power in the Governor with the advice and consent of the Senate.

PRIVILEGES OF ELECTORS

Mr. STOW said on Saturday he submitted a resolution instructing the committee on the elective franchise to enquire into the expediency of securing to every elector the privilege of holding a certain amount of real estate owned by him or in which he had a permanent interest, that such property might be described and registered, and that it should not be incumbered by or for any debt contracted or created by such elector after such registry, and a reasonable publication or notice thereof. That resolution it seemed to him had been misunderstood; some gentlemen seemed to be apprehensive that it was aimed at the security of property, and that it was nothing less than agrarianism; he therefore took occasion to say in explanation that he had brought it up for the benefit of the masses. He thought they should connect a greater number of the people with property, and hence his resolution which he was of opinion was in favor of humanity. That there might be no further misunderstanding he moved that his resolution be printed which was agreed to.

NATURALIZATION LAWS.

Mr. WORDEN offered the following :

Resolved, That the committee on the elective franchise, inquire into the expediency of providing in the constitution for the exercise of the right of suffrage, so that in no instance shall the exercise of that right depend on the naturalization laws of congress.

Mr. WORDEN said, as his friend from Erie had been so unfortunate as to be misunderstood, he begged leave to say a word in regard to the resolution he had first offered, that he (Mr. W.) might not be misunderstood. As the constitution now stood, the right of suffrage was conferred on citizens, but the constitution did not say whether persons should be citizens of this state or of the United States. There was no provision in our constitution or law by which persons could become or be made citizens of this state, as contradistinguished from citizens of the United States. We had virtually by our statutes given a construction to the word citizens, as used in our constitution, and we had held—so such was the law—that no person, not a natural born citizen, could become a citizen of this state, except through the action of the federal Congress. He desired to present the question whether it would not be wise in us to establish a rule in that respect, totally independent of the action of Congress.—As the matter now stood, Congress might enlarge or restrict the period of residence necessary to citizenship, and in this way affect the interests of this State, or what might be supposed to be its interests, and might legislate against the express will of the people of this state. As to naturalization, it was early decided, under the federal constitution, that each state had the power to pass naturalization laws for itself. At an early day the circuit court of the U. S. for Pennsylvania, made that decision. Subsequently, there were dicta to the contrary in the Supreme Court of the United States. But more recently, an able and learned judge of this court, now deceased, had classed this power to pass naturalization laws as among those powers which each state might exercise in connection

with the federal congress. He thought the subject was one worthy of examination, and he desired nothing more. And he only said this that his object might not be misunderstood in presenting the resolution. He thought it expedient that we should have a fixed rule of suffrage, as applicable to that class of persons called aliens—and that their right to vote should in no case depend on the action of the federal congress.

Mr. W.'s resolution was adopted.

Mr. CHATFIELD here remarked, that two or three members had submitted resolutions of instruction, with the view of presenting their own opinions, and drawing out those of others, on matters connected with the new Constitution. He suggested that some one of these resolutions be now taken up, if the movers of them were now prepared to discuss them. He would call for that offered by the member from Seneca (Mr. BASCOM)—as to the propriety of discontinuing tribunals of exclusive equity jurisdiction.

Mr. BASCOM said he had not intended to call up his resolution to-day. It was offered merely to have it lay on the table—to be taken up when the Convention might not have other business before them—with a view to discussion. If the gentleman from Otsego desired to call it up, Mr. B. had no objection. He did not move it himself.

Mr. KIRKLAND thought it rather premature to discuss so great a change as this proposed, now. Besides, this matter was before the judiciary committee, and they would be ready to report no doubt within a reasonable time—and perhaps no benefit could arise from a discussion, before.

Mr. PATTERSON said he should judge from indications that the gist was pretty much ground out for to-day. He suggested that we adjourn. If any more resolutions were to be offered, or any business to be done, let us have it. Perhaps we might as well test the question—he moved an adjournment.

The Convention adj. to 11 o'clock to-morrow morning.

TUESDAY, JUNE 16.

Prayer by the Rev. Mr. BRITTON.

COMMITTEE ON RETURNS.

The PRESIDENT announced the following as the committee of five directed to be appointed yesterday, on the returns of clerks of courts and surrogates:—Messrs. J. J. TAYLOR, HAWLEY, ST. JOHN, CANDEE and O'CONOR.

Mr. RHOADES presented returns from the clerk of the supreme court in the city of Albany for the first six months of the year 1845, which were referred to the committee of five.

JUDICIARY SYSTEM.

Mr. SHEPARD said he had a proposition for a judiciary system, which he wished to have referred to the committee on the judiciary. It did not contain all the details he had heretofore contemplated, inasmuch as some of them had been anticipated by other propositions which had been presented—it was therefore incom-

plete, but as an outline he wished it referred. He read it as follows, and it was referred as desired:—

Resolved, That the judiciary committee consider the propriety of the following propositions:—

1. The division of the state into eight judicial circuits.
2. The establishment of three common law courts, of general and concurrent jurisdiction, to consist of not more than eight judges each, who shall be required to hold their terms according to the demands of business, and with reference to its most speedy dispatch.
3. The arrangement of the circuits so that no judge shall hold court two consecutive terms for the same circuit.
4. The establishment of practice courts, to be held by the said judges, for the adjudication of all questions of practice, in the first instance, that may arise in their respective courts.
5. The hearing of certioraris and appeals from the justices' courts before one of the judges of one of the said common law courts, to be designated—which hearing, and the decision thereon, shall be final.
6. The hearing of certioraris to other officers, pro-

proceedings in cases of mandamus, prohibition, procedendo, informations in the nature of quo warranto, and other special cases not otherwise provided for, in another of said common law courts to be designated.

7. The hearing of proceedings in criminal cases on writ of error or other proceeding in the nature of an appeal from the judgment of a single judge, in the third of said common law courts.

8. The granting of the fullest equity powers in all matters that may be auxiliary to a suit at law, at any stage of its proceedings, to the judge having cognizance thereof.

9. The abolition of the present court of chancery, and the distribution of its powers to not more than eight equity judges.

10. The abolition of the present mode of taking testimony in chancery, and the substitution of oral testimony, to be taken before the equity judge who shall hear the particular case.

11. The establishment of courts of general and special sessions in the city and county of New York, which shall try and finally dispose of all criminal cases cognizable in said city and county, subject to the right of appeal to the common law court designated for the purpose, as before provided.

12. The establishment of courts of special sessions to consist of not less than two justices of the peace who shall have cognizance of the smaller grades of criminal offences.

13. Arguments in banc in common law cases, shall be heard and decided before the court in which the particular cause was tried, excluding the judge who tried the same from giving his voice in the decision.

14. In equity cases on appeal, the particular case shall be first heard before two equity judges, neither of whom shall have sat at the hearing of said case.

15. The establishment of a court of errors to be formed from the common law and equity courts, to hold not less than three terms in each year.

16. The exclusion from the decision of any case of the particular court or equity judges by whom said cause has been heard and decided.

17. A tenure of judicial office not exceeding eight years in its duration, and a choice of judges by classes of one judge in each court every year.

18. The abolition of all fees or rewards for judicial services other than a liberal salary, which shall neither be increased or decreased during the term of office of the incumbent.

19. The abolition of the county courts and courts of common pleas.

THE COURT OF ERRORS.

Mr. WARD said he was desirous of ascertaining whether the gentleman from Oneida, who a few days ago presented a series of resolutions, one of which in particular related to the court of errors as now constituted—intended to call up those resolutions for consideration. It seemed to him they should be discussed and considered before the judiciary committee made its report on this subject, that the sentiment of the Convention might be known, for his impression was that there were a majority here in favor of abolishing that court—not because they had not confidence in it, but because it was desired to separate that court from the senate.

Mr. KIRKLAND replied that the subject had been discussed by the judiciary committee and an expression of opinion given thereon, but it had not been yet embodied in a written proposition; under these circumstances it was not now his intention to call up his resolution.

Mr. STRONG could see no object then that the gentleman from Oneida could have had in throwing his batch of resolutions before the Convention, if they were not to undergo some debate and elicit an expression of opinion of the Convention. He agreed with the gentleman from Westchester (Mr. WARD), that if there was to be an expression of opinion, it should be before the committee on the judiciary reported;

but he hardly thought his friend from Oneida, after throwing his batch of resolutions before the Convention would dodge the question by refusing to call them up.

Mr. KIRKLAND said he had succeeded in calling the attention of the Convention to his propositions, and hence he had attained his object. If, however, any gentleman desired to debate them, they could be readily called up from the table. He had no objection to bringing them up at any time, for they were resolutions which he apprehended would meet with very general approval.

The conversation here dropped.

LIMITATION OF JUDICIAL DUTIES.

Mr. MURPHY offered the following, which was adopted:—

Resolved, That it be referred to the committee on the judiciary to enquire into the expediency of restraining the legislature, by positive prohibition, from assigning any duties to the judicial department except such as are of a judicial character.

EXEMPTION FROM MILITARY DUTY.

Mr. DANFORTH sent up the following, which was adopted.

Resolved, That the committee on the rights and privileges of citizens of this state, be instructed to enquire into the expediency of exempting from military duty, except in case of insurrection or war, all those who are not recognized by the constitution as legal voters.

BANKS, THEIR CONDITION, LOSS BY THEIR INSOLVENCY, &c.

Mr. POWERS said he had a resolution which he desired to offer, calling for information from the Comptroller, which he apprehended would be extremely valuable to the Convention when they came to act on the question of Banks and Banking. The gentleman from Cayuga, on Saturday last, presented a resolution for the consideration of the Convention, involving the personal responsibility of individual stockholders of Banks. This was a new element in the history of Banking in this state, but it was a proposition that was well deserving of the best consideration of the Convention, and its mature deliberation, and to which he (Mr. POWERS) should give his most cordial assent, provided it was accompanied with security for the redemption of circulating notes. He believed the information which his resolution called for, would be found very valuable in the investigation of the present system of Banking, and with permission he would read it.

It was read and adopted as follows:

Resolved, That the Comptroller report to this Convention a list of the incorporated banks of this state, the time of their incorporation or renewal, when their charters expire, and the amount of capital of each; also a list of such of the said banks, subject to the "safety fund" law, as have become insolvent, and the amount contributed and paid out of that fund to the creditors of such insolvent banks; also a list of the banks established under the act "to authorize the business of banking" where the same purport to be located, and its business carried on, the actual capital as returned to his office by the applicants to him for circulating notes, the amount of such notes delivered by him to each banking association or individual banker, and the nature and amount of the securities transferred to him for the redemption of said notes; also a list of such of the last mentioned banks which have failed to redeem its notes by reason of insolvency or otherwise, the amount of the circulating notes of such banks unredeemed or not returned to him and the loss,

if any, and the amount thereof upon the securities transferred to him for the payment of said circulating notes.

Mr. CHATFIELD moved an adjournment, that the committees might proceed to the dis-

charge of their duties, as nothing could be done by the Convention until the committees were able to report.

The Convention adjourned accordingly, to 11 o'clock to-morrow morning.

WEDNESDAY, JUNE 17.

Prayer by the Rev. Mr. BRITTON.
POWERS, &c., OF THE GOVERNOR AND LIEUT. GOVERNOR

Mr. MORRIS, submitted the following :

Committee No. Five, on "The election, tenure of office, compensation, powers and duties (except the power to appoint or nominate to office) of the Governor and Lieutenant Governor," unanimously report the accompanying proposed Article :

ARTICLE —.

On the election, tenure of office, compensation, powers and duties (except the power to appoint or nominate to office) of the Governor and Lieutenant Governor.

§ 1. The executive power shall be vested in a governor. He shall hold his office for two years; and a lieutenant governor shall be chosen at the same time and for the same term.

§ 2. No person except a native citizen of the United States shall be eligible to the office of governor, nor shall any person be eligible to that office who shall not have attained the age of thirty years, and have been five years a resident within this state, unless he shall have been absent during that time on public business of the United States, or of this state.

§ 3. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature shall, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenant-governor.

§ 4. The governor shall be general and commander-in-chief of all the militia, and admiral of the navy of the state. He shall have power to convene the legislature, (or the Senate,) on extraordinary occasions.—He shall communicate by message, to the legislature at every session, the condition of the state, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers, civil and military. He shall execute all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall receive for his services the following compensation, viz.—Four thousand dollars annually, to be paid in equal quarterly payments; six hundred dollars annually, to be paid in equal quarterly payments, for the compensation of his private secretary; the rent, taxes and assessments of his dwelling house shall be paid by the state.

§ 5. The governor shall have power to grant reprieves and pardons after conviction for all offences except treason and cases of impeachment. He may commute sentence of death to imprisonment in a state prison for life. He may grant pardons upon such conditions and with such restrictions and limitations as he may think proper. Upon convictions for treason, he shall have power to suspend the sentence until the case shall be reported to the legislature at its next meeting. He shall in his annual message communicate to the legislature each such case of reprieve, commutation and pardon granted by him since his next previous annual message, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

§ 6. In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of

the term, or until the governor absent or impeached, shall return, or the disability shall cease. But when the governor, shall with the consent of the legislature, be out of the state in time of war at the head of a military force thereof, he shall still continue commander-in-chief of all the military force of the state.

§ 7. The lieutenant-governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor the lieutenant-governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing his duties, or be absent from the state, the president of the senate shall act as governor until the vacancy shall be filled or the disability shall cease.

§ 8. The lieutenant-governor shall receive six dollars for every days' attendance as president of the senate; and he shall also receive the like compensation for every twenty miles travel in going to and returning from the place of meeting of the senate in the discharge of his duties.

§ 9. The governor and lieutenant-governor or either of them shall not ex-officio or otherwise, hold any other office of trust, honor, profit or emolument under the state or the United States, or any other state of the Union, or any foreign state or government: the acceptance by the person holding the office of governor or lieutenant-governor, of any other office of trust, honor, profit or emolument under the state, or under the United States, or under any other state of the Union, or under any foreign state or government, shall vacate his said office of governor or lieutenant-governor.

§ 10. The governor may in his discretion deliver over to justice any person found in the state, who shall be charged with having committed, without the jurisdiction of the United States, any crime except treason, which by the laws of this state, if committed therein, is punishable by death, or by imprisonment in the state prison. Such delivery can only be made on the requisition of the duly authorized minister or officers of the government within the jurisdiction of which the crime shall be charged to have been committed; and upon such evidence of the guilt of the person so charged as would be necessary to justify his apprehension and commitment for trial, had the crime charged been committed in this state.

§ 11. Every provision in the constitution and laws in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by other officers or persons towards him, shall be construed to extend to the person administering for the time being the government of the state.

§ 12. The governor may, upon the application of the sheriff of any county in the state, order such a military force from any other county or counties of the state, as may be necessary to enable such sheriff to execute process delivered to him.

§ 13. The governor may remove from office any sheriff at any time within the period for which such sheriff was elected. He shall first give to such sheriff a copy of the charges against him, and an opportunity of being heard in his defence, before any removal shall be made.

§ 14. Every bill which shall have passed the Senate and Assembly, shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration two-thirds of the members present shall agree to pass the bill, it shall nevertheless become a law, be presented to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all cases, the votes of both houses shall be determined by yeas and nays, and the names voting for and against the bill

shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law. If at the next ensuing session of the legislature, the same bill shall be again passed by the vote of the majority of all the members elected in each branch of the legislature, such bill shall become a law notwithstanding the objections of the governor; but in such case also, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively.

Respectfully submitted:

RORT. H. MORRIS,
JOHN K. PORTER,
WILLIAM PENNIMAN,
SERENO CLARK,
JOHN HYDE,
CYRUS H. KINGSLEY,
DAVID S. WATERBURY.

Mr. MORRIS moved that it be laid on the table and printed; but at the suggestion of Mr. BROWN, varied his motion so as to refer the report to the committee of the whole, and to print.

Mr. W. TAYLOR desired to have more than the usual number of copies of this Article printed. He moved the printing of 600 additional copies, the usual number being 300.

Mr. MORRIS accepted the amendment, and 500 copies, and the reference to the committee of the whole, were ordered accordingly.

CHANGE OF REFERENCE.

Mr. CAMBRELING offered the following, which was adopted:

Resolved, That the committee on the currency and banking be discharged from the further consideration of so much of a resolution adopted by the Convention, referring to that committee the question of the individual liability of stockholders in moneyed corporations other than banks, and that the same be referred to the committee on corporations other than banking or municipal.

Mr. ANGEL offered the following, which was adopted, after being amended on the motion of Mr. LOOMIS:

Resolved, That committee No. 7 on the appointment or election of all officers whose functions are local, &c., be discharged from the further consideration of the resolution adopted by the Convention on the 11th inst., (Mr. Loomis') referring it to said committee "to inquire into the expediency of making constitutional provision to equalize direct taxation, and making it proportionate to the actual value of the estate of the individual taxed, regardless of the distinction between real and personal estate," and that the same be referred to the committee on the powers and duties of the legislature, except, &c.

SALE OF NON-RESIDENT LANES.

Mr. HYDE offered the following, and it was adopted after a few words from Mr. WORDEN and Mr. TALLMADGE:

Resolved, That the committee on the powers and duties of the legislature, except, &c., be instructed to inquire into the expediency of providing in the constitution that non-resident lands which are sold for taxes be sold in the counties in which they belong.

EMISSION OF BILLS OF CREDIT.

Mr. KENNEDY offered the following, which was adopted:

Resolved, That it be referred to the committee on the currency and banking to inquire whether the 10th section of the 1st article of the constitution of the U. S., by providing that no state shall emit bills of credit, does not thereby prohibit a state from creating corporations empowered to do that which said state cannot do under said provision.

ARREST OF FUGITIVES FROM SERVITUDE.

Mr. RHOADES offered the following, and it was adopted:

Resolved, That it be referred to the committee on the powers and duties of the legislature to inquire into the expediency of so amending the constitution as to require the passage of laws prohibiting any officer connected with the administration of justice in this state from aiding in the arrest or detention of any person claimed as a fugitive from slavery or involuntary service.

MAYORALTY OF NEW-YORK.

Mr. CORNELL offered the following, which was adopted:

Resolved, That it be referred to the committee on the organization and powers of cities, &c., to inquire into the expediency of permitting the city of New-York to lengthen the official term of the Mayor thereof to two years.

DISABILITY OF DUELISTS.

Mr. KENNEDY offered the following, and it was adopted:

Resolved, That it be referred to the 11th standing committee to inquire into the expediency of incorporating a clause into the constitution providing for the civil disability of all persons who shall hereafter be engaged, directly or indirectly, in a duel, as principal or accessory before the fact.

LEGAL REFORMS.

Mr. WHITE offered the following —

Resolved, That it be referred to the committee on the judiciary to inquire into the expediency of providing in the constitution for a systematic and thorough reform of courts of law and equity—for a simplification and reduction of the antiquated, artificial and ponderous forms of legal and equitable proceedings—and ultimately for the enactment and codification of the vast mass of unwritten law and equity—in order that the people may know the legal and equitable rules by which they must be governed—that litigation may be diminished, and justice more promptly administered: And also for the extension of the right of trial by jury to all practicable cases.

Mr. NICOLL said that while some portions of that resolution might be properly sent to the judiciary committee, there were other portions that seemed to him to require a select committee—he alluded to that part which spoke of the codification of the laws. This he thought was as important as any thing which had as yet been submitted to the Convention, and he hoped the mover of the resolution would so modify it as to permit it to go to a select committee, for, in addition to the reason already assigned, the judiciary committee had now before it a greater amount of business than it could conveniently get through in the short time it would have at its disposal.

Mr. WHITE said if the judiciary committee was so oppressed with business he would have no objection to modify his motion.

Mr. RUGGLES said the judiciary committee had now business before them that would occupy all their time for a considerable number of days. He, therefore, concurred in the motion of the gentleman from New-York (Mr. NICOLL) to refer it to a select committee. He was inclined to think a majority of the judiciary committee wished to have it take that course.

Mr. WHITE had no objections.

Mr. STOW desired to say a word or two before it was disposed of. A day or two since he offered a resolution instructing the judiciary committee to inquire into the expediency of providing for a board of law commissioners to

revise the practice, proceedings and pleadings of our courts, and it seemed to him that to refer the resolution to a special committee after his resolution had been committed to the judiciary committee would be an inconsistency. He wished this resolution to be sent to the committee to which it appeared to him naturally and properly to belong, for it had reference to the organization of our courts.

Mr. STEPHENS, with all respect to the honorable chairman of the judiciary committee (Mr. RUGGLES,) while he did not wish to impose on the judiciary committee greater burthens than they could conveniently bear, must be permitted to say that he thought this subject was legitimately the business of the judiciary committee. Suggestions had already been made in the committee on the judiciary and a course of action contemplated, which, if this were referred to a select committee, might occasion a collision between them. Although the reference might to some extent burthen the judiciary committee, it came so directly within their duties, that he hoped it would take that direction.

Mr. WARD had examined the resolution and he agreed with the gentleman from New-York (Mr. STEPHENS,) that it did belong to the judiciary committee. If it were sent to a select committee its report might interfere with that of the judiciary committee, which it was desirable to avoid. There was much good sense in the suggestions which this resolution contained, and he had no doubt if this Convention should fail to apply a remedy to the evils alluded to, that the legislature to be elected under the new constitution, if it should be confirmed by the people, would do so. He hoped it would go to the judiciary committee, though he thought some portion of the resolution belonged to the legislature.

Mr. NICOLL said undoubtedly part of it belonged to the judiciary committee, but there could be no difficulty or collision, inasmuch as the special committee could hold a conference with the committee on the judiciary in relation to it and reconcile their differences. He was desirous that it should go to a select committee because the resolution went far beyond the duty of the judiciary committee. The judiciary committee contemplated the administration of the laws, whereas the resolution looked to the laws themselves. This was a subject which required the services of a separate committee, and he hoped the Convention would deem it of sufficient importance to justify such a reference.

Mr. JORDAN said this resolution seemed to embrace various objects, all important unquestionably. As to a part its subject matter, it was already referred to the judiciary committee, and he was inclined to the opinion that that was the correct committee to examine the subject. But there was another part of equal, and of far greater importance if possible; and he concurred with the gentleman from New York (Mr. NICOLL,) in saying that it should go to a select committee. He referred to that portion of the resolution which contemplated an examination of the subject of a codification of the laws. That was a subject of vast importance and magnitude. It would be a tremendous work if undertaken, and to perform it properly, would

require much time, and the best talent of the state. He enquired therefore if it would be competent to move the reference of the resolution to the judiciary committee, except so much as related to a codification of the laws, which should go to a select committee.

The PRESIDENT replied that such a motion was in order.

Mr. JORDAN then made that motion.

Mr. RHOADES said it would be advisable not to send subjects to different committees, so as to create embarrassment either to the committees or the Convention; but with respect to this resolution, there was a diversity of opinion as to the reference that should be given to it. He therefore moved that the resolution be laid on the table, and printed, which would give gentlemen an opportunity to reflect on the subject.

Mr. WHITE assented, and the resolution was laid on the table and ordered to be printed.

A DECLARATION OF PRINCIPLES.

Mr. CORNELL offered the following resolution, which was adopted:

Resolved, That it be referred to the committee on the rights and privileges of citizens, &c., to inquire into the expediency of embodying in the constitution, a clear and succinct statement or declaration of principles as to the origin and grounds of government in this state.

ELECTION OF JURORS, JUDGES, &c

Mr. HUNT offered the following, which he read in his place:

Resolved, That the judiciary committee be directed to inquire into the expediency of a subdivision of the several wards and townships of the state into tithings or jury districts, each to contain about ten citizens competent to the performance of jury duty, who shall annualy, or as often as a vacancy may occur, elect one of their number to the office of jurymen.—The expediency of prohibiting any person not thus elected from filling the office of juror—and the expediency of conferring on the jurymen thus chosen the exclusive power of electing justices of the peace, and all state, circuit and local judges.

Mr. HUNT:—I desire to accompany my motion with a few remarks; if it were only to ask pardon of the judiciary committee for adding another to the many schemes and suggestions before them. They will perceive, however, that what I propose is no new scheme, but one that was tried by our Saxon ancestors, for ages, and found to work well—too well, indeed, to suit the Norman aristocracy, who adroitly managed to magnify the powers of judges of their appointment, and to prevent the people from appointing their best and wisest men to represent them in the jury-box, as they had been accustomed to do from the time of Alfred. That aristocracy so amended the jury system as to make it, in most cases of importance, where their special interests were at stake, little else than an automaton, a scape goat, “a screen behind which the judges could skulk from responsibility.” They preserved the forms of jury trial, so far as those forms could be used to lend a sanction to their oppressions; but they perverted the spirit of that admirable democratic institution by a judicious ultraism—a violent regard for equal rights—which led them to throw open the jury-box to every body; and which, of course, enabled them to pack it, when necessary, with their own instruments and retainers. I would by no means assert that the general char-

acter of juries, under our present system of selecting them, is bad. I suppose the contrary to be the fact. Yet very many of our courts are haunted, day after day, by dissolute loungers, waiting a chance to obtain a shilling by getting on a jury, whose integrity and judgment no man can confide in, and who are utterly unfit to decide either the law or the facts of any case—men whose governing motive, in making up their verdict, often may be nothing higher than a hope, by humoring the judge, to “place themselves in the line of succession” for another case and another shilling. Now, the admission of such men to the jury-box, tends to degrade the democratic element of our judiciary, precisely as the extension of the elective franchise to an inferior, barbarian, or servile race, would degrade those who might exercise it in common with them, and impair its value. I am aware that some may consider this language anti-democratic. But I think differently. While democracy is opposed to all false and aristocratic distinctions, it recognizes all distinctions that are real, and that exist in the nature of things. If I must, in order to entitle myself to the name of democrat, disregard the distinctions between civilized and savage, black and white, drunk and sober, cheats and honest men, then I am no democrat, “and will, by God’s help, continue so until my life’s end.” Although I never served on a jury, nor hardly ever entered a court-house in my life, I suppose our present mode of selecting “the judges of all fact, and of law, when they choose it,” (as Jefferson describes them,) is this: In ordinary cases, they are raffled into office; but when a rich murderer, or skilful swindler is to be cleared, then the system of challenging regular jurors, and bringing in the right sort of talesmen is resorted to. Now if this is the right mode of appointing our judges of the law and the facts, why not fill the bench in the same way? I consider it our duty to veto all this. I consider the office of jurymen as one of the highest trusts that can be conferred upon any man, and would have it filled by the very best men in the state. To ensure this result, I propose the system of electing jurors, which was adopted by our Saxon ancestors, and advocated by Jefferson. I advocate their system, because I know of no better one, and cannot myself devise any other so good.

Should we succeed in filling our jury benches with men who are fully qualified to sit there, the legislature might with great propriety reduce the number now required to try a cause, and thus lighten the present tax on jurymen’s time and patience. Business men, when they submit a dispute to arbitration, generally find three arbiters sufficient; and I see no reason why more than twice that number of jurors should be required, unless in cases of great difficulty or importance. I would respect the just rights of all litigants, but at the same time remember that men who are not litigants have rights also, and ought not to be dragged from their own business by dozens to settle other people’s quarrels, when half a dozen would answer all the ends of justice. It would also be but just to increase the pay of jurors to say \$1 a day, or 10 cts an hour. A man whose time is not worth that, is not fit for the office; and when government takes any man’s

time or other property by force without payment, it sets a most pernicious example to thieves. I would not have consumed the time of the Convention with these remarks, if I did not deem it possible that some plan like that I advocate, when properly prepared by our judiciary committee, might obtain the sanction of this body. The whigs and conservatives—those at least who are not of the Norman stock—should approve it out of respect to Woden and the good King Alfred: the democrats, because it is endorsed by Jefferson, the Confucius of the new world. My main reason, however for the hope just expressed, lies in the strong objections which exist against the appointment of judges by the present mode, and the scarcely inferior objections to their election by the people direct. But should we entrust the selection of judges, (as I hope we may,) to our chosen jurors—to the men who have the best opportunity to know personally the character and fitness of candidates—to the picked men of the whole people—then our judges, while strictly amenable to the intelligence and integrity of the community, would have no inducement to sacrifice justice at the shrine of popular prejudice and ignorance; the bench would be beyond the reach of party and of aristocratic influence, and exempt from the carelessness and corruption always induced by the absence of responsibility to the people. And while the reform proposed would tend thus strongly to secure an able, industrious and impartial bench, its effects would be still more elevating upon the jury itself. It would render it impossible for even the most dexterous pettifogger about our courts to obtain a corrupt or incompetent jury in the whole state. It would not only restore to our jurors their ancient powers and their legitimate rights and dignity, but it would tend to render them worthy of those honors—worthy of their trust. I have ventured to obtrude these views, because I think they deserve the consideration of this Convention. Most that has hitherto been said here relates to the superstructure of our judiciary: I would therefore direct attention to its foundation; believing that if we can only perfect that, the superstructure will almost grow up of itself, and prove a refuge and a sanctuary to generations yet unborn. One word as to the cost and trouble of electing jurors. Were it made the duty of the assessors to divide their respective towns and wards into tithings—to appoint an inspector or overseer to each titling—and to give him on or before the last Monday of every year a written designation of its boundaries and inhabitants subject to jury duty;—were such inspector required to convene his little district on the first Monday of each year, and whenever a vacancy should occur, for the purpose of electing a jurymen out of their number, and then to receive and canvass the votes and send the name of the jurymen chosen to the town clerk, or whatever officer might be directed to keep the jury list—were the performance of these simple duties to be enforced by adequate penalties, nothing more would be required.

Mr. STRONG remarked that the proposition here was very novel indeed. He wished to hear it read again; for if it was of a copy with the speech, he wanted to understand it.

The resolution was read again by the Secretary.

Mr. STRONG went on to say that it appeared to him the gentleman was just about a century behind the age. It reminded him forcibly of what he heard related, coming down in the cars to this convention. A member was about starting for the convention when he was accosted by a neighbor, a farmer, who said to him, "You're going down to make a new constitution, are you?" "Yes." "Well, I want you to put into the constitution a provision in relation to partition fences, for I've a very bad neighbor, and I want the question settled." Now, this would be about as good. But as this was only a matter of reference, it didn't make much difference. He should not object to the reference.

Mr. STEVENS did not know that he comprehended fully the precise subject matter of the enquiry; but he listened with interest to the article the gentleman had just read—and he rose

to say that it would oblige him if the gentleman would refer his speech or report, with his resolution. It presented considerations which had not suggested themselves to his mind, on hearing the resolution read.

Mr. BASCOM suggested a difficulty. One part of it only should go to the judiciary committee.

Mr. HUNT asked if the judiciary committee did not intend to recommend electing judges? That was what he proposed—electing judges as well as jurymen.

The resolution was referred to the judiciary committee.

Mr. CHATFIELD asked a further leave of absence for Judge NELSON of one week, which was granted.

Mr. BROWN, believing that the Convention could employ themselves more usefully on committees than in convention, moved an adjournment.

Adj. to 11 o'clock to-morrow morning.

THURSDAY, JUNE 18.

Prayer by the Rev. W. H. CAMPBELL.

ELECTION DISTRICTS OF NEW-YORK CITY.

Mr. BAKER presented returns from the county clerk of the city and county of New-York, in answer to a resolution which he recently offered, calling for a statement of the separate population of each election district, together with a description of such districts by boundaries.

COMMON SCHOOLS.

The PRESIDENT presented to the Convention a preamble and resolutions which had been adopted by a convention of the county superintendents of common schools, &c., and transmitted to him to lay before the Convention.

Mr. WARD moved a reference to the 12th standing committee, which was agreed to.

MILITARY SERVICE OF QUAKERS.

Mr. C. O'CONOR presented a memorial which had been adopted by the Society of Friends at their annual meeting, held in the city of New-York in the month of May last. He said it had been entrusted to him, together with printed copies for the use of the members of the Convention, with a request that he would move its reference to an appropriate committee. The object contemplated was to relieve the religious body from which it came, from certain grievances, of which they complain they labor under in relation to military service. He now therefore presented the memorial and moved its reference to the committee on military affairs.—The motion was agreed to.

RETURNS FROM COURTS.

Returns in answer to a resolution of the convention were received from James Conner, esq., clerk of the city and county of New-York, furnishing information in relation to causes docketed, damages and costs, &c., which, after a brief conversation on the subject of printing, in which Mr. SHEPARD, Mr. KIRKLAND, and Mr. JORDAN participated, was referred to the committee of five.

TAXATION OF PERSONAL ESTATE.

Mr. RUGGLES stated that on Saturday last he moved a resolution in relation to the taxation of personal estate, which was referred to the 15th standing committee, on his motion, because to that committee had been referred a resolution on a kindred subject. Since that time, however, the resolution of the gentleman from Herkimer, to which he referred, had been taken from the 15th and transferred to the second standing committee, on the powers and duties of the legislature, and therefore he moved that his own resolution take the same direction.

The change of reference was made accordingly.

NEW RULE.

Mr. TALLMADGE offered the following which was adopted:

Resolved, That a motion to strike out and insert, shall be one motion, and indivisible.

SCHOOL FUNDS, &c.

Mr. NICOLL offered the following resolution, which was adopted:

Resolved, That the Comptroller be requested to furnish for the use of the Convention, a statement showing—

1. The amount of the school fund, the character of the investment, and the amount of money paid into the Treasury and not invested; also, a brief history of the changes made in the investment of the capital, with a reference to the laws under which they were made, and the effect of those changes on the security or productiveness of the fund.

2. The same particulars in relation to the Literature Fund

3. A statement of the present condition of the U. S. Deposit Fund, giving all the losses of capital and specifying the counties in which the same have occurred; also the amount of revenue derived annually from the fund, and the manner in which it is appropriated by existing laws; and showing the terms on which these moneys were deposited in the state treasury.

CANALS, FINANCES, &c.

Mr. TILDEN, from the committee on canals, offered the following resolution, and it was adopted.

Resolved, That the Comptroller be requested to furnish for the use of the Convention, the following statements—

1. A statement of the debt of the state, and the payments thereon, as exhibited in Table F, of Assembly Document No 61, of 1842, brought down to June 1, 1846

2. A statement of the direct debt of the canals, showing in the order of time, the periods at which the principal becomes payable; the works for which it was contracted; the times at which the scrip was issued; the rate of interest thereon; and showing the principal sum, the interest in each year on the whole debt, and the interest and principal payable in each year, on the supposition that the debt be paid as fast as it becomes payable.

3. A like statement of the debt created in aid of incorporated companies.

4. A like statement of the General Fund debt, assuming the Astor stock, and the Indian annuities to be paid in ten years.

5. A like statement of the whole debt united.

6. An account showing in each year, from 1817 inclusive; the amount of the salt tax, auction tax, steamboat tax, and land sales—so far as such lands were not donations to the Canal Fund—received into the Canal Fund; and also any payments by the General Fund to supply deficits in the revenues of the lateral canals, and the present aggregate amount thereof, calculated on the principle of a yearly rent, with interest compounded at five per cent, deducting from time to time, sums paid by the Canal Fund into the treasury and used by the General Fund.

7. A like account, computing only simple interest on the moneys advanced, making a rest only when the Canal Fund in effect made a payment absorbing the payment for interest as soon as may be, but calculating no interest on interest.

8. The revenue of the Erie and Champlain canals for each year, and their expenses for repairs, superintendence and collection; and their net revenue.

9. The revenues of all the canals, taken as a system, for each year; the expenses of each of them, and all of them collectively, and their net revenue.

10. The current expenses of the state for each year, beginning as early as 1817, exclusive of payments for the lateral canals; specifying any sums paid for interest, and showing what the annual expenses would have been if the General Fund had been supplied with ready means, and been subject to no debt; and also showing the yearly charge by reason of any General Fund debt.

11. An estimate of the probable revenues of the General Fund under existing laws, and any information he may deem proper to aid in forming a correct opinion on that subject; and as to probable current expenses of the government, chargeable on that fund.

MILITARY DUTY—EXEMPTION.

Mr. BASCOM offered the following resolution which was adopted:

Resolved, That the committee on military affairs enquire into the propriety and expediency of exempting all persons from the performance of military duty, who shall certify in writing to the military commandant, that they have conscientious objections to engaging in war.

THE JUDICIARY.

Mr. BASCOM offered the following:

Resolved, That the judiciary committee enquire into the expediency of further continuing a judiciary system that provides tribunals of limited local and infe-

rior jurisdiction for one class of suitors, and those of general unlimited and superior jurisdiction for other classes, involving the necessity of appeals from court to court, to procure final decisions:—And further, That the said committee enquire into the practicability and expediency of so changing the character, jurisdiction and powers of the justices' courts as to make them courts of conciliation.

Mr. B. said he hoped he should be charged with no disrespect to the committee on the judiciary for offering the resolution, for he had offered it more for the purpose of eliciting the ideas of others, than of giving utterance to any opinions of his own. There were gentlemen whose minds had been brought to bear on this subject, and he hoped the result would be the adoption of some proposition by which the object contemplated might be attained.

The resolution was referred.

CHANCERY SALES.

Mr. TAGGART offered the following resolution:

Resolved, That the Secretaries of the Convention address to the Register, Assistant Register and Clerks of the Court of Chancery respectfully the following inquiries:—

1st. How many applications for the sale of infants' real estate were made in such court during the year 1845?

2d. What was the aggregate value of the property of infants sold by order of the court during said year 1845 and what was the value of such property in each case respectively?

3d. What was the aggregate amount of costs taxed and allowed for conducting such sales?

4th. What is the whole amount of moneys now invested for the use of infants in said court?

5th. The commissions retained by the Register, Assistant Register and Clerks respectively from the proceeds of the sale of infant's estate?

Mr. WORDEN suggested the amendment to embrace the commissions of the Registers in Chancery on the produce of the sales of the estates of infants.

Mr. BROWN, Mr. SHEPARD and others also suggested amendments; and that they might be all embodied Mr. TAGGART withdrew the resolution.

PERIODICAL REVISIONS OF THE CONSTITUTION.

Mr. MANN offered the following, which was agreed to:—

Resolved, That it be referred to the committee on future amendments and revisions of the constitution, to consider the propriety of amending the constitution so as to submit to the electors of this state, at a general election periodically, or every — years, whether they, the people, will call a convention to revise the constitution, or not.

Leave of absence for 8 days was granted to Mr. CROOKER.

The Convention then adjourned to 11 o'clock to-morrow morning.

FRIDAY, JUNE 19.

Prayer by the Rev. W. H. CAMPBELL.

EXPENSE OF REGISTRATION.

The PRESIDENT laid before the Convention a statement of expenses incurred in the registration of voters in the city and county of New York, which had been received in answer to a resolution of the Convention.

Mr. KENNEDY moved its reference to the

committee on the elective franchise, and that it be printed, which was agreed to.

RETURNS FROM COURTS.

The PRESIDENT also laid before the Convention a report from the Comptroller in answer to a resolution of the Convention, setting forth certain expenses of the several courts of law

and equity, which being itself an abstract, was referred to the committee on the judiciary.

BOARDS OF SUPERVISORS.

Mr. FORSYTH offered the following, which was adopted:—

Resolved, That it be referred to the 16th standing committee to enquire into the expediency of conferring upon the boards of supervisors of the several counties of this state by constitutional provision, the power of legislation with respect to the location, erection, and maintenance of public buildings, bridges, and highways; the erection and division of towns; the election, number, term of office and compensation of all town officers, police courts and courts of special sessions; the power of raising money by tax upon real and personal property; and generally with respect to all other matters of a purely local nature.

AFFAIRS OF PRIVATE CORPORATIONS.

Mr. RUGGLES offered the following, which was adopted:—

Resolved, That it be referred to the 17th standing committee to enquire into the expediency of establishing some power or authority by which the stockholders or creditors of banking and other private corporations may, by summary examination under oath of all officers and agents of such corporations, enquire into, discover, and publish the situation and condition of their affairs in all respects, and the particulars of the management and conduct of the officers and agents of the corporation in relation to its affairs.

RECEIVING AND DISBURSING PUBLIC MONEY.

Mr. MANN offered the following, which was adopted:—

Resolved, That it be referred to committee No. 3, to take into consideration the propriety and expediency of reporting an amendment to the constitution requiring all receiving and disbursing officers of the state government not to receive, keep, and disburse the funds of the state without the intervention or agency of banking institutions or moneyed corporations, and separating the state finances from the power, control, and agency of all moneyed corporations.

Leave of absence was granted to Mr. J. J. TAYLOR for three days.

SPECIAL PRIVILEGES, &c.

Mr. St. JOHN offered the following, which was adopted:—

Resolved, That it be referred to the 11th standing committee to consider and report as to the propriety of prohibiting the legislature from granting any privileges or exemptions to any citizens beyond those of other citizens and from granting to any association of individuals or body corporate any privileges or exemptions which are denied to other citizens—except such privileges and exemptions as are expressly provided for in the constitution.

THE CODIFICATION OF THE LAW, &c.

Mr. WHITE called up his resolution, offered on Wednesday, for consideration and reference, and it was taken up.

The resolution directs an enquiry into the expediency of a thorough reform of the courts of law and equity, and of its antiquated and cumbersome forms. Also, of a codification of unwritten law and equity, and an extension of the right of trial by jury—published heretofore.

Mr. WHITE moved to divide the enquiry, so as to refer the former portion to the judiciary committee, and the latter to a select committee of seven; which was agreed to.

Mr. CHATFIELD here moved an adjournment.

COUNTY LINES, &c.

Mr. STOW (the motion being waived) offered the following, which was adopted:—

Resolved, That the committee on the powers and

duties of the legislature, be instructed to inquire into the expediency of providing in the Constitution, that before any law erecting a new county shall take effect, the location of the public buildings shall be designated, and then it shall be submitted to the electors within the limits of the proposed county to determine, by a majority of the votes given, whether such county shall be established or not: And whether any law annexing part of one county to another, ought not to be restrained from taking effect, until the electors residing within the limits of the district so to be annexed, shall have determined in its favor.

CANAL CONTRACTORS—DAMAGES, &c.

Mr. JORDAN offered the following, which was adopted:—

Resolved, That the Comptroller be requested to report to this Convention the amount of all monies paid to contractors with the state for the enlargement or construction of public works—as damages for the violation or rescission of contracts on the part of the state: And also, all claims of a similar character against the state, so far as he may have it in his power to ascertain the same.

PLAN FOR A JUDICIARY SYSTEM.

Mr. HARRISON presented a plan for a judiciary system, which he said had been sent to him from New-York, by a gentleman of much experience in courts of law, and well known in the state. He was told that it was a paper of some merit, and he would ask its reference to the judiciary committee. [A voice: "Whose is it?"] Mr. H. was understood to say it was drawn by Mr. Clark of New-York.

The paper was so referred.

ROYAL GRANTS.

Mr. MURPHY offered the following:—

Resolved, That it be referred to the following committees respectively to enquire into the expediency of striking out of the constitution, as useless and unnecessary, and liable to popular misconstruction—as follows:—

First, to the committee on the creation and division of estates in lands—so much of the constitution as declares that nothing contained therein shall affect any grants of land within this state made by authority of the King of Great Britain or his predecessors, before the 14th day of October 1775, or affect any such grants since made by this state, or by persons acting under its authority.

2. To the committee on the organization of cities and villages, so much as declares that nothing contained therein shall annul any charters to bodies politic or corporate by the said King or his predecessors, made before the said day, or shall affect any such charters since made by this state, or by persons acting under its authority.

Mr. MURPHY said it might be proper, in order to prevent misapprehension as to his object, that he should state that in offering this resolution he had no desire or wish to interfere with the rights of property, whether that property be in lands or franchises in the nature of private property. If these provisions were struck out of the constitution, there would still remain a provision that nothing contained in the instrument should affect or impair the obligation of contracts, or the rights of property, which would probably serve all the purposes for which these provisions were originally introduced. But the object for which he proposed the resolution was to prevent a very common error in this community—an extensive error—that there was something in charters granted before the formation of the constitution, so very sacred, that they might not be touched, whilst charters granted since might be touched. The charters of the city of Buffalo or Brooklyn might be altered or repealed by the legislature; but the very moment you

touched the ancient city of Albany, whose charter was granted in 1686 by a Royal Governor, then you were touching something sacred! Now, he did not speak of an imaginary case here—for we had evidence every day of the truth of what he said. The charter of the city of Albany conferred on the Mayor of the city the exclusive power to grant licenses to tavern-keepers. So he was informed. If in error, the gentleman from Albany (Mr. HARRIS) would correct him. And Mr. M. understood that the Mayor of Albany, notwithstanding the supreme power of the state and the people of Albany together had united in saying that no licenses should be granted, persevered in granting licenses.—Mr. M., desired not to be misunderstood in regard to the cause of temperance. He did hold, however, that that great cause was more likely to be injured than benefitted by any attempts to enforce obedience to a sumptuary law, as he regarded that law. He only referred to the case for illustration. If it was a fair illustration, the law should be obeyed in Albany as well as Buffalo. He held that all public power was held in trust for public purposes. And he did not want the error to prevail, as it did in this community and in high places, that the charter of this city was now protected by the constitution from the exercise of the sovereign power. As regarded the form of the resolution, a part of it referred to the committee of which he was chairman. Properly, perhaps, that did not belong, under the organization of the committees, to that committee. In order however that the subject might be before some committee, he moved its reference. But it was perfectly immaterial whether it went there or to the committee on the rights and privileges of citizens.

Mr. JORDAN considered this a pretty important resolution in its principles—and he rose to move to lay it on the table for the present—so that in some form or other, an expression might be had on it here before it was referred to any committee. It was a matter of very great question whether under the treaty of '83 between the British and American people, we were at liberty to legislate in any way, either constitutionally or otherwise, so as to affect vested rights which existed prior to the revolution. He was not disposed then to go into any exposition of his views. He only rose to move to lay on the table, that we might turn our attention to the subject before it went to a committee. For it was important, whatever committee had it, that they might know whether there was any basis for action under the resolution.

By consent of the mover, the resolution was laid on the table.

APPRAISAL OF PRIVATE PROPERTY TAKEN FOR PUBLIC PURPOSES.

Mr. STOW offered the following:—

Resolved, That the committee on personal rights be instructed to enquire into the expediency of providing the means by which the value of private property shall be ascertained, when taken for public purposes.

Mr. STOW had observed that the committee on the rights of citizens, had a vast number of subjects referred to them; but he hoped the Convention and the committee would pardon him for expressing an earnest desire that they

would examine and see if the Constitution was sufficiently guarded in reference to private property. Now, private property could not be taken for public purposes, without just compensation. But, under the determinations of the courts, by which we were bound, no matter what our private opinions might be, the legislature might, in their discretion, provide tribunals by which that compensation might be ascertained. It must be obvious to all, without comment or argument, that the security of private property was left entirely at the mercy of the legislature. For, if the party taking the property can provide his own tribunal, we might as well allow him to take it without any tribunal. This operated severely in localities—in cities particularly—for, under several of our city charters, the common council appointed its own appraisers.

The resolution was adopted.

PARDONS.

Mr. SHEPARD offered the following, which was adopted:—

Resolved:—That the Governor be, and hereby is requested to furnish to this Convention:

1. The number of applications for pardon for criminal offences, made during the year 1845.
2. The number of pardons granted on such applications during said year.

SECURITY FOR COSTS, &c.

Mr. NELLIS moved the following, which was adopted:

Resolved, That the committee on the judiciary be directed to enquire into the expediency of making some constitutional provision, whereby a party on commencing an action at law or in equity, or in removing any cause or suit at law or in equity to a higher court or tribunal than the one in which it was commenced, shall be required to give security for the payment of all costs he or she may be liable to pay to the opposite party, and also to give either party on the trial of any cause or matter, the right of calling on the opposite party as a witness, and having the benefit of his or her testimony.

Mr. CHATFIELD now renewed his motion to adjourn. He was satisfied that nine-tenths of these resolutions were more proper subjects for a legislative body than for a convention—and that we should spend our time more profitably in committee than here.

Mr. TALLMADGE urged that the convention should not now adjourn—but yielded the floor, under an intimation that the motion was not debatable.

The motion to adjourn was lost.

Mr. TALLMADGE then suggested why he would continue this business—and that was that the committees might have before them all matters that gentlemen might desire to lay before them, before making their reports—in order that they might embrace all of them when they did report.

Mr. CHATFIELD enquired of the gentleman whether he believed one twentieth of these resolutions would ever be considered by the committees?

Mr. TALLMADGE: Every one of them are considered by our committee.

Mr. CHATFIELD: Does the gentleman believe that one twentieth of them are subjects for the consideration of a convention?

Mr. TALLMADGE: They are all to be considered, with reference to that point at least.—

His committee had three sessions a day—one from 9 to 11, another after adjournment until the dinner hour, and another in the evening.—And every resolution sent to them was considered and disposed of by a vote of the committee.

ARRANGEMENT OF THE NEW CONSTITUTION.

Mr. BRAYTON offered the following resolution:

Resolved, That a committee of seven be appointed, whose duty it shall be to examine into and report upon the following subjects—

1. The arrangement of the several articles and sections of the Constitution as amended and adopted.
2. The manner and form in which the Constitution as amended and adopted shall be submitted to the people of this state for their adoption or rejection.
3. The publication of the amendments, or of the Constitution as amended.
4. The form of the notice of the election.
5. The form of the ballot.

Mr. MARVIN said it struck him as quite too early to raise such a committee. Better wait until we had come to some conclusion on the propositions that might be submitted. He suggested, though the resolution would be very proper in its time, that some weeks must elapse be-

fore it would be necessary to raise such a committee.

Mr. B. assented, and the resolution lies on the table.

ABRIDGING LEGISLATIVE SESSIONS.

Mr. CANDEE moved the following, which was adopted:—

Resolved, That it be referred to the 2d standing committee to enquire into the expediency of restricting the annual sessions of the Legislature of the State to a term not exceeding 90 days; and whenever the Legislature shall continue in session beyond the time above specified, they shall do so without compensation, except in cases of extreme emergency, in which cases the Governor may have the power to determine.

SECURITY OF PRIVATE PROPERTY.

Mr. RICHMOND offered the following which was adopted:—

Resolved, That the committee on the rights and privileges of citizens inquire into and report upon the propriety of so framing the constitution as to prohibit hereafter the taking of private property for the benefit of corporations or individuals.

On motion of Mr. BROWN, the Convention then

Adj. to 11 o'clock to-morrow morning.

SATURDAY, JUNE 20.

Prayer by the Rev. W. H. CAMPBELL.

RETURNS FROM CHANCERY.

The PRESIDENT laid before the Convention returns from the Register in Chancery, John M. Davison, as to the number of bills filed in that office and the number of causes on the calendar, in the years 1844 and 1845, which on motion of Mr. CHATFIELD was referred to the committee on the judiciary.

EQUALITY OF TAXATION.

Mr. MORRIS offered the following which was referred to the committee on the rights and privileges of the citizens of this state:—

§. No citizen can by any means be compelled to contribute to any gift, aid, loan, tax or imposition or other like charge, which is not imposed on and required of all other citizens irrespective of class, calling or occupation.

LOCAL TAXATION.

Mr. MORRIS submitted the following which he wished should be sent to the fourteenth committee on the organization and powers of cities and incorporated villages, and especially their power of taxation, assessment, borrowing money, contracting debt, and loaning their credit.

§. Personal property used or invested in trade, business or occupation, shall be assessed in the town or ward where such trade, business or occupation is conducted.

Mr. TAGGART was of opinion that the proposition more properly belonged to the fifteenth standing committee—whose duties affect the power of counties, towns, and other municipal corporations, except cities and incorporated villages, and especially their power of local legislation, taxation, assessment, borrowing money, and collecting debts.

Mr. MORRIS said he had no choice as to the committee; he only desired that it should be referred.

Mr. MURPHY said he should not object to

the reference, although he understood it as intended to affect the city from whence he came. It was, however, an interesting question, and should be well considered, but he hoped it would not go to the committee of which he was a member, (the 14th.)

Mr. MORRIS begged the gentleman's pardon; he did not know what committee that gentleman was on, and he had accepted the suggestion to send it to the 15th standing committee before he ascertained that the gentleman from Kings was at the head of the 14th. The gentleman from Kings was right—this was an important subject; and in respect to it he would use the figure of speech, or reference, which that gentleman favored them with yesterday, when he cited Albany as an illustration. Now, Albany might happen to have a business done in the lower part of the city, and the gentlemen doing such business there might live over in Greenbush, and therefore pay nothing for the use of lamps, docks, streets, &c., in Albany. There was, however, no disposition on his part to tax the property in Greenbush. It was only intended that the property used in Albany should be there taxed, and not the property that might be over the river—that such property as was used in Albany should contribute to the support of those laws by which it was protected, leaving persons to be taxed in Greenbush for all property that might be used there. He accepted the suggestion to send this to the 15th standing committee.

Mr. STETSON desired to know if the gentleman from New-York intended to include the property that might be in Albany on commission, and thereby make the whole country contribute to the taxation of the city?

Mr. MORRIS said that would be a subject for the consideration of the committee, and might be a good reason for reporting against it.

Mr. BROWN said, to him it was apparent

the subject matter of this proposition did not belong to the fourteenth committee; but rather to the third, on canals, internal improvements, &c.

Mr. MORRIS said he had no objection to the reference to the 3d standing committee, which was probably as good or better than the others that had been named.

Mr. RICHMOND said gentlemen would discover, if they would look a little into the matter, that committee number three had nothing whatever to do with it. [Laughter.] It could not by any possibility be made to assume a shape to lead to such a conclusion as that. Standing committee No. three had committed to it the subject of canals, internal improvements, public revenue and property, public debt and the powers and duties of the legislature in reference thereto, &c. As then this proposition did not belong to the third, what were the powers and duties of committee No. two? The powers and duties of the legislature, except as to matters otherwise referred. Now this was a matter connected with the taxation of property and where it was to be taxed, whether in Albany or Greenbush, New York or Brooklyn. As heretofore had been the practice, this was the subject of legislation, and the gentleman's proposition was of a general character. It did not specify New York and Brooklyn, Albany and Greenbush; it was a simple proposition that personal property should be taxed where the business is done, where the property is used, or the capital employed, and not where the owner resides. Now this might occur in every county; and hence this subject belonged properly to the committee No. two.

Mr. MURPHY concurred in the views of the last speaker in relation to the reference of this proposition. It no more belonged to the third than to the 14th or the 15th standing committee. It was a matter of general interest, whereas to these three committees were referred particular matters. Committee No. two would probably embrace the subject, though really it was a subject of legislation, and did not belong to this body at all. They might, however, as well have it considered now. It was a proposition to change the uniform common law principle, which provided for the taxation of property at the domicile of the owner. He hoped it would be sent to a committee who would give it a calm consideration. It would not be the first time that attempts had been made to change our legislation, so that Brooklyn might be made a black sheep or scapegoat for the benefit of New-York.

Mr. STETSON did not desire to change the reference to number two, though the latter part of the subdivision—"except as to matters otherwise referred"—would seem to imply that every other committee should be first tried. He expressed the hope that committee number two might be relieved from the consideration of the subject, intimating that he was unfavorable to the proposition.

Mr. CHATFIELD desired to see some disposition made of this torpedo, which every committee seemed unwilling to touch. Some three or four had been already mentioned, and all had protested against the reference. He moved that it be referred to a select committee, and at the same time protested against being a member of it. [Laughter.]

Mr. LOOMIS concurred with the gentleman from Otsego that it was a proper subject for a select committee. On looking over the list of committees, there appeared to him to be no one within whose powers and duties it would come, more than another, especially after the expression of opinion of the gentleman from Clinton, (Mr. STETSON,) who was at the head of committee No. two—his impressions being unfavorable to the views of the mover of the proposition.—He knew nothing of the relative position of N. York and Brooklyn, but he desired to say that he saw no good reason for the distinction between real and personal property for the purposes of taxation. They were both property, and both produced profit to the owner; and while real estate was taxed where it was located, he saw no reason why personal property should not also be taxed where it was located and used. Either real estate should be brought under the rule applicable to personal estate, or *vice versa*. A good deal of difficulty probably arose out of the adjustment of the details. The arbitrary distinction which existed between real and personal property, we derived, perhaps unconsciously, from the mother country, where a landholder—an owner of real estate—was considered a personage of more importance than one who possessed only personal property. There, were interposed also very great difficulties in the way of an alienation of real estate, and a distinction was there made between real and personal estate which here did not exist. There were, it was true, some remains of it here in practice, such as the formalities of deeds of transfer, &c., but generally the spirit of our law was in favor of transferring one as well as the other. He hoped it would go to a select committee.

Mr. PERKINS said if it was desirable entirely to change the law in relation to the assessment of personal property, it was a matter which should engage the very serious attention of this body; especially if we were to provide for it by constitutional enactment; and he apprehended the views of the gentlemen from New York and Herkimer were impracticable, without an entire change of the system of taxation of personal property. In order to meet the views of these gentlemen, we must tax all personal property whatever, as real property was taxed, without any reference to the indebtedness of the owner. As the law now stood, a person was only taxed on his personal property over and above what he owed. But if the doctrine of the gentleman from New York was to prevail, where was that deduction to be made?—The law as it existed, and as it must exist, if we allowed a deduction on account of indebtedness, required that the person assessed should have notice of the amount of his taxation, in order that he might have the deduction made, if any; but if a person now doing business in the city of New York, had \$100,000 worth of personal property there, and resided in Brooklyn where he had also \$100,000 worth of personal property, where was the deduction to be made of the \$100,000 of indebtedness which he might have? In the city of New York or in Brooklyn?

Mr. LOOMIS. Where he resides.

Mr. PERKINS: If the deduction was made where he resided, in a case such as the had im-

aged, the personal estate there would be entirely exempt from taxation, where it was protected, and the town or place where protection was extended to such property, would derive no benefit from the wealth it was made to protect. That must be the result of the proposition; and it became, therefore, a serious question whether the distinction between real and personal property as to indebtedness should be destroyed. Whether that was desirable, whether it was not better that all property should be taxed without respect to indebtedness, he repeated, was a very serious question, and one that very few of us would be disposed to give an opinion upon without mature consideration.

Mr. VAN SCHOONHOVEN thought it was not necessary to raise a special committee, for if he understood the composition of committee No. eleven, it was designed for the consideration of just such questions as this. The rights and privileges of the citizens of this state, involved the subject of their taxation. (Cries of "oh, no.") He thought it did. This was a question involving the rights and privileges of citizens of this state—it involved the question whether they should be taxed on personal property, in one place or another, or in more than one. Here the citizens of New-York wanted to tax the citizens of Brooklyn, and to have the benefit of Brooklyn capital; and the question was whether they had a right to do it. What was the committee for, at whose head was the gentleman from Dutchess (Mr. TALLMADGE) unless it looked to things of this kind? Mr. V. S. should like to have a report on this subject from the gentleman from Dutchess. He was inclined to concur with the gentleman from Herkimer on the subject of the distinction between real and personal estate, but as it was not now in order he would not enter upon its discussion.

Mr. BASCOM opposed a special committee. We were running too much into matters that belonged to legislation. An observer might well imagine, from the tenor of this and other propositions, that we believed we possessed all the wisdom of the land, past, present, and prospective. This was a proper subject of legislation; and he hoped too much consequence would not be given to it by raising a special committee.—We were consuming too much time on propositions that belonged either to general or local legislation; and if we continued to give importance to them by considering, discussing, and referring them, we should give encouragement to a thousand propositions which properly belonged to the statute law of the land. He questioned the propriety of considering every proposition that any gentleman might offer; especially giving them consequence by a reference to a select committee. He hoped this would have the usual reference.

Mr. SHEPARD said it seemed to him that the course which the reference should take was clear; it could not however be made to any one of the committee by itself. Committee No. 14, it seemed to him, had charge of that part of the resolution which relates to the powers of cities and incorporated villages to tax and assess. There was then a considerable part of the reso-

lution which was not embraced in the duties of that committee; but which properly, should be referred to committee No. two, which he supposed had the general charge of matters of taxation, or to committee No. three. He repeated, that the reference should be divided, and one part committed to committee No. 14, and the residue either to committee No. two or three, as gentlemen might think proper. Some allusion had been made by the gentleman from Kings (Mr. MURPHY) to the substantive part of this proposition—to its merits. Now on this subject, as one of the representatives of New York, he felt obliged to say that certainly no greater injustice could be done to such a corporation as that of the city of New York than to permit citizens of Brooklyn to trade there to the amount of millions of dollars, and escape the burthens which should be imposed on that property. A question of considerable practical inconvenience did arise certainly as to where that property should be taxed; and he supposed it would be found impossible to settle that question so as to avoid inconvenience; yet it did appear that an approximation to an avoidance of the difficulty was contained in the proposition of his colleague from New York. He concluded by moving a division of the proposition and to refer one part to the fourteenth and the other to the third standing committee.

Mr. STRONG had been somewhat entertained with this debate, especially with the speeches of the representatives of the two contending cities, New-York and Brooklyn; but he believed it was all out of order—for it was not proper to discuss the merits of a resolution on a simple question of reference. Now, suppose they were to engraft into the Constitution all these propositions which we were receiving, what sort of a Constitution would we have? There could be no reason for engrafting on a Constitution, that which had repeatedly failed as a legislative measure; nor did he believe that our time was well taken up with such discussions. Any thing that touched the pockets of the people, the people themselves will understand and look into, and therefore they wanted no such constitutional provision as that now before the Convention. But there was another difficulty, and it struck him that it was a considerable one. He alluded to the difficulty of finding a favorable committee to take charge of this subject. It was an old truth, and should now be adhered to, that a child should not be put out to a nurse that would strangle it; and yet where was there a suitable committee of this body that had not manifested an opposition to the reception of this nursing? He was therefore willing that there should be a special committee for its consideration; for it would not be doing justice to the gentleman from New-York to send it to a committee that had avowed an opposition to the principle it embraced.

The PRESIDENT then put the question on the motion to refer to the committee number three, and it was negative—ayes 42, noes 43.

The question then recurred on referring the resolution to committee number eleven.

Mr. TALLMADGE took an objection to the form of these resolutions, purporting as they did on their face to be actual enactments rather than subjects matter of enquiry. We understood it—

but the public might not. He should prefer to have the propositions express in words that they were mere propositions of enquiry. As to the reference now proposed, Mr. T. said, as one of committee number eleven, he had no objection to taking and considering all matters that did not strictly belong elsewhere, if such was the pleasure of the Convention—but he was not aware when that committee was raised, that it was to be a committee on an *omnium gatherum* of all sorts of matters, which could not easily find any other destination. He supposed that it was to have charge of matters intended to secure the rights and privileges of the masses—and not mere local subjects, affecting New-York and Brooklyn. He should prefer, therefore, that this should go to the delegation from New-York and Kings. He would not say the black sheep or the white sheep alone—but let the two crows take it together and settle it in their own way. And this would be in entire accordance with parliamentary usage—that when there was no appropriate standing committee, a select committee should be raised—and that committee favorable to the proposition. When a gentleman wished to make a doll, he should be permitted to dress it in his own robes, and present it to society in his own garniture. Nondescripts of this sort were always sent to select committees. If it went to any standing committee, it should go to number 14—the committee on taxation. Certainly it could not be sent to the committee on the rights and privileges of citizens, unless we altered the names of things, and called this the glorious right and privilege of being taxed.—And it would certainly be amplifying this privilege very much to tax a man in every town where he happened to own a cow, or a horse or an ox. But he would not follow the practice of discussing the merits of propositions on a mere question of reference, as we had been all the morning. He hoped this subject would be referred to a kindred committee, and leave the committee on the rights and privileges of citizens to consider principles of constitutional law necessary to secure these rights and privileges—such as the principle of the non-imprisonment of witnesses, merely because they happened to be witnesses in cases of crime. But if it was a privilege to be taxed in more places than one—so be it. The committee would endeavor to guard it, if committed to them. It belonged however, properly to the committee on general taxation, or to a select committee. He preferred the latter.

Mr. RHOADES hoped this matter would go to a select committee. Every committee that had been named, or that had been suggested as in any way appropriate, seemed to be indisposed to take it. Hands off, was the word all round. And every gentleman who had proposed a select committee, before he sat down, had expressed the hope that he might not be put on it. Now, Mr. R. was going to propose a select committee; and he was going to say another thing to the gentleman from New-York (Mr. MORRIS)—and that was this—that there was a time, if it were not so now, when the citizens of New-York, or a majority of them, were opposed to internal improvements, which had added so much to the wealth of that city—that they came

tardily into the support of the N. Y. and E. railroad. Now, it would seem, from the proposition of the gentleman from New-York, that he was disposed to tax the property of every man who happened to be in New-York transacting business. Mr. R. wished barely to say to him, that the time might come when business men all over the state might recollect that there was such a place as Boston, such a place as Montreal and Quebec—such a place as New Orleans—and that it was possible that the trade which had so enriched that city might be diverted to these cities. Mr. R. would say nothing more in regard to that. He esteemed highly the gentleman from New-York (Mr. MORRIS) and all his colleagues—and so far as he was acquainted with the business men of the city, he esteemed them as highly honorable men—generally enlarged and liberal in their views. But he did hope, proud as he was of New-York, its honor, and reputation, that it would not be found standing out against its own interests. But the select committee he would propose was the delegation from the city and county of New-York.

Mr. MORRIS replied that a delegate from the city and county of New-York, might perhaps thank the gentleman for selecting him and his colleagues to take charge of this matter, were it not for the previous part of the gentleman's speech—in which he informed us of the city and county of New-York, that there was a Boston, a New Orleans and a Montreal—bringing up the fact that there were such places, to frighten us all out of our propriety—as if we like school-boys under a threatened fagellation, might be induced by threats to retreat precipitately from any honest convictions we might have upon an important principle. Now, though Mr. M. was a delegate from the city and county of New-York, he thanked his God that he was a delegate of the state of New-York—and he had yet to see—or rather his memory had yet to run back to the first instance where local feeling had destroyed or prostrated his sense of what was due to all. He introduced that proposition from an honest and thorough conviction that it was just in itself, without reference to localities or to individuals whose property might be reached under it. He introduced it as an honest proposition, equally important to every locality in the state. Now, as the matter stood, Mr. M. found himself in the position of the man who went to a certain village to sell a fox skin. He tried, all over, to dispose of it. No man would have it. At last he tried to lose it. [A laugh.] He dropped it carefully, and ran. But immediately he was followed with the cry, 'Mister, mister, you've lost your skin.' [Renewed laughter.] The poor fellow threw up his hands in despair. 'What a predicament I'm in. I've tried to sell it and can't. I've tried to give it away, and could'n't. At last I tried to lose it and am defeated in that.' [Laughter.] Now, Mr. M. had tried—not exactly to sell it—but to place it in such a position that those who he knew were opposed to it might receive it, and might upon a thorough examination of the matter, wake themselves up to the fallacy of their previous impressions. That might be called a sale. Then he tried to give it away. He assented to every suggestion as to where it should go—and each

and all repudiated it. No committee would touch it. Now, he would not give it away; and he therefore asked that it might go to a special committee. He believed the parliamentary arrangement, under such a motion, was that the gentleman who made it, should be chairman of the select committee. And he did it thus openly for the purpose of informing gentlemen that he did not shrink from the responsibility of presenting it to the Convention and the public on its merits. If on the merits he was wrong, he knew there was the wisdom and the firmness there to put him down. He would not suggest who should be with him on the committee; but he trusted the President would put intelligent men on it who were opposed to the proposition. If the gentleman from Rensselaer would withdraw his proposition, Mr. M. would move a select committee for the reasons he had assigned.

Mr. VAN SCHOONHOVEN withdrew his motion, and Mr. SHEPARD withdrew his, and

The question was then on the motion to refer to a select committee

Mr. CHATFIELD believed that was his proposition, [laughter.] He did not wish however to take from his friend from New York the chairmanship—for he distinctly stated that he desired not to be put on it. Still according to usage, he (Mr. C.) would be at the head of it. [A laugh.] Perhaps he could give his reasons for not desiring to be there, and it would be only extending the fox-story to its conclusion. The poor fellow who could not even lose his skin, if Mr. C. recollected the story, as a last resort said he would go to Rhode Island and there they would steal it from him. [Laughter.] If the gentleman would carry his proposition over to Brooklyn, they would steal it from him. [Renewed laughter.]

Mr. RHOADES said it was not the first time he had heard the fox-story. It occurred to him that his friend from New York was in danger of losing his fox skin in this Convention; and therefore he preferred a select committee consisting of the New York delegation. But the gentleman from New York (Mr. MORRIS) spoke of an effort being made to frighten the delegation from New York from their convictions. Mr. R. had not intended any such thing. He was led into the train of remark which had been thus construed, not by any thing the gentleman had said, but by what fell from the gentleman from Kings (Mr. MURPHY.) Mr. R. was led to believe that the object was to tax citizens of Brooklyn doing business in New York. And though the gentleman from New York did not mean New York—but referred to Albany, asking whether people were to come here to Albany and enjoy its walks, its streets, its docks, its wharves, its lights, and its police and other regulations, and not pay for it—yet Mr. R. supposed from this course of remark that the gentleman intended really to illustrate the condition of New York. Hence Mr. R. felt at liberty to allude to New York, to its opposition to internal improvement which had done so much for it, and throw out the idea that the trading portion of the community might learn that there were other places where they could do their business—that if, in addition to the embarrassments they had labored under from the opposition on the part of New York to measures which they deem-

ed of vital importance, they were finally to be taxed for the privilege of using the sidewalks streets and gas lights of the city—the effect might not be to induce business men to go there. For this reason, and out of friendship to his friend from the city, he felt inclined to admonish him of a feeling that had begun to pervade the minds of the trading population of this state.

Mr. MURPHY had no objection to a special committee. He desired the proposition should go there. He thought it a matter of sufficient importance to engage the attention of the Convention. And in the few remarks he had before submitted, he intended to confine himself simply to the question of reference. But in the course of this discussion, we had been amused with a very interesting Joe Miller by the gentleman from New-York (Mr. MORRIS.) And the story had been taken up and finished by the gentleman from Otsego (Mr. CHATFIELD.) [A laugh.]—Now, Mr. M. thought the gentleman from Otsego was a little too fast. The gentleman from New-York was not disposed to lose this proposition. He (Mr. MORRIS) wished to take it—And Mr. M. hoped it would go where he could take it. Brooklyn would have no opportunity to steal it. Nor did Brooklyn ask to be placed in the category with stealing Rhode Island.

Mr. WATERBURY urged the importance of this question to the whole state—for there was not a county where a similar state of things did not exist as that which had been alluded to—capital being withdrawn from towns and concentrated in the large villages and cities. Hence the importance of a full and candid examination of the subject—not with reference to one locality, but the whole state.

The motion to refer to a select committee prevailed.

SEPARATION OF BANK AND STATE.

Mr. CONELY offered the following:

Resolved, That it be referred to the third standing committee to enquire into the expediency of making provision in the constitution that nothing shall be received in payment of dues, by this government, except gold and silver coin, and such evidences of debt as are secured by bonds of this state, and are issued by institutions which do not issue such evidences of a lower denomination than — amount.

Mr. RICHMOND had a word to say on that. It was very evident that the third was not a currency committee—having nothing to do with the kind of funds that debts owing to the government were paid in, or any thing of that kind. It was only raised with reference to the great question of state debt and state credit. There were at least two other committees that it would be far more proper to refer it to. But he was almost afraid to designate which, lest he should alarm the feelings of some gentlemen on those committees, and lead them to vote the subject on to his committee, however wrong it might be to put it there, in order to be rid of it themselves. We had a committee on currency and banking—another on corporations other than banking and municipal. He would not suggest which of these it should go to. But gentlemen would see that there was no affinity between it and the duties of the third. It was not raised to consider what kind of funds the dues of the government should be paid in, or its debts paid in.

Mr. CONELY said his proposition had ref-

erence to the state revenues, and came strictly within the province of the third committee. But he had no objection to a reference to the committee on currency and banking.

Mr. SHEPARD hoped not. It had reference to the collection of the state revenue, and to the question whether it should be collected in gold or in silver coin, or in paper above a certain denomination. It clearly was in the province of the committee on the public revenue, to consider what the state should take, as between its debtors and itself, in its dealings. It was not a matter which came at all within the cognizance of the bank committee.

Mr. CAMBRELING remarked that substantially the same proposition had been referred to committee number three. As that had gone there, he hoped this would take the same direction.

Mr. RICHMOND then said that if we had already referred such a proposition, it was not necessary to refer this at all. But if it must be referred—and he had avowed himself in favor of referring freely every proposition that gentlemen might bring in—the question was so clearly not within the province of committee No. three, that he thought we had better have a select committee on the sub-treasury, and refer all these matters to that committee. But he did not want to be chairman of such a committee, and would not make the motion. He had rather be clear from it. Still there were gentlemen who were exceedingly anxious to make a report on the subject, and he for one should be gratified to read it.

Mr. SHEPARD said the difficulty was this. As the gentleman from Suffolk (Mr. CAMBRELING,) stated, a proposition like that embraced in this was referred the other day to committee No. three. Mr. S. introduced that proposition himself, and distinctly recollected its reference. That proposition contemplated the collection of the public revenue in gold and silver coin, and having already gone to the third committee, it seemed to him unwise to refer the same subject to a select committee. The result of such a distribution of duty must be two reports on the same subject. He hoped this enquiry would take the direction indicated by the mover—the direction in which it was naturally drawn, by the former reference.

Mr. TOWNSEND hoped the enquiry would be sent to committee number three. It was a question having reference to the safety of the public revenues, and that whole subject, by order of the Convention, had been entrusted to that committee. And to them properly belonged the management of these revenues—and it would be singular if that committee without any such intimation as this, in view of the losses sustained by deposits in broken institutions and by the receipt of their broken promises, should not consider that subject. He for one, had no objection to taking the responsibility, if the reference were made, of giving special attention to the subject: though his individual opinion was, that the committee should be charged specially with as few matters as possible, and especially in reference to banks and bank notes. There had been a great deal too much said and done already.—The great error had been in the outset, in de-

parting from the standard of gold and silver, and undertaking to facilitate transfers of large amounts, instead of leaving them to be made in such form as individuals might choose. He hoped, as a matter of courtesy, that the resolution would take the direction indicated by the mover.

Mr. CONELY was satisfied with committee number three.

The motion to refer to the committee on currency and banking, having been withdrawn, the question recurred on the original resolution.

Mr. PERKINS moved committee number two. [Several voices, "Oh no."] It appeared to him a very proper question for that committee—whether the legislature, for all time to come, should be deprived of the power of regulating the receipt and disbursement of the public money. For the proposition contemplated taking away from the legislature the power of controlling, from time to time, as the exigencies of the state might require, the mode of collecting, keeping, and disbursing the public revenues.—Committee number two had charge of all matters pertaining to legislation, except those otherwise referred. This subject had not been otherwise referred—else, the motion to refer it would not have been made. And if the power of the legislature over this subject was to be abridged, committee number two should consider the question of making this restriction a matter of constitutional law.

Mr. STETSON would not oppose any proper and just reference to his committee (number two). But with all due respect to his friend from St. Lawrence (Mr. PERKINS), he did not see the propriety of making a reference of this proposition to that committee. In one aspect, it concerned banking and the currency; and in another, the revenue. It belonged mainly to this department. General legislation, it was true, would include this, and in the absence of specific direction, would go there. But properly, it should be divided among three, or given to one of them. He did not wish, by a premature disclosure of opinion, to get rid of a subject, which the Convention might be disposed to refer. But it might be proper for him to remark now, as to his own individual opinion, that he was in favor decidedly of what was called the sub-treasury system for the Union, and had been from its origin. Without wishing to discuss the question prematurely, he would go further, and say that there was a very distinct difference between what was called a sub-treasury for a state, and a sub-treasury for a Union. The government of the Union was the great money dealer of the country, and its specie clause reached and affected every locality. And he hoped, if this proposition was referred to him, that the mover of it would make an argument to convince him, or committee number two, that to introduce it into the Constitution would not produce locally the same effect as did what was called the small bill law—that is, make the state of New-York the ground of circulation for other states, without accomplishing the great object the mover had in view—that of a thorough and radical reform. It seemed to Mr. S. that the gentleman's object could be better accomplished at Washington than here.

The PRESIDENT here remarked that the

merits of the resolution were not under discussion. Gentlemen had generally observed this rule thus far; but the Chair, under the suggestion just now made that an argument on the merits might be expected from the mover, felt bound to call attention to the rule.

Mr. PERKINS believed he confined himself before strictly to the question of reference.

The PRESIDENT assented.

Mr. PERKINS went on to say that the gentleman from Clinton (Mr. STETSON) had not answered the suggestion he made at all—that this proposition principally involved the question whether this matter should be left to the legislature, to regulate according to the exigencies of the state and the policy of other states; or whether it should be made a matter of constitutional law. In that aspect of it, he insisted that it was only properly referable to committee No. two, and belonged there.

Mr. STETSON (Mr. PERKINS yielding the floor) said the gentleman's reasoning made committee number two a supervisory committee over all the rest, so far as to determine what were proper subjects of constitutional law. Now each committee determined that matter for themselves. It was the residue of matters not referred to other committees, that were referred to number two.

Mr. PERKINS replied that this subject had not been referred to any other committee. If it had been, we should not have had this debate. And as this had not been referred, and was a question between legislation and constitutional law, it seemed to him his remarks held perfectly good.

Mr. PATTERSON had supposed until this morning, that on a mere question of reference the merits of the proposition to be referred were not debateable. That, he supposed was settled parliamentary law; and yet, from what had taken place, he should conclude that a different rule prevailed. But, under the intimation from the Chair, he should not enter on the merits of the question. But if it were in order to debate it, he should say that he did not understand the matter as the gentleman from Clinton (Mr. STETSON) did. If in order, he should say in reply, that if a sub-treasury was right for the Union, it was equally right for the state. As to the reference—we should not send out this proposition to a dry nurse. The gentleman at the head of committee number two (Mr. STETSON), had indicated an opinion which to Mr. P. seemed very extraordinary; but the intimation was, that if it were referred to him, he should report against it. Mr. P. would not send it therefore, to such a committee; but to one that would give it a fair consideration—and when the committee to whom it was referred, reported that a sub-treasury with the specie clause was right for the state of New-York, then let us have the proposition brought up. He, for one, when we got into committee of the whole, would like to discuss that principle. But he did not see how we were to get into committee on it, unless we had a select committee formed out of the New-York delegation to bring it forward. Send it to a committee formed out of the country delegates, and you would not get it up at all, for they evinced a good deal of flinching on the subject. If

we could get a committee formed of part of the New-York delegation, he would send it there.—He would not send it to committee number two. We should get no favorable report there, very clearly. If the mover of the resolution would designate five men who would be likely to make a favorable report on it, Mr. P. should vote in favor of such a committee. He only wanted it referred as the mover desired, for he (Mr. CONELY) probably had some selection in his mind's eye.

Mr. CONELY was satisfied with committee number three.

Mr. PATTERSON: Then I vote that.

Mr. RICHMOND: I can't promise now that we shall report favorably. There's some doubt about it.

Mr. HUNTER: I am on that committee, and am not willing to commit myself on it.

Mr. SHEPARD was exceedingly sorry to hear members of committees to whom propositions not yet examined were to be referred, express themselves at once to the effect that they will not report favorably. He must say, with all respect to those who had done so, that these avowals were somewhat premature. A little reflection, a little argument, a little consideration of the question whether the same policy that was applicable to the general government might not be applicable also to a state government—might possibly convince these committees that a favorable report would be after all better for the interests of the state and the welfare of the people. He should be sorry indeed to see this proposition go to a committee, any one member of which might have expressed himself against it—he meant here in Convention—openly and in such a manner as from a mere pride of opinion to bind his subsequent action. The remarks of his excellent friend on his left (Mr. PATTERSON) he confessed had shaken and changed his opinion in regard to the proper reference. He hoped, to use the language of the gentleman from Chautauque, that a reference would be made to a favorable committee, who might be disposed to present the proposition in its fairest form, and with all the lights to its comprehension and to its fair and deliberate consideration by the Convention.—He trusted it would take such a reference now—a reference favorable to the project—and when the proposition did come before the Convention, if no other gentleman would undertake to do it, he himself would undertake to demonstrate the wisdom of the plan and its perfect applicability to our state government and to our circumstances.

The question was here taken on Mr. PERKINS motion, and it was lost.

The original resolution, referring it to committee number three, prevailed.

ASSESSMENTS BY JURY.

Mr. JONES, on behalf of Mr. VACHE, (now absent) offered the following, which was adopted:—

Resolved, That it be referred to the eleventh standing committee to consider the necessity of providing that whenever private property shall be taken for public use, and the compensation therefor shall not be payable directly from the public treasury of the State, or of some county, city, town or village, the amount of compensation so to be made, shall be assessed by jury in

some court of general jurisdiction, or the principal court of the county or larger juridical division of the State, in which the lands to be taken may lie, in the same manner and with the like right of review as to questions arising on such assessment as is or may be allowed by law in civil actions

ELECTION OF SUPREME COURT JUDGES.

Mr. W. TAYLOR moved the following, which was adopted:

Resolved, That it be referred to the committee on the judiciary to enquire into the expediency of making the judges of the supreme court elective by the people for a term of six years, and re-eligible without limitation as to age; after the first election the judges to be divided in three classes; the seats of the first class to be vacated at the end of two years, the seats of the second to be vacated at the end of four years, and the seats of the third class to be vacated at the end of six years.

RIGHT OF SUFFRAGE.

Mr. SHAVER moved the following, which was adopted:—

Resolved, That it be referred to the fourth standing committee to enquire into the propriety of so amending the Constitution as to require—

1. That every naturalized citizen, to be entitled to vote, shall have resided in the State six months after he shall have become naturalized

2. That citizens coming into this State shall be entitled to vote after they have resided in this State six months.

3. That no person shall be entitled to vote who shall not have resided thirty days in the town or ward where he shall offer to vote

CHANCERY SALES, &c.

Mr. TAGGART offered the following:—

Resolved, That the Secretaries of the Convention address to the Register, Assistant Register and Clerks of the Court of Chancery respectively the following inquiries:—

1st. How many applications for the sale of infants' real estates were made in such court during the year 1845?

2d. What was the aggregate value of the real estate of infants sold by order of such court during said year 1845, and what was the value of such estate in each case respectively?

3d. What was the average amount of costs taxed and allowed for conducting such sales?

4th. What is the whole amount of moneys now in or under the control of said court belonging to infants which is not invested?

5th. What is the whole amount of commissions retained by such Register, Assistant Register or Clerks from the proceeds of the sales of infants' real estate made in the year 1845, for investing or paying out such proceeds or for any other cause?

6th. What is the whole amount of moneys now in or under the control of such court, invested or not invested, belonging to unknown owners of real estate, sold by order of such court?

7th. What is the whole amount of moneys now in or under the control of such court invested for the use of widows or the interest upon which is payable to them, upon dower or other rights by order or decree of such court?

8th. What is the whole amount of moneys now in or under the control of such court, belonging to widows, upon dower or other rights, which is not yet invested?

Mr. LOOMIS said in reference to the enquiry of the gentleman from Genesee (Mr. TAGGART) desired to be made, that he should be pleased to have it go a little further. He understood that for some years past there had been a large sum of money under the care of the court of chancery which had been paid in by different estates on behalf of infants and others, and much of it had been there a long time, until the sum total was understood to exceed \$2,000,000. He might be wrong as to the sum stated, but he was satisfied it was a considerable amount. He did not

know that any special act of the Convention was desirable on this subject but as the business of the court was the subject matter of enquiry, it might be proper now to obtain information relative to the accumulated sum to which he had referred, and this he could accomplish by offering an amendment to the resolution, as follows:—

Also, a statement showing the amount of funds deposited in the court of chancery in each year for 25 years past, the amount paid out in each year, the rate of interest at which said funds are invested, whether any part or not is on interest, and if any, how long

Mr. TAGGART feared the proposition would embarrass his resolution very much; for it would extend the time necessary to furnish replies further than was contemplated and thus the result of the enquiries be in a measure lost to the Convention. He had endeavored to compress the enquiries so that the replies could be obtained early enough to be of some utility. He hoped the gentleman from Herkimer would withdraw his amendment and offer it hereafter as a separate proposition.

Mr. LOOMIS assented, and the resolution was adopted.

FUNDS IN CHANCERY.

Mr. RHOADES offered the following:—

Resolved. That the Chancellor of this State be requested to furnish to this Convention the aggregate amount of all the funds in the Court of Chancery, (and subject to the order and control thereof,) on the first day of June, 1846, as follows:

1. The aggregate amount of all funds deposited in banks.

2. The aggregate amount deposited in all trust companies.

3. The aggregate amount vested in bond and mortgage.

4. All other funds, if any, under the control and order of said Court.

Mr. R. said it would be seen that his resolution had particular reference to the funds in chancery, and his object was, as they were talking about abolishing that court, in its present form, to obtain some information as to the aggregate amount of money subject to its control, and the parties to whom it belonged. He desired to know if the resolution of the gentleman from Genesee, just adopted, embraced that subject?

Mr. TAGGART replied that it did not. His resolution mainly related to funds belonging to infants, unknown owners, and widows.

Mr. WORDEN suggested to the gentleman from Onondaga, to allow his resolution to lie on the table until Monday, for he was of opinion that it was not sufficiently comprehensive.— Though the resolution specified money deposited in banks, and money loaned to trust companies, still in this shape it might not draw forth all the information that could be desired. He understood there was a large amount of funds under the control of the Court of Chancery, entrusted to corporations—not loaned to them, strictly speaking, nor deposited; and he would be glad if the gentleman from Onondaga would introduce into his resolution some general language to draw out the amount invested in corporations, whatever might be the manner or form in which it was placed there; for the resolution, as it now stood, might fail to draw out the information to which he referred—as these funds were, he apprehended, neither “loaned” nor “deposited.” There was another point The

Court of Chancery had from time to time been receiving what was called fines, and he understood a large amount of fines had been imposed by that court, which were now, and had been for years, retained by that court; and he was not sufficiently advised to be able to say whether they were retained by authority of law, or against law. He had always supposed, however, that fines, when imposed and collected by a court, belonged to the people of the state, and should go into the public treasury. He understood that the fines imposed and received by the Court of Chancery have not had that direction, but were retained in some other way, and appropriated in some other manner; but of the particular way or manner, he was ignorant. He should like therefore to embrace this enquiry in the resolution, and he hoped that the mover would allow it to lay on the table until Monday, that they might be able to reflect on these and other subjects, and be prepared so to amend as to include all these subjects of enquiry.

Mr. RHOADES assented, and the resolution was laid on the table

MODE OF REPORTING AMENDMENTS.

Mr. MORRIS said he had a couple of resolutions which he would offer; but first he desired to say a word or two in explanation. The Convention would remember that yesterday he proposed to go into committee of the whole on the Article which he had reported in relation to the powers and duties of the governor and lieutenant governor, for the purpose of making some alteration in the phraseology and to correct some errors which had crept in, in copying. On conversing with members of the Convention, he found a diversity of opinion as to whether the manner of reporting should be that adopted by the committee, or not; and as other committees were soon to report, it was deemed most prudent to have that question settled now, so that if the committee to which he belonged, had erred in the form of their report, they might take it back and conform it to the directions of the Convention; or, if the Convention should think the committee had pursued the correct course, that other committees might follow the example. His first resolution, if adopted, would sanction the manner in which his committee had reported. Mr. M. read as follows:

Resolved, That the standing committees be and they hereby are directed to embody their suggestions for a

constitution in their reports, in articles and sections, that they copy into such articles the sections of the constitution applicable thereto to which they do not propose amendments or alterations, and in such sections as they propose to amend and alter, they shall incorporate such amendments and alterations.

Mr. M. continued: To make himself understood, if he had not done so, he would say that his plan, on taking up an article of the constitution was this: Such sections as they did not propose to alter, they copied into the proposed article for the new constitution. And such other sections as did not conform to what they intended the new constitution to be, they altered and presented in their modified shape. By such means the committee supposed the members of the Convention would be better able to judge of all parts of the article, and the propriety of the amendments; but he would state that as there was no difference in the printing of the report, they were compelled to go to the present constitution and to examine it to know what were and what were not amendments. To provide for this for the future, he proposed to submit the following resolution:—

Resolved, That the reports of standing committees shall be printed under the direction of their respective chairmen, and that all alterations and amendments shall be printed in italics.

By the adoption of this form they would have all the parts of the constitution before them and see what were and what were not amendments.

Messrs. KIRKLAND and BROWN opposed the resolution and Mr. WARD sustained it.

The resolutions were laid on the table.

NEW-YORK CITY COURT OF ARBITRATION.

Mr. STEPHENS offered the following resolution, which was adopted:—

Resolved, That it be referred to the Committee on the Judiciary to inquire into the expediency of constructing a court for the city of New-York, upon the principles laid down in the revised Statutes, vol. 2, part 3, chap. 8, title 16, article 4 "Arbitration."

Said court to be entitled the "Arbitration Court in and for the city and county of New-York;" to consist of a chief justice of the degree of counsellor at law, two associate justices, not members of the legal profession, to be elected by the people, to hold their offices for five years; to have cognizance of all matters in controversy between all persons who may bind themselves to submit to its decisions and not to appeal therefrom; to have a clerk at a fixed salary, to prepare bonds of submission, and to enter up judgments.

On motion of Mr. CLYDE, the Convention then

Adjourned to 11 o'clock on Monday morning.

MONDAY, JUNE 22.

Prayer by the Rev. Mr. CLAPP. INDIAN TRIBES.

Mr. GARDNER presented a memorial from the chiefs and head men of the Tuscarora tribe of Indians praying that their present political circuits may not be disturbed. It was referred to the eleventh standing committee and ordered to be printed.

RETURNS FROM COURTS.

The PRESIDENT presented returns made by the clerks in chancery for the fifth and second circuits, of the number of bills filed and the causes on the calendar of their courts, in pursuance of

a resolution of the Convention. Referred to the committee on the judiciary.

LOCAL TAXATION.

The PRESIDENT announced the following as the committee on the resolution submitted by Mr. MORRIS on Saturday:—Messrs. MORRIS, MURPHY, LOOMIS, PERKINS, and VACHE.

EXEMPTION FROM EXECUTION.

Mr. TOWNSEND offered the following resolution, which was adopted:—

Resolved, That the committee upon the rights and privileges of the people of this state, enquire into the propriety of fixing a constitutional limit to the a

mount of real and personal property, that it shall be the privilege of a citizen of this state to hold, exempt from execution for debt contracted subsequently to the first day of January next.

PEOPLE'S RESOLUTION.

Mr. WATFEBURY offered the following, which was adopted:—

Resolved, That it be referred to the third standing committee to enquire into and report the expediency of incorporating into the constitution a provision, that every law authorizing the borrowing of money, or the issuing of state stock, whereby a debt shall be created or increased on the credit of the state, shall specify the object for which the money shall be appropriated; and that every such law shall embrace no more than one such object, which shall be single and specifically stated; and that no such law shall take effect until it shall be distinctly submitted to the people at the next general election, and be approved by a majority of the votes cast for and against it at such election; that all money to be raised by the authority of such law to be applied to the specific object stated in such law, and to no other purpose whatever, except the payment of the debt thereby created and increased. This provision shall not extend or apply to any law to raise money for the purpose of suppressing insurrection, repelling a hostile invasion, or defending the state in war.

THE SCHOOL MONIES.

Mr. A. HUNTINGTON offered the following, which was adopted:

Resolved, That the Secretary of State be requested to report to this Convention, if any, what it was have been refused their distributive shares of the proceeds of the common school fund, for non-conformity with the requisitions of the law regulating the distribution thereof.

TAXATION OF MORTGAGED PROPERTY.

Mr. STRONG offered the following:—

Resolved, That there be in the Constitution an article containing in substance the following provisions:—That all bonds, mortgages, judgments and all other evidences of debt which are liens on real estate, shall not be taxed as personal property; and that all real estate shall be taxed to the owner or occupant at its fair value; and that any person or persons owning or holding any bond, mortgage, judgment, or any other evidence of indebtedness which are liens on real estate, shall be liable to the person or persons to whom the same shall have been taxed for his, her, or their portion of said tax in proportion to the interest he, she or they may have, hold or own in said real estate.

Mr. S. said this was a proposition, perhaps, that might startle some gentlemen here, but the object was to prevent, if possible, a double taxation. He had another object, and that was to reach personal property now concealed from the eye of the assessor. Suppose an individual owns a farm worth \$5000, and he gives a mortgage upon it for \$4000, by the present system he would be taxed to the full value of his farm, and he who holds the security on such farm was not taxed for the mortgage, if he could possibly conceal it from the assessor; and he apprehended not one half of the liens on estates were taxed as personal property. If this proposition were incorporated into the constitution, the person to whom the land is taxed would be taxed as now—there would be no difference in the system of collection—but the individual would have his remedy against the person holding a lien on his farm, and that person would not escape the tax. Such a system would be for the interest of landholders: for when the lien-holder came for his money, the landholder would have the opportunity to say, I have paid the tax, and the law has given me the right to deduct from you a proportionate share of it. Thus the money lender could not escape from the payment of

his share of taxation. But he was well aware that this proposition would meet with opposition both here and elsewhere. He was well assured that the men who are making themselves princely fortunes from those who were under the necessity to hire their money, would be opposed to a proposition of this kind; but if the principle was right in itself—if it was honest and just—if it dealt out equal justice to all, he for one felt bound to support it, let the opposition be what it might. It might be said that a remedy could be provided by legislation. Past experience had shown to the contrary. This law had existed a long time; he did not recollect how long, but it was too long altogether, and the man who bought a farm was taxed for the incumbrance on it, and the man who owned the mortgage thereon, might live in the same town or in the same neighborhood, and both be taxed at the same time. Was not that double taxation? It was an unjust taxation—a conclusion from which there could be no escape. He knew this had been already much talked about. The question was frequently put—those who have been assessors or supervisors would be able to answer this from their own experience—why this double taxation? Why should the owner be taxed for his farm, and his neighbor taxed for the amount of his mortgage on the same farm? What was the answer?—There was none—there could be none, but “my dear sir, such is the law.” If he should be told that this matter should be left to legislation, he would ask them to look back and see if legislation had ever remedied the evil which was so justly and so properly complained of? Perhaps some might think he should not take up the time of the Convention with a discussion of this question, but his excuse was, and he had framed his resolution with that view, that he desired to call out a direct expression of the views of this body upon it, as he apprehended some gentleman might move to lay it upon the table, or its reference to a committee where it would be allowed to sleep for ever. He wished gentlemen now to express their views on this important question, and if there were any here whose diffidence was such as to prevent the expression of their views—a delicacy and diffidence with which he (Mr. S.) was not now troubled, although he was sometimes [a laugh]—he would have no objection to have it sent to a select committee.

Mr. CHATFIELD perceived the resolution did not purport to be a resolution of enquiry, but a distinct proposition, the vote on which, if an affirmative vote, would be an expression of the opinion of the Convention that it should be incorporated in the constitution. Such a vote would be decisive in favor of the principle; and he did not think the Convention was ready to give such a vote this morning; he, therefore, moved to lay the resolution on the table.

Mr. STRONG consented; and it was so disposed of, and ordered to be printed.

WRITTEN REPORTS OF COMMITTEES

Mr. RUSSELL, pursuant to notice, now moved a re-consideration of the vote by which the Convention sometime since expressed the opinion that it was inexpedient for committees to accompany the propositions they may report, with a statement of the reasons which led them to their conclusions.

After some conversation between Mr. PATTERSON, Mr. RUSSELL, Mr. STETSON, Mr. LOOMIS, and Mr. MARVIN, on a point of order,

Mr. RUSSELL said he did not intend to make a speech, but he desired to say that when the resolution which he desired to have reconsidered, was passed, it was in a thin house, when but little consideration was given to it, and after an eloquent speech from the gentleman from Otsego, (Mr. CHATFIELD). He thought then and he thought now, that the Convention had unadvisedly adopted a rule which might interfere with their duties. There were many here who were not accustomed to public speaking, who might nevertheless give us much valuable information if they were permitted to express their views in writing.—He also desired that every proposition should come before them with the best and strongest illustrations and elucidations of facts and figures, and that each member should have an opportunity to weigh and consider them maturely and calmly. We ought not to be called upon to decide important questions hastily, nor when we might be excited by eloquent appeals on that floor. We should be enabled to reflect on all subjects in our own rooms, and after full examination to approach the conclusion. If we were permitted to have written reports, we could examine and compare the reasons on which propositions were based, and if the argument was unsound we would be the better able to detect the fallacy. He could conceive that many of the committees would not desire to make written reports. The judiciary committee, for instance, might desire to avoid that; but there were other committees from which reports would be useful. The committee of which he was a member (on currency and banking) had at its head a distinguished and experienced gentleman (Mr. CAMBRELENG,) who might give the Convention facts, statistics, and references to printed matter, that would be very valuable, but neither he nor any other gentleman could do it so well on this floor, unless in the form of a written speech; which when read would be hastily taken by the reporters and published under circumstances of great disadvantage. There might be many gentlemen who would shrink from the ridicule which was sometimes attached to the reading of written speeches; and it would be attended with great loss of time to the Convention, to listen to reports in the form of speeches, if gentlemen were willing to put them in that shape. But if we were permitted to have these reports at our own rooms, we could thoroughly examine them, paragraph by paragraph, and judge fairly of the combined result of the industry of the committee. He had no desire to trespass on the time of the Convention, nor would it be necessary probably to consume much time on this subject; his notice of this motion had been some days before the Convention; members had had an opportunity to deliberate upon it, and he hoped they had done so, that, without pressing an argument, they might dispose of it promptly.

Mr. RICHMOND said the remarks of the gentleman from St. Lawrence contained some views which, on their face, were calculated to carry conviction with them. He concluded his state-

ment by hoping that, as they had had time to reflect on this matter, they would come to a different conclusion than they did before. True it was, there had been some reflection on this subject and much conversation, and the most frequent argument he had heard was, that it was proper that those who were unaccustomed to public speaking should be allowed to give their views in writing. But he must be permitted to add, that he had heard of but one gentleman of that class—those who were too diffident or too inexperienced to speak in public—who desired to have that privilege which a reversal of the decision of the Convention would give them. He had, however, heard at least a dozen gentlemen take that view, who were in the habit of rising here and inflicting long speeches on the Convention; and he was of opinion the result would be, if this motion should prevail, that such gentlemen would be afforded an opportunity to be heard twice by the Convention and the country: first in a written report, and then orally; and under such circumstances, he would ask where the laymen would be? He apprehended they would be left as much in the back-ground as they could be now.

Mr. CAMBRELENG should not have troubled the Convention, had not the gentleman from St. Lawrence made a direct reference to the committee to which Mr. C. belonged. Though Mr. C. in some degree concurred with that gentleman, he was not at all dissatisfied with the resolution adopted by the Convention. In the former Convention there was no resolution—no order taken on the subject. It was left to the discretion of committees, and he believed in every case the course adopted was to present amendments to the constitution nakedly, and for the reason that it was regarded as all important at the outset, or as soon thereafter as practicable, that the Convention should have before them all the amendments proposed, in order that they might deliberate on them all as a whole. The result was that in almost every instance propositions were presented, he might say without sufficient deliberation, and had to be referred again. Mr. C. thought there was great propriety in the course adopted then, notwithstanding the argument of his colleague on the committee (Mr. RUSSELL.) And he must say that he preferred the course of presenting propositions nakedly, unargued and unenforced by a report, leaving every member to examine it without lead or direction—so that when the propositions came up for action, both the committees and the convention would be better prepared to argue and discuss them. He thought the original resolution unnecessary, believing that every member would acquiesce in the propriety of the course indicated in it. He felt obliged to the gentleman from St. Lawrence for the motive that induced him to make this movement; but he could assure that gentleman and the Convention that when he should be instructed by his committee to report any proposition, he should do so without argument—and such, he believed would be the course of committees generally.

Mr. LOOMIS confessed to the surprise he felt when he heard the vote announced by which the resolution proposed to be reconsidered, was adopted. Had he anticipated such a result,

or the probability of it, he should have opposed the resolution. He should not now entertain a doubt as to the result of this motion, but for the talent and legislative experience which he found arrayed against him. The resolution now proposed to be reconsidered, he regarded as a proposition to suppress information—to suppress the deliberate views and convictions of committees sent out by this body to ascertain facts and report their conclusions. Of all things, this was the last course to be adopted here. What were committees sent out for? They were delegations of the power of this body, to give their best attention and study to the subjects committed to them; to collect facts, analyze reasoning, and present their conclusions to the body. He regarded it as the duty of the committees, if they believed these facts and this reasoning would conduce to right conclusions here, to present them in the form of a report. He should feel bound to do this, in such a case, were he not absolutely prohibited by the expression made and now sought to be revoked. This course would give gentlemen the benefit of the information and deliberations of the committee, and time to scan their reasonings and make preparation to defend or attack the report when it came up. He would leave it optional with committees to do this; not to pre-occupy the minds of others with their views, but that the body for whom they acted, might have the benefit of their labors, and judge of their conclusions. He would not have elaborate arguments presented here, nor would he have committees go out and come in here as partisans, bound to sustain their side of the question. But he wanted the facts and the reasons on which they based their conclusions, and he felt that he should be very much assisted in forming his own conclusions, could he have them in advance of the propositions coming up for debate. Better leave committees to their discretion in this respect, as they were left in all deliberative bodies.

Mr. SIMMONS agreed entirely with the gentleman from Herkimer. If we were to go back 2000 years, before the eloquence and power of the press and pen were known—when the harangues of Athens and Rome settled all great questions of peace or war, from a stump—perhaps reasons might not be necessary or expected, for any course of action we might take. But now, it seemed inseparable from the very idea of deliberation, that we should have reports written and printed—that we might examine subjects with care and attention, and not trust merely to the declamation of a promiscuous assembly, which some of us could not hear distinctly, nor could all of us determine off hand, or compare the jumble of argument sometimes brought up in a day here. The doctrine of the Bible, that every christian should be ready to give a reason for the hope that was in him, was applicable to every person here in the discharge of his duty.—No person could come to a conclusion that he had a particle of confidence in himself, or that any body else should have confidence in, unless he had travelled through the labor of drawing up a report—for it often happened that before we got through with it, we found ourselves obliged to go back and reconsider and amend—and all of us ought to have the opportunity to go over the same ground at our

rooms. He confessed, he was surprised at the vote the other day, by which the Convention took ground against written reports in all cases. He would leave that matter entirely to the discretion of members. He would not compel committees to report reasons for their conclusions, but he would not deprive ourselves of the benefit of these reports, nor the committees themselves of this salutary process of reviewing as it were their own decisions. As an illustration, he alluded to the report of committee number five—saying that if that committee had accompanied their Article with a written report, it would have been of an entirely different character. [A laugh.]

Mr. BROWN remarked that the resolution proposed to be reconsidered, declared it to be the sense of the body, that it was inexpedient for committees to assign the reasons that may have led them to their conclusions. He ventured to say, that among the many very experienced gentleman in legislation on that floor, there was not one who could bring to memory any legislative body, in any country, that ever adopted a proposition so perfectly preposterous, he had almost said, so perfectly infamous as this. The business of the body had been distributed by a committee of seventeen, without any opportunity having been first afforded to members, except out of the house, to interchange sentiments on the points on which the constitution should be amended. And in addition to that every committee had been forbidden to assign a reason for its conclusions! He would not require elaborate reports from every committee, on every question referred; but he did undertake to say that it would aid us materially in our deliberations to know what reasons governed this and that committee; and to have them put on paper. As was well said the other day, some of these reports were to be based on statistics and facts that would be beyond the reach of a large portion of the body, unless presented by committees in reports. How were members to get at these facts and conclusions, engaged as they were necessarily upon committees? He had the honor of being put on the judiciary committee—a committee that had regularly its three sessions a day—and he begged to know how he was to inform himself on the multitude of subjects that had gone to committees? It was unjust to him individually to be placed in such a position. His life had been an active one. There were subjects of deep concern to his constituents, and of the deepest solicitude to him and his children, on which he wanted information. And it would be cruelty to him if the committee on public debt for instance, should be precluded from informing him what that debt was—variously estimated, as it had been, at twenty-one and twenty-six millions. It was a complicated and difficult subject—requiring a long and patient examination to be understood. And was he to be told that the able committee on that subject, and its able chairman, were not to be permitted to give him the reasons for their conclusions? He hoped gentlemen would deliberate long before they inflicted what he with all respect claimed to be an act of injustice. He wanted it put on paper what the public debt was—what the state of the public revenue was

—what had been the course of the legislature in appropriating the public money, which brought the state to the very verge of bankruptcy—that he might see it, and judge of it himself. As to the judiciary committee, of which he was one, they would find it to be their duty to report in favor of a large increase of the judicial force of the state. Probably it would alarm the people. Were they to be precluded from stating in a report what the judicial expenses of the state now were? Were they to keep their mouths closed, as to what these expenses were now, and what they probably would be under the new system? He hoped whatever gentlemen might think of this individually, that they would look at the application of the rule to others. He must be permitted to say here that he had looked at the report of the committee on the Executive departments, and that he concurred with the gentleman from Essex (Mr. SIMMONS,) in the remark that had it been accompanied with a written report, we should not have had it in the shape in which it was. Here we had a whole article reported, substantially the old constitution with the addition of a few words—and for one, he should have liked to have had a report from the committee, setting forth the reasons on which they were willing to go down to posterity, for having recommended putting it into the constitution that the Lieutenant Governor should have six dollars a day and no more. Another circumstance. All of us knew that the abolition of slavery in the District of Columbia was a subject that had distracted congress and the country year after year, for a long time. And all who had been within the region of this excitement would concur in the opinion that if that question had been sent to a committee, and they had reported on it and spread that report before the country, this agitation would have ceased long since, as the report on the Sunday mail question quieted that excitement. But it had not ceased and would not, because the southern portion of the confederacy refused to consent that petitions should be even laid on the table—much less referred—and no committee was allowed to speak on the subject. Mr. P. concluded with the remark that he protested against the resolution in question the other day, and that he hoped the Convention, as an act of justice to itself, if not to those who desired these reports, would allow committees to exercise their own discretion whether they would make reports or withhold them.

Mr. CHATFIELD said that having given his views at large when the resolution in question was adopted, he should not have felt justified in again occupying the attention of this body, were it not for the course taken by certain gentlemen who had, with zeal and warmth, advocated the other side of this proposition. And he regretted that any gentleman, in assigning reasons for his course, should have deemed it essential, or even tolerable, so far to have departed from the line of legislative courtesy, as to brand any proposition presented or adopted here, as infamous.

Mr. BROWN (in his seat) : I did not say so.

Mr. CHATFIELD then entirely misunderstood the gentleman. Mr. C. understood him to say, that the resolution in question was perfectly preposterous—and that he was on the point

of saying that it was infamous. Mr. C., as an advocate of that resolution, did not choose to stand in that position. He preferred not to have a proposition which he might offer or defend in good faith, denounced on that floor as partaking of an infamous character. Nor did he believe that the gentleman from Orange, or any other member of that body, stood so far above his fellows—or that the great principle of equality was so far prostrated here—as to justify him or others in assuming to pronounce judgment on the motives of those who happened to differ with them. Mr. C. felt himself bound to believe, and so ought every other member, that every proposition submitted here was presented with good motives and for justifiable ends. Mr. C. believed the proposition of the gentleman from Washington (Mr. BAKER) which had drawn out these denunciations, was presented in good faith, and with a desire to enable members to come to the consideration of propositions with minds unbiassed and unprejudiced by labored reports, framed with ingenuity perhaps, and well calculated, if wrong, to mislead. That was no doubt the object of the resolution. Such were his views before, and such were his views now—and no epithet that might be applied to him or to his acts here, unaccompanied by reason, would change his views. The gentleman from Orange mistook, if he supposed he (Mr. C.) was to be driven from any position he believed to be tenable, by mere epithet and denunciation. Mr. C. had not changed his views. He regarded this body as entirely different in its composition and mode of action from a legislative body. In the latter, subjects were often referred of a local character, and where all the facts on which action was to be based, must be drawn from the locality, where alone knowledge of them existed. In such cases, the facts and reasons on which the committee based their recommendations, were properly and necessarily embodied in a report. But was there a member of that body who did not come there knowing what was to be the subject matter for action? Did any man come there with the idea that he was to legislate for a locality, or on matters which the ever varying circumstances of localities demanded should be subject to change. We had the organic law of the state to deal with. We were to amend or entirely remodel the constitution. Every proposition presented here had reference to the fundamental law—and the question was whether it was desirable or necessary to have these propositions come before us, accompanied by elaborate and written arguments in support of them. Mr. C. differed with the gentleman from Herkimer. (Mr. LOOMIS,) in the remark that committees were so many delegations of the power of the body. The remark implied that this body was irrevocably bound by the conclusions of its committees, and that we could not amend or alter their propositions in any particular.—Mr. C. did not understand that committees had such power. Subjects were sent to them to be considered, matured and reduced to form; and when presented here, they should come naked, without a report of the reasons that had led the committee to their conclusions. Mr. C. did not know how far the action of certain gentlemen

might look beyond that hall. He could not tell what ambitious aspirations led to this strong desire to be put on record in the form of a written report. He knew not what offices were to be created by this body, by and by, to be filled by somebody. He could not know what turn things might take under the new constitution—whether or not members of this body might be elected to fill these places. How far gentlemen were looking forward to a place on the page of history, it was not for him to say. But he was not a little surprised to find that almost every gentleman on the judiciary committee was found here advocating a reconsideration. It was not for him to judge of men's motives. He was bound to believe they were good. He did believe it. There were other reasons that induced him to sustain the resolution in question. It was very easy to fancy—indeed the avowal had been almost made by those who sustained this motion, that we might expect, if committees were to report at all, to have two or three reports from the same committee—all of them to go on the journal. This would lumber up the journal to no useful purpose. Nothing would be gained by printing the reasons and arguments of gentlemen, in support of their own propositions. The money it would cost could be more profitably expended. Nor did he imagine, that if statistical or other information was requisite and in possession of committees, that it must necessarily be lost unless embodied in a report. Did any member suppose that it would not get here, if desired or called for, through members of the committee? Surely, there could be no difficulty in getting out such facts. The gentleman from Orange could communicate them, if called on, without any trouble whatever. As had been remarked, the advocates of this motion to reconsider, almost all of them, were abundantly able to make their views known here. Indeed, this proposition did not come from those who had so many excellent friends here advocating their cause—not from those who had not the faculty of speaking—but from those who, in the language of the gentleman from Herkimer, (Mr. Loomis) felt it to be their duty to submit their reasonings in the form of a written report. The gentleman from Herkimer was seldom at a loss, when he desired to speak; and so with the gentlemen from Orange and St. Lawrence. Mr. C. did not want gentlemen of their ability to put their speeches on record first, and thus pre-occupy the minds of members with their studied reasonings. He would have every member on perfect terms of equality with all the rest; and it was to prevent any undue advantage in this respect, (among other reasons) that he opposed these written reports.

Mr. BROWN explained. He used a word in the heat of debate which seemed to admit of an offensive interpretation. Whether it admitted of that interpretation in itself, or whether that direction had been given to it by a desire on the part of the gentleman from Otsego to put him in the wrong, he would not undertake to say—He would now say, however, that he impugned the motive of no member—nor did he use the word at all in an offensive way. That, he trusted, would be sufficient for the house. Whether it would be sufficient for the gentleman from Otsego, was another question. If that gentle-

man desired, as Mr. B. thought he had manifested a disposition on several occasions before, to lecture him and put him in the wrong, Mr. B. should not omit to reply, though he would not now.

Mr. CHATFIELD might have misconceived the motive of the remark. He did, however, suppose that the remark was levelled at himself, in part, for the reason that he advocated the proposition the other day which it was now proposed to reconsider.

Mr. BROWN did not think at the time what course the gentleman took then. It had gone out of his mind. He used the word hastily—and if the gentleman had not been as ready to put him in the wrong, as he was in the debate on the little matter of adjournment the other day—

Mr. CHATFIELD: I do not recollect that.

Mr. BROWN: Well sir, nor will I advert to it further.

Mr. DANA hoped the resolution would pass. He should like to have the reports to take to his room where he could consider them, and as he was one of those who knew nothing of public speaking, write down his own views on what he thought was wrong. He should thus be better able to arrive at correct conclusions; and he therefore hoped the committee would be allowed to make their reports as to them might seem best.

Mr. STETSON thought the conclusion to which the Convention had come was unwise, and he should take great pleasure in recording his vote for the motion of the gentleman from St. Lawrence. The practice of the Convention in 1821 was founded, he believed, on the resolution or suggestion of the honorable gentleman who was also a member of this Convention (Mr. TALLMADGE); but it left a discretion with the committees; while the resolution of this Convention might be construed as restrictive, and it became a gag law on the organized committees of this body, involving also an absurdity.—They referred certain subjects to committees, and they would take the conclusions at which those committees might arrive; at the same time they repudiated the reasons on which the committee based their action. Now he might well say that a wise conclusion was not always apparent without a statement of facts. If this were not so, they might act on all subjects here without the aid of standing committees. This was especially true of a complicated state of facts in connection with constitutional law. For what purpose were committees organized if it were not to form conclusions which might not primarily be obvious to all. Committees were organized to examine, collect, criticise, and compare, and then furnish the fruit of their labors to instruct those who were to pass finally on the subject. Objections had been made that these reports would lumber the journal, but that was simply a question of time. Statements would be made both orally and in writing; if orally, the Convention must listen to them to the consumption of much of its time, whereas if they were written, members might read them at their own rooms. The argument against reports was therefore an argument for a long session, and in that case where was the saving of the public money? If the committees were left to their own discretion

he did not anticipate that they would encumber the journal with their reports; he thought better of their intelligence, and felt more confidence in their discretion. Allusion had been made by the gentleman from Genesee (Mr. RICHMOND) to speaking members of that body, which he (Mr. S.) wished to repel. The allusion was to a desire which certain gentlemen might have to monopolize the right to talk. Another gentleman, rather ambiguously certainly, and somewhat insidiously, had intimated that there might be a lurking desire for posthumous fame, in connection with written reports. Now, if the prospect of future glory operated on the mind of any gentleman, he would ask if the same motive would not prompt them to speak as well as write reports, for had they not there an able corps of reporters, taking down with accuracy and precision all that was said, and were not the speeches made there to be collected and perpetuated in the form of a book? It would therefore be seen that the personal allusion was unnecessary, though it had produced an effect on the minds of many. Nor was it well founded, for he believed the members of the committees were superior to such feelings, and were as anxious as the gentleman from Otsego a few days since protested he was, to discharge with fidelity the duties which had been confided to them.—But there were other reasons why the motion should prevail. To permit the resolution to stand as at present would possibly—he did not say certainly—put every member of the Convention in a false position before the country and posterity. The Convention had referred to committees baskets of resolutions, some of them containing propositions that were very plausible on their face, and such as would induce many of the people to say to them: “why do you not adopt them?” And yet the committees were to be gagged so that they could not give a reason for refusing to adopt these propositions; their names would go forth with the reports containing their refusal, and they would be accused of coming to an unwise conclusion, because a wise conclusion might not always seem to flow from a plausible proposition. The resolution presented on Saturday by the gentleman from New-York (Mr. MORRIS) in relation to taxation in New-York of residents in Brooklyn, involved a complicated question; and looked at the action of this body. It had been referred to a select committee to examine and report, but if they were only to bring in a *projet*, or refuse to act upon it, where would be any beneficial result arising out of the reference?—These and other reasons, would induce him to vote for the motion of the gentleman from St. Lawrence.

Mr. W. TAYLOR did not think the resolution of the Convention so preposterous as the gentleman from Orange (Mr. BROWN) seemed to think. It was the course pursued by the Convention of 1821, to which no written reports were made.

Mr. STETSON said there was no gag imposed by the Convention of 1821, and he was now willing to trust simply to the discretion of the committees.

Mr. W. TAYLOR said the resolution was declaratory of the sense of the Convention, that it was inexpedient to accompany propositions of

the committees with written reports of the facts and reasonings which had led them to their conclusions. He believed he had voted for the resolution. He had listened to the remarks of the honorable gentleman from Otsego (Mr. CHATFIELD) with the attention and pleasure with which he always listened to a speech from that gentleman, and he confessed, taking the action of the Convention of 1821 with the remarks made when this subject was before considered by this body, that he was influenced in favor of the resolution. He should, however, now vote for the reconsideration, for he was of opinion that the object contemplated by the Convention would be as well accomplished by reconsidering the vote taken, as by retaining the resolution. There had been a clear indication that the Convention did not want voluminous reports, but that explanations which were deemed essential might be presented; and the reconsideration might now be carried, and the resolution laid on the table.

Mr. BRUCE did not believe it was his duty to vote for the reconsideration. In the first place the resolution which the Convention had adopted was but prescribing the course pursued by the Convention of 1821, and he had yet to learn that any evil arose out of that practice in that Convention. He should not vote for the reconsideration in the next place because he was not willing to give to members of committees privileges which no other member could enjoy, for in the one case their speeches in the form of reports would go on the journal, while the speeches delivered on this floor on the same subject would not be there recorded. Again if the reasons of the committee were to be recorded, judicial tribunals might be influenced by them. For these and other reasons he was opposed to the motion.

Mr. STEPHENS, tho' he could not lay claim to parliamentary experience or knowledge, nevertheless was inclined to believe that no precedent could be found for a rule which would absolutely preclude committees from submitting written reports, if in their judgment the case required it. The precedent which had been so often alluded to of the convention of '21, as he understood it, did not go the length of this rule of ours—for there the matter was left entirely to the discretion of the committees. He confessed, he had voted for the resolution in question, without full consideration, and that subsequent reflection, aided by the remarks which he had listened to here, had had the effect to reverse his opinion and his vote. He was satisfied that the right to submit written reports would not result in overloading the journals—and would not be exercised especially under the recent expression of the body, to any great extent, nor in any case except where it was thought essential to a proper understanding of a proposition. Reference had been made to the judiciary committee, of which he was an humble member. He was not aware until to-day, that there was such entire unanimity there as had been intimated. But if it were so—as his mind had been so entirely undecided as to his course on this question, heretofore—he thought that he at least should be absolved from the imputation of having reference to the future or to posterity, if he should vote now to reconsider.

Mr. JORDAN said he had heard nothing that could induce him to change his vote on this question. The precedent that had been cited, drawn from the practice of legislative bodies, was inapplicable, as there was no case but one in this state of such a body assembled for such purposes, as this. In the convention of '21, it was true, there was no formal rule or resolution excluding written expositions of the views of committees. Yet the records showed that in no one instance did committees then submit such expositions with their reports. Without repeating what had been already so well said in opposition to this motion, he would only suggest a single consideration in addition. And that was this. We were not to act finally and conclusively on the constitution we might adopt. The people were ultimately to pass upon it. This body also might not adopt the several propositions submitted as they came from the committees. But were it otherwise, were these reports adopted in the form in which they were presented,—still they must go to the people finally for ratification. If the reports of committees only went on the journal, the new constitution would go to the people, with the argument on one side only before them. On the other hand, if the report of a committee should be overruled, the reasoning of the committee would be inapplicable to the modified proposition, and where were the people to look for the reasons which governed the Convention in adopting such modification? True, we had reporters here, who did and would no doubt faithfully report all that was said on the floor, and embody these reports in a volume. But if the people were to rely on their reports for information, why should not the reasoning of the committees go before the people in the same form, and in the same book? Certainly, it was desirable that every member should have the opportunity of placing his views before the people, who were to pass finally on the new instrument, in as enduring and imposing a form as the committees. These were controlling reasons with him why he would adhere to the resolution heretofore adopted.

Mr. MARVIN examined the parallel attempted to be drawn between the action of this body and a legislative body. To make the parallel hold good, the entire constitution should be referred to a single committee to report an entire new constitution, as committees in a legislative body reported bills. In that case, it might well be insisted that an elaborate report should be submitted in explanation of the reasons which had given shape to the instrument. But here the constitution was parcelled out among committees—each having its particular portion to consider. It might be that the articles or amendments of different committees might not harmonize, or might have different systems in view.—It might hence be necessary often to reconsider, after having adopted a proposition in one form, in order to make it harmonize with another—and thus render the reports accompanying them inapplicable to any thing in the new instrument. Again, the Convention might sustain a proposition, and yet for reasons other than those assigned by the committee from whom it came; and yet the Convention in so voting,

might well be supposed to endorse these reasons, and these reasons would go to the people as the reasons which controlled the action of the body. He insisted that if any expositions were to go out as the views of the body, they should be framed, after the entire constitution was matured—and not from time to time, in parcels, as committees reported—especially in view of the alterations which might be made in all these propositions, and the consequent inapplicability of the reports to the shape they might finally assume.

Mr. VAN SCHOONHOVEN regretted to differ with the very able gentlemen who had taken the negative of this question, but he still remained of the opinion he had originally entertained, and should vote to reconsider. He insisted that the rule or order shutting out the reports of committees, was at war with the practice of every deliberative body of which we had much knowledge—and he might add with the design and object of the distribution of labor among committees. He was at a loss to conceive why we raised committees and charged them with the consideration of different subjects unless it was to secure deliberation, the collection of information useful to the body—and to guard against the effect of such eloquence as we had listened to this morning. Nor did he indulge the apprehensions that seemed to be entertained in some quarters, that well considered and elaborate reports might go before the people in an official character, and thus carry more weight with them than they were justly entitled to. He believed the people had intelligence enough to detect the fallacies, if any, that might thus be placed before them, whether in an official or any other shape—and if it were otherwise, there was no danger that there would not be expositions enough of sound views, to dispel any illusion that might be created. Nor did he imagine that all the committees or even any considerable number of them would be unanimous in their reports.—There were indeed few committees, the members of which would not differ, and present counter reports. So that we might regard it as certain, that no important subject would be presented to the Convention or the people in a one-sided point of view. Nor did he believe that committees would abuse the privilege of making reports, by spreading on the journal elaborate speeches. He was disposed to trust them to report as much and as little as they might deem necessary, and he would not indulge the idea that these reports would swell to an inordinate length and cumber the journal. Again, the idea that committees would have an advantage over the rest of the house, if indulged in presenting elaborate reports—was entirely fallacious. The advantage would be altogether on the side of individual members—for they would then have the reasoning of committees in print—they could examine it at their rooms and come in here much better prepared to answer it, than if the same reasoning were orally presented here, and the answer must be made on the spur of the occasion. Mr. V. S. could not see the distinction attempted between the organization of this body and that of a legislature, so far as the action of committees was concerned, nor why reports should not be made

in one case as well as the other. He insisted that it was due to the body itself, as well as the people, that subjects should be presented before us in the formal and deliberate manner of a report from a committee—that we might come to the discussion of them with all the light which a committee could throw upon them—rather than to rely on the communication of it to us orally here, or through reported debates, which were often imperfect and sometimes inaccurate.

Mr. WATERBURY desired the reports to be free and untrammelled, though some gentlemen had spoken in this debate as though the reports of the chairmen of committees were to operate as laws. He spoke at some length of the position in which his own committee would be placed, if their proposition were sent back to them for a report, and was understood to be in favor of entrusting the committees with discretionary power.

Mr. NICHOLAS regretted at this late hour to continue a discussion which had been already so protracted, but it appeared to him that the adjustment of this question must have an important influence on the only object which every gentleman had in view, which was to secure the greatest freedom of thought and action in our whole proceedings, and a judicious and useful result to the deliberations of this Convention.—He would not, especially at this hour, travel over ground which had been thoroughly explored; he did not intend to review reasons already fully given, for adhering to the resolution declaring the inexpediency of written, detailed reports from standing committees; but there were two reasons that had not been there stated, which with several others that have been dwelt upon to-day, had a controlling influence with him when he voted in favour of the resolution which it was now proposed to reconsider; and these reasons would now induce him to vote against its reconsideration. The first was, that the people generally, and future expounders of the constitution, would refer

to these reports, if made and recorded, for the reasons which induced the framers of the constitution to adopt such and such provisions—whereas in the debates subsequent to the presentation of these reports, reasons may have been expressed or entertained which controlled the minds of the Convention instead of the views of the committee as expressed in their recorded reports. Frequent allusions had been made there to-day to the exposure of lay members of the Convention to an undue bias from reading an able report of a learned committee, but he apprehended quite as much danger from the very strong prepossession with which these committees will meet the Convention in favor of their reports. They will be strongly wedded to opinions which are the result of great deliberation and research, and should peradventure any of the laymen referred to advance reasons which may induce the Convention to differ with the committee, if they had made a written report, which, when recorded, will perpetuate one set of opinions, will very reluctantly adopt views adverse to those which are to go on the records of the state. And the written report may unintentionally bias these learned gentlemen of the committee in adhering to views, which, during the subsequent discussion in committee of the whole, are proved to be such as should not be adopted. There would be entire freedom of discussion in committee of the whole, and every member of a committee might there freely and fully assign his reasons for his conclusions as reported, and at the same time would be much less embarrassed in changing his views, should such a change become proper and necessary.

Mr. RUSSELL here requested Mr. N. to give way, the hour of adjournment having arrived.

Mr. NICHOLAS suspended his remarks accordingly.

Leave of absence was granted to Mr. SHELDON for one week.

Mr. RUSSELL then moved an adjournment. Adj. to 11 o'clock to-morrow morning.

TUESDAY, JUNE 23.

Prayer by the Rev. Mr. CLAPP.

COMMITTEE ON CODIFICATION OF LAWS.

The PRESIDENT announced the following as the committee on so much of the resolution adopted on the 19th inst., on the motion of Mr. WHITE, as relates to the codification of laws:—Messrs. WHITE, WARD, RHOADES, CHATFIELD, NICOLL, STOW and SHEPARD.

SERVICE ON COMMITTEES.

Mr. PERKINS moved that he might be excused from service on the committee appointed yesterday on the motion of Mr. MORRIS. It had been frequently remarked in this Convention, that propositions should not be put to committees for consideration, who were opposed to the subject matter embraced in them, but to a committee that would nurse and husband them. He apprehended the regulating of a tax bill, was rather more a matter of legislation, than of constitutional provision, and therefore he should not have confidence in himself in arranging and

regulating a provision for such purpose. As, then, it seemed to be the sense of the Convention that these propositions should be considered by committees that are not opposed to their objects, and that will be prepared to bring forward something as the result of their deliberations, he thought it would be desirable that it should go to a committee that would be favorable to the framing of a tax bill as a constitutional provision. Again, he did not wish to stand in the position in which he was placed by the expression of opinion in the Convention—a very significant expression of opinion, that it was not desirable that committees should report in writing, the reasons for their reports. Here was a proposition made, and if there was any utility in referring it to a committee, it was that the information the committee might obtain in their investigation should be thrown before the House for their perusal and consideration; but if they were not allowed to have such reports, he could see no necessity for referring such matters to a com-

mittee at all. If no information was to be given but such as was drawn out by the debates, there could be no reason to refer to a committee unless it were to prepare them for consideration in this body; and he imagined it would be much better if gentlemen would themselves shape their own propositions and offer them here as amendments to the constitution, so that they could be debated and considered without the delay attendant on sending them to the committees. He had no desire to debate the question which had been here raised—he thought it was not a proper subject of constitutional law, and therefore he did not wish to debate it as a matter of expediency, for some legislature hereafter to adopt. But there was another reason why it was desirable that he should not serve on this committee. They had had another proposition from the gentleman from Monroe (Mr. STRONG,) to engraft on the constitution a provision to regulate the tax law. Now it could hardly be desirable that that proposition should go to another select committee; and as all these propositions were to go to committees that were favorable to them, the gentleman from Monroe should be put in a position to nurse his own proposition, and lay it fairly before the Convention. Mr. P. hoped, therefore, that he would be excused from serving on this committee, that he might make way for the gentleman from Monroe. He had another reason in the course pursued by the gentleman from Otsego, who after moving a reference to a special committee, asked to be excused from being on that committee.

Mr. STOW hoped the gentleman from St. Lawrence would not be excused, and for the very reasons that that gentleman himself assigned.—He did not wish to see committees constituted in advance as had been intimate; he supposed they should not here adopt the legislative courtesy of giving gentlemen favorable committees on all their propositions. He thought we should select men who would weigh the subjects, and consider carefully whether the subject proposed was worthy of a constitutional provision, or whether it did not belong to the legislature. In his judgment it was a very important question whether propositions should be sent to favorable committees, or to committees that would calmly and impartially consider them. One of the most essential services that could be rendered this Convention and the country, was to prevent unnecessary or improper amendments even being suggested to this body. It was of vast importance; and he confessed no one thing had alarmed him so much as to see, from the day we commenced offering resolutions to the present time, propositions offered as parts of a constitution, which were properly matters of law. He hoped gentlemen would be put on committees who entertained opinions counter to the propositions offered, so that both sides might be heard, and therefore he hoped the gentleman from St. Lawrence would not be excused, but that the committee would have the aid of his ability and experience, in pointing out what was proper and right for legislation and what should be principles of fixed fundamental law.

Mr. STRONG did not understand the position that subjects should go to favorable committees, as meaning that the committee should all

be of one opinion on the subject. He understood it to mean that the committees should be appointed as were the standing committees of legislative bodies, which were composed of men of each political party, that different views might be brought together. And for that reason, he thought a very wise selection had been made of the gentleman from St. Lawrence, who was the very man for that committee. Perhaps a wiser selection could not have been made. The reasons the gentleman had given, had satisfied him (Mr. STRONG) that his wisdom and experience and talent should be brought into requisition on that committee. He hoped, therefore, the gentleman would not be excused.

Mr. PERKINS reiterated the opinion that the proposition of the gentleman from Monroe should be nursed by its author and parent; but it would be useless to commit propositions to committees, and then prohibit the expression of their views and reasons for their conclusions on them. The rejection of a proposition which had been submitted to a committee, without giving some reasons for it, would be disrespectful to the mover of it.

Mr. STRONG replied that the gentleman need not give himself any uneasiness about his (Mr. S's) proposition, for it was still on the table, and might not get off of it.

The question was then taken and the motion to excuse Mr. P. was lost.

THE CANALS, PUBLIC PROPERTY, &c.

Mr. F. F. BACKUS offered the following, which was read, and at the suggestion of Mr. LOOMIS, consented that it lie on the table.

Resolved, That the Comptroller be requested to furnish, for the use of the Convention, the following statements and estimates:—

1st. The value of the Erie and Champlain canals on the first day of January, 1846, estimating the value at such sum as the net proceeds of the tolls and revenues of those canals for the season of 1845 would pay the interest at 5 per cent, after deducting the expenses of collection, cost of superintendence and repairs for that year.

2d. The aggregate value of all the canals upon the like basis, that is, after deducting the expense of collection, superintendence and repairs from the gross amount of tolls and canal revenue for the season of navigation for 1845, showing upon what amount of capital the net proceeds would pay the interest at 5 per cent.

3d. The average rate or per centage of the annual increase of the tolls of all the canals for the last ten years, or from 1836 to 1845, both inclusive, and the average amount of expenditures for collection, superintendence and repairs.

4th. The aggregate value of all the canals on the first day of January, 1856, upon the supposition that there will be the like average annual increase for the next ten years—or upon what sum the net proceeds of the tolls and revenues for the season of navigation for 1845 would, at such annual average increase, pay the interest at 5 per cent, deducting the average amount of annual expenditure for superintendence, collection and repairs for that year from the gross amount of canal revenues.

5th. An account, showing what would be the net proceeds or earnings of all the canals from the first of January, 1846, to the first of January, 1856, upon the supposition that the canals were already paid for and deducting only from year to year the average amount of expenses for collection, superintendence and repairs for the last ten years, compounding the interest from year to year upon the net proceeds for the coming ten years at 5 per cent.

6th. The like calculation and estimates, computing only simple interest at 5 per cent.

7th. The aggregate valuation of real and personal

estate in the several counties of this state at the time of the completion of the Erie and Champlain canals.

The present valuation, and the average annual rate per cent of increase for this period.

5th. The estimated present value of the public property of the state, including

1st. All the canals, estimating the same as directed under the 4th head, as above.

2d. The capital of the school fund.

3d. The capital of the literature fund.

4th. The United States deposit fund.

6th. The several public buildings and grounds appurtenant to the state, wherever situated, estimating the same at cost, and showing the aggregate amount of all.

A report was received from the Comptroller, in answer to an enquiry in respect to banks and banking associations—which on motion of Mr. TOWNSEND, was ordered to be printed.

Mr. SHAW presented a plan for a judiciary system, which was referred to the committee on that subject.

Mr. WITBECK also presented a plan for a judiciary system, which took the same direction.

LEGISLATIVE INTERCHANGE OF BILLS.

Mr. NICOLL offered the following, which was adopted:—

Resolved, That it be referred to the committee on the powers and duties of the legislature to inquire into the expediency of declaring in our constitution that no bills shall be sent from one branch of the legislature to the other within a certain time, to be specified, prior to their adjournment.

ROYAL GRANTS, &c.

Mr. MURPHY here called up his resolution, laid on the table at the request of the gentleman from Columbia, (Mr. JORDAN,) referring it to several committees to consider the propriety of striking out certain clauses of the constitution.

The resolution was taken up.

Mr. MURPHY said that when he offered his resolution, he had some doubts as to the propriety of the reference indicated in it. On reflection it appeared to him properly referrible to the committee on the rights and privileges of citizens, as the clauses proposed to be struck out were in that part of the constitution which was referred to that committee. Besides, one of the committees named in the resolution he had the honor to be a member of, and he preferred that the preliminary examination of the question should go to some other. He now, therefore offered a substitute for his resolution, giving the inquiry a new direction, and more clearly indicating his object. Mr. M. sent up the following:—

Resolved, That it be referred to the committee on the rights and privileges of the citizens of this state, to inquire into the expediency of striking out so much of the fourteenth section of article 7 of the constitution as declares, that "nothing contained in this constitution shall affect any grants of land within this state, made by authority of the said king (of Great Britain) or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made before that day; or shall affect any such grants or charter, since made by this state, or by persons acting under its authority," as useless and unnecessary, and liable to popular misconception; and of otherwise amending the said section so that the same shall read as follows:—

"§ All grants of land within this state made by the king of Great Britain or persons acting under his authority, after the fifteenth day of October, one thousand seven hundred seventy five, shall be null and void; but nothing contained in this constitution shall impair the obligation of any debt or contract or any other rights

of property, or any suits, actions, rights of actions, or proceedings in courts of justice."

The substitute was adopted.

Mr. TOWNSEND suggested, that this question was not clearly understood all round. He supposed the question was on the reception of the substitute, and that the question would then be on its adoption. He hoped the Chair would so decide, as it was too important a matter, involving as it did chartered rights of great magnitude, to pass off in this way—without even being printed.

Mr. SHEPARD understood the question as his colleague did—that it was not on the reference, but on the reception of the substitute. For one, before this reference was made, he wanted it printed. It involved a grave principle, and might involve an extensive infringement on vested rights of property. He did not suppose that his friend from Kings intended any such thing; but it was certainly treading very close on a line, where a great deal of mischief might be done by a false step. Hence, he wanted the substitute laid on the table and printed. He made that motion.

Mr. WARD remarked that the question having been taken, debate upon it was out of order.

The PRESIDENT ruled that the question could only be revised by a motion to re-consider—which without unanimous consent must lie over under the rule.

Mr. TOWNSEND, to relieve the question of all difficulty, in point of order, moved a reconsideration—expressing the hope that the convention would consent to the question being now put.

Mr. JORDAN presumed there would be no objection to that—adding, that the substitute was in substance precisely the original—the reference of it being now to one committee instead of two.

Mr. SHEPARD thought there was a clear and distinct difference between the two propositions. This proposed an amendment to the constitution in terms.

The question on reconsidering, by consent, was here put and carried, and

Mr. SHEPARD then moved to lay on the table and print.

Mr. MURPHY remarked that the gentleman from New-York (Mr. SHEPARD) entirely misapprehended the purport of the substitute. It simply proposed to refer to one committee what he before proposed to refer to two—with the addition, not substantive, but formal, providing that the article to be amended should read, as it would read, with these provisions struck out.—This being the only alteration, he submitted whether, having allowed his resolution to lie on the table two or three days, it was required of him in courtesy to let it lay there longer.

The resolution was however laid on the table, and ordered to be printed.

ASSESSMENT AND TAXATION.

Mr. HARRISON offered the following, which was adopted:

Resolved, That it be referred to committee No. two, to inquire into the propriety of inserting in the constitution the following provisions:

The legislature shall provide by law a uniform rule of assessment and taxation for the several counties in this state; and shall prescribe such regulations as will secure a due valuation of all property, both real

and personal. The estimates of real estate to be made on its actual intrinsic value as near as the same can be determined at the time; and that county clerks and registers in cities shall upon the requisition of the assessors of the same, and of the wards in cities, make annually, by the 1st day of June, full returns of all mortgages, liens and incumbrances on the real estate situate in their respective towns and wards, to enable the assessors justly to apportion, equalize and assess the same.

SALARIES, &c.

Mr. SALISBURY offered the following, which was adopted:

Resolved, That the third standing committee be instructed to inquire into the expediency of making provision in the constitution, that in all cases where a salary is given to any officer in this state as a compensation for his services, that no extra compensation shall be allowed to such officer, for any purpose or under any pretence whatever.

THE PEOPLE'S RESOLUTIONS.

Mr. SHAW offered the following, which was adopted:

Resolved, That the committee (No. three) on canals, internal improvements, public revenue, &c. be directed to inquire into the expediency of incorporating into the constitution of this state the People's Resolution (so called) and the pledges and guarantees of the act of 1842, entitled "An Act to provide for paying the debt and preserving the credit of the state."

APPOINTMENT OF JUDGES.

Mr. STOW offered the following:

Resolved, That the judges of courts of record shall be appointed in the following manner—

The state shall be divided into not less than six, nor more than ten districts, containing as nearly as may be, without dividing a senate district, an equal number of people.

The governor shall nominate, and by and with the advice and consent of two-thirds of all the senators elected, of whom there shall always be one vote from each district, appoint the judges.

In case the senate shall not confirm the nomination of the governor, when he shall have submitted two nominations for any one vacancy, the senate shall proceed to appoint a judge to supply such vacancy. Each senator shall (without debate) name a person, and from the two persons named by the largest number of senators, the senate shall determine, by lot, which one shall be appointed.

Mr. STOW said, it would be seen that his resolution was an affirmative proposition, and would be declaratory of the sense of the body, if adopted. He did not propose to have it considered now. He offered it to call the attention of the body, and through it, the attention of the people, to some different mode of selecting judges from any that he had heard suggested. It seemed to be generally understood here, that there was no alternative between the present mode of appointment by the governor and senate, and that of a direct election by the people. He had heard it remarked that the people themselves had decided in fact, that they would have an election of judges. Mr. S. differed with those who entertained that opinion. He thought the people had determined no such thing. On the other hand, he thought they would be very slow to come to any such conclusion—that they would deliberate long before they changed so fundamentally our system of government. He thought they would be very slow to say that even jurors should be selected by a popular vote; much less judges. But he did not mean to argue this question now, but to call attention to his proposition. He had endeavored to suggest a system for the choice of judges, that should

give to the minority of the people a very decided voice in their selection. He was fully convinced that a mere majority of the people, whether acting directly or through their representatives, ought not to create the judiciary of the state—but that the minority, for whom that department was chiefly created, should have a voice in it. Gentlemen should bear in mind the essential distinction between the judicial, legislative and executive departments. The two latter should represent the majority, and for obvious reasons. Not so with the judiciary. That was intended, to a great extent, as the shield and protection of the minority, and a different rule of selection should be applied to it. It was also expedient, in his judgment, that all parts of the state should be heard in the selection of a judiciary that was to determine the law for all parts of the state. His resolution was drawn with a view to secure that object, that we at the west, when we went to New York to have our rights determined, should know that our constituents, in other words, ourselves—had had something to say about the tribunal that was to decide upon our rights and interests. Localities should have something to say about our courts, at least the courts of general jurisdiction. He meant the minority—so that the choice should not be controlled by party considerations. And if he understood his own proposition, it would be found absolutely impossible to create a partisan judiciary under it. It would have a tendency also to call from private life to the bench something besides extreme partisans. For his proposition required a concurrence of the two leading parties in a choice—and that in order to secure this concurrence, men of moderation must be taken, and not extreme partisans to fill the bench. But he would not argue the question. He intended only now to lay his proposition on the table and have it printed, that members might have some other thing to think of than the two extremes of the present mode of appointment, and a popular election.

Mr. PATTERSON would like an opportunity to propose an amendment.

Mr. STOW withdrew his motion for that purpose.

Mr. PATTERSON: Also to make some remarks—which he wanted to go out with it.

Mr. STOW did not wish to preclude debate on the subject.

Mr. PATTERSON understood the resolution as intended to elicit the sense of the Convention, affirmatively, on the mode of appointment indicated in it. For one, he was not prepared to say that the people of this state were incompetent to elect judges of their courts. He believed they were as competent to do this as they were to elect a governor, or to vote for President of the United States. He had no idea of having a political bench; but he was for stripping the power of appointment entirely from the executive. He could never consent that this power of appointment, which had been conferred on the governor, and left there for a quarter of a century, should be continued in his hands. How were judges appointed now? The constitution, it was true, conferred the power of appointment on the governor and senate; but did they exercise that power in point of fact in the selection

of judges? By no means. The judges of your county courts, were not appointed by the governor and senate. Practically they were appointed by a caucus, held in the county where the judges were to officiate. The people got together in caucus and then made their nominations for the office of judges of the county court, and these names were sent to the governor. And what governor ever refused to send in these names for confirmation to the Senate? And what senate had we had that had declined to confirm nominations thus made through a caucus of the party of the executive? Whichever party had the governor they made their caucus nominations, and that was virtually an appointment. Mr. P. recollected a few years ago—and he had had occasion to relate the circumstance to a smaller body than this, in this city—some gentlemen in Franklin county got together and resolved themselves into a democratic republican county convention—A. B. was called to the chair, and C. D. appointed secretary—and it was found that E. F. and G. H. had a majority of all the votes—and it was therefore resolved unanimously that they be recommended to the governor as judges. The proceedings were sent down here in due form to the governor—this was in 1834—and he supposed, seeing that it was a democratic republican convention, that it was all right. That was strong enough to suit Gov. Marcy, and he sent in E. F. and G. H. to the senate, and they confirmed the nominations—when it turned out that he had appointed a couple of whigs instead of a couple of democrats. [Laughter.] This was a practical illustration of the mode of appointing judges that had been in vogue some twenty years. Mr. P. knew not whether similar tricks had been played off on other governors. It was enough to know that governors would swallow what was sent to them in this way, if they were only the right kind of names. It might be said that this was not the way in which judges of the supreme court were appointed. But he wanted them appointed in a better way. He wanted the people to have some say about the matter. He wanted them elected by the people. He did not believe that any other mode of appointment would satisfy the wishes of the people. The matter had been discussed in the committee of which he was a member, and probably they would soon be able to present some form of a judiciary to the Convention. He should have preferred that the committee should have reported before saying anything on the subject. But as this proposition had been put in here he wanted to protest against that mode of appointment. He was against having the governor say anything as to whom the people should have for judges.

Mr. STETSON did not want to interfere. But the merits of the question were not strictly debatable.

The PRESIDENT remarked that the resolution, which was an affirmative proposition, was under consideration.

Mr. STOW did not of course want to discuss the question at length. He would only say now that when the gentleman from Chautauque had seen the resolution in print and had reflected on it, Mr. S. believed he would find that he had to-

tally misunderstood its effect. He now renewed his motion to lay on the table and print.

Mr. NICOLL suggested that it be referred to the judiciary committee.

Mr. STOW: No sir, that would not answer the purpose at all.

The printing was ordered, and the resolution laid on the table.

Mr. WARD here said he had the gratifying intelligence from the gentleman from New York (Mr. MORRIS) that to-morrow, he should be prepared to call up the article in relation to the executive for consideration—and as there was no further business before the Convention, he moved an adjournment. [Cries of 'no,' 'no!']

On motion of Mr. CHATFIELD a resolution was adopted requesting the State Librarian to open the libraries an hour earlier, for the accommodation of members of the Convention.

WRITTEN REPORTS.

On motion of Mr. NICOLL the Convention resumed the consideration of the motion to reconsider the vote by which the Convention had resolved that it was inexpedient for committees to accompany their reports with written arguments.

Mr. NICHOLAS referred to the various reasons which had been urged yesterday against a reconsideration, and deemed it unnecessary for him to enlarge much upon what he had then said; but he would allude to the expediency of having no written reports, with reference to the free and unbiassed action of the members of committees themselves. They might wish to change their opinions and when their written report was placed on record, if such subsequent change in their views occurred they exposed themselves unpleasantly to the imputation of fickleness and inconsistency. And this being apparent, might it not cause members to cling to their original propositions as reported, with undue pertinacity, when they might under other circumstances have consented to adopt others in their stead? It had been contended that this measure was without precedent in deliberative bodies. The course pursued by the convention of 1821 was strictly in accordance with the spirit of the resolution, and the precedent was the more striking, from the fact that when the chairman of one of the committees, (the honorable gentleman now in attendance from Dutchess) made the first report which was made in that convention—he suggested the inexpediency of committees' assigning in their report, their reasons for their conclusions. The propriety of the suggestion was so manifest, that it was acted upon in all the subsequent proceedings of the convention, they never received a written detailed report from any committee. The gentleman from Clinton (Mr. STETSON,) had expressed an apprehension, if the committees did not make written reports that injustice might be done to the great number of subjects referred by individual members to the several committees. A large proportion of these questions thus referred, belonged to the legislature, and had no direct relation to such general principles as should be embodied in a constitution. Where they were of this character, the committee would ask to be excused from their further consideration; and

where they were fit subjects to be engrafted on the constitution, the committee having them in charge would include them in the propositions which they submitted to the Convention. Mr. N., as this discussion advanced, was more and more strongly impressed with the belief that the Convention would insure the greatest freedom of thought, the more thorough exemption in all their deliberations from undue influences and prepossessions, by dispensing with detailed reports, setting forth the reasons of the committees.

Mr. BURR said perhaps he should apologize to the Convention for detaining it one moment longer from the question; for it had been amply discussed; and he was surprised that a question which appeared to him to be of so little importance, should have called forth so long and so earnest a debate. There must be something about it which he was incapable of seeing, which gave it importance. The question, as he understood it, was whether they should rescind a certain resolution adopted the other day, in which they expressed the opinion that it was inexpedient for committees to accompany their reports with arguments and reasons. He supposed, at the time, that it was of but little importance whether they passed the resolution or not; had he considered the resolution mandatory on committees, he should have been opposed to it; for he would do nothing that would cripple or circumscribe them. But if it was merely advisory, or expressive of the wish of the Convention that they should shut out extraneous matter, he approved of it. Now, however, he felt himself totally at a loss to determine which way to give his vote. He felt rather inclined yesterday, to vote in favor of the reconsideration, supposing the resolution was to be taken as in some degree binding on committees; but on watching the debate, and on more reflection, he was unable to see that the resolution as it stood, was anything more than advice to committees to be cautious to frame their reports so as to avoid extraneous matter, such as would go on the journal and encumber it unnecessarily. If that were its purport, and he was inclined to believe it was, he was prepared to vote against rescinding. It might be proper to caution committees against introducing too much in their reports; and from the course which the debates had taken in this Convention, he was not sure but it would be well to caution gentlemen against saying too much. The Convention had spent much time in considering and debating this question, and to him it appeared of too little importance to justify such debate. For himself he would promise that his speeches should be few and far between, and very brief.

Mr. BSCOM voted for this resolution, and from the course the debate had taken, and the severity with which the proposition has been reviewed, he trusted the friends of the resolution who were disposed to adhere to it, would be granted a little indulgence. What was the question here? It was in effect how much authority and influence should be given to the committees. It was not a question whether committees should be gagged, as had been represented by the gentleman from Clinton, (Mr. STETSON,) yesterday, but whether they should gag the Conven-

tion. They had parcelled out to 18 or 20 committees the business to come before the Convention, and great influence and authority would be given to them if this resolution were rescinded; for they would be at liberty to give not only the propositions but reasons and arguments in favor of them. This was well stated yesterday by the gentleman from Columbia, and he would attempt to illustrate the position that gentleman took, and see if he could be understood. He would do this without any indication of what the report of the committee of which he had the honor to be a member, was likely to be. Suppose the committee, then, should report a judiciary plan, with a separate and distinct chancery tribunal: there were gentlemen on this committee who, without disrespect to other gentlemen, it might be said, could give as strong and decisive arguments in favor of that proposition, as any gentleman in the state of New-York. Suppose the Convention should strike out that plan and substitute another, the substituted plan would go down to the people without a chancery jurisdiction, and with arguments that would be all powerful with the people against it.—What then would be the probable result if the amendments were submitted to the people separately, as perhaps they ought to be? Why the people, influenced by the arguments of the committee, would reject the proposition of the Convention, and they would fall back on the present beautiful system, and that would be the consequence of having a proposition one way and an argument the other. But there was another objection. He desired every man in the Convention to act freely on the convictions of his own judgment; but when they told him that a committee had deliberately agreed to any proposition, and presented reasons to sustain it—when that report had gone forth on the wings of the wind, to the remotest corners of the state—could he believe that those gentlemen would be as free to consider that proposition in committee of the whole as those gentlemen who were less distinctly committed to the proposition? But he would forbear to proceed, after calling the attention of the Convention to one other position—and one which, to be consistent with himself, would require that his explanation should be brief. It was this: had gentlemen calculated the importance of time? As had been already seen, it was a matter of some considerable difficulty for committees to agree on the propositions they had to submit. We were nearly at the end of the fourth week of the session, and as yet we had received but one single report.—The Convention, to use the language of the gentleman from Dutchess, had not yet assumed its proper attitude before the people whom they represented, and the people were in consequence looking with some impatience on their proceedings. But if, when committees had agreed on propositions, we set them to work to furnish arguments and reasons in detail, we would impose a duty which for the committees to perform would consume much valuable time that might be better devoted to more important business. They were, he repeated, in the fourth week of the session, and they had eighteen or twenty committees to report, on an average, two, three or four propositions each, which the

Convention would have to debate and consider; and they must remember that November was the time when the people were to pass on the constitution they might frame, and that to them it would be desirable that some little time should be given them for deliberation before they were called to final action. Had gentlemen reflected on the importance of the work in which they were engaged? What was it? Why to frame the best system of government that God had ever permitted the people to live under on the face of the earth. When they came to that business, there was ability here to do it, but they must husband their time, and not give to the committees duties that would interfere with the business of the Convention. They should not permit either propositions to go forth with erroneous or a one-sided aspect. They were told that speeches could be made there, and they would be reported by an able corps of reporters, and given to the world, but he could not for a moment entertain the belief that in individual members would thus be placed in positions of like advantage with committees who were privileged to make written arguments, and have them spread upon the journals or documents.

Mr. STRONG said many gentlemen in the course of this debate had spoken his mind very fully, and it would not be necessary that he should go over the same ground. But he wished to state what he considered an objection to long reports. The gentlemen from Essex and from Kennesaw, and some others who yesterday addressed the Convention in favor of reconsidering, must have convinced the Convention that they were sufficiently able and eloquent to express all they desired to say; but if the Convention were to adopt the course those gentlemen advocated—if we allowed the committees to write out their reasons and arguments on paper, why these were the very men to whom this advantage would be given—advantages which other members of the Convention did not possess. How, for instance, would they counterbalance the advantage that would be given to the powerful pen of the gentleman from Herkimer, (Mr. HOFFMAN,) who had likewise a very eloquent tongue. Perhaps no man could spread out his thoughts on paper better than the gentleman from Herkimer, and afterwards he could come here and with the eloquence of a Patrick Henry, a Henry Clay, or a Daniel Webster, he could sustain his report. He was opposed to giving these gentlemen these advantages over the lay members of the Convention.—But there was another reason. He was unable to understand how gentlemen could from day to day, by the force of argument, sway the minds of members; but true it was, gentlemen were frequently getting up there and declaring themselves converts to new doctrines. He was convinced, that the influence of some gentlemen's eloquence alone was yet much to be dreaded.—He was reminded by such confessions of a remark once made to him by a friend who rejoiced in religious conversions—it was, "that to be a good Christian a man must be converted every day." [Laughter.] Now we had here a number of that class who were converted every day, and of course they were good members. [Laughter.] It had been said that the permission to

make long, detailed reports, was for the benefit of the lay members. To that class he belonged, but he did not ask gentlemen to trouble themselves to do any such thing for him; nor had he heard more than one lay member express any opinion in favor of it; and he apprehended before that member got through one report, he would be a convert back again as he was the other day. [Laughter.] He begged the Convention not to trouble themselves on his account, for he was in favor of short talk and short work. He did not want any written arguments spread out there to go forth to influence the people, in a shape and form which all of us would not have the benefit of.

Mr. RUSSELL said it had been urged that the reports of committees would go on the journals, and he feared some gentlemen misunderstood this matter. It was for the convention to determine what should go on the journal, and hence the argument was not well taken. Having been the unfortunate instrument in calling out this debate, he would make one brief remark. It was this—that this debate had exhibited a most conclusive argument in favor of the right to report. Two honorable gentlemen had here used language in debate in reference to each other's motives, which neither on cool reflection would put on paper in his own room.—Written reports would be divested of all personalities—of any thing calculated to excite or inflame the passions; while they would be more valuable in conveying information than oral statements.

Mr. RHOADES was in favor of a reconsideration, for it was very evident if we did not receive written reports, we would have reports in the form of speeches; and he was much mistaken if some of his friends who opposed the reconsideration, were there when the chairman of the committee on canals made his report, if the Convention compelled him to report orally, who would not be led to exclaim "oh that mine adversary had written a book!" [Laughter.] We should be admonished by what we heard yesterday, that reports should be written rather than oral. It seemed that an epidemic had come into the Convention. He confessed he felt infected himself. It had been said by physiologists that but one disease could prevail in the system at the same time; the disease of the Convention appeared to be that sometimes called the *cacoethes loquendi*. It would be better to exchange that for the *cacoethes scribendi*. By such a change in our condition, we should save much time and hasten the period when we should have created an instrument for the people to adopt as their constitution.

Mr. HOFFMAN not having been here when the resolution in question was adopted, felt called upon to say a word, not on the theory, but on the practical effect and execution of it. Proceed as we would, time must be consumed. It was not enough, therefore, that some difficulty might be pointed out in any particular case. We must make a choice between difficulties. And it appeared to him, that in this case, a choice might be safely made. If we should leave this Convention where the convention of 1821 was left, where every other convention had stood, where every legislative body in the Uni r

now stood, its committees free to report or not—in all probability they would adopt the course in the main adopted in the convention of 1821. Why distrust the committees? Indolence, the love of speaking, the hard labor of writing—all leaned to the course taken by the convention of 1821, where no man was coerced or driven from writing. It might be easy for some to write; but whoever had attempted to write out an elaborate opinion on any subject, had found it more difficult than he anticipated; and he could assure gentlemen that no written reports would be made here to any practical extent, unless the committee making them found that the subject could not be safely treated in any other manner. This was the case in every legislative body.—But suppose the rule to stand as it was, and a committee should conclude to report against an important proposition. How were they to make that report? By saying that they had come to that conclusion—and that was all. Now, committees would not do this. They would wait until the last day of the session, when no reply could be made, no investigations could be gone into, and ask to be discharged. This would be the inevitable result—the practical operation of the rule. But suppose a committee should find that they could not with safety present their conclusions, without giving their reasons in some form or other—either in the form of facts, leading inevitably to one result, or in the form of facts and argument. How would they behave? They would present their report at your table. Necessity would compel them to do so—and the Convention must decide on its reception. A majority can decide that it shall be received. That, in practice, would annihilate your rule—for the Convention would not grant leave to one committee to report and refuse it to another.—Your rule would be annihilated, and in addition to that, you must have an argument on the question of reception. But if you rejected a written report thus presented, was there a man there who did not know that this would excite an anxious curiosity every where to know what it was that was rejected, and that it would be sought out and read every where? So that every where they would have the benefit of the reasoning, except here. You could not prevent that practical effect of the rule enforced—and if you could so far enforce it, you could go no farther. There was a step still within the reach of a member, by which he could vindicate his individual right against the Convention. He would not have the Convention thus come in collision with individual rights. How could the Convention prevent the gentleman from Monroe from writing out his reasons at full length, referring to line and page where the facts could be found on which he rested, and giving it to the press, to be spread as wide as the region of letters?—Would any member who believed that to be his duty to himself and fellows, hesitate to take that course in his last vindication against any act of the Convention which should seek to prevent him from bringing his reasons before the public? And this would be done too, under circumstances which would preclude any reply to reasoning, which gentlemen seemed to imagine might be strong enough to overthrow the judgment of the Convention. That would be the

practical result. If gentlemen doubted it, they had only to look back to a case, where not even closed doors and the strongest injunctions that could be imposed on man, did succeed in destroying individual independence. Luther Martin told the people of the U. States, in spite of all regulation to the contrary, what he had done, and the reasons for his conduct. But if you permitted a committee, against a love of ease, against a desire to speak, against the satisfaction of being heard, against the opportunity of choosing a new argument in the progress of debate—to embody in writing when they thought proper, their arguments, to be read, considered, and if there were error in it, exposed here before the country—he asked, if that would not be the best, the wisest course? For his own part, there was no labor more disagreeable to him than that of writing. That he presumed would be found true of almost every other member. If they thought differently, it was because they had not been compelled to try their hands on a responsible argument—for a more responsible act a man could not be called on to do—an argument yet to be answered, considered, adopted or rejected. Believing this, he should vote to reconsider—hoping the convention would not embarrass itself in any way in this matter—but leave gentlemen free to write out or speak out the reasons for their action, as they might choose.

Mr. WARD was quite sure when he moved an adjournment, that if this matter was called up, it would lead to a protracted and unprofitable debate, and such he must be permitted to say, had been the result. Entertaining the same opinion which he at first had, he should vote against the motion to reconsider—and whilst he said this, he would avail himself of the opportunity to answer but a single objection raised by two or three gentlemen—among others by the gentlemen from Essex and Rensselaer. They alluded to the practice of legislative bodies as at war with the resolution in question. And yet they failed to present a single case where a Convention had been held, either in this state or the Union, where any written argument had been presented with a report. He thought he heard the gentleman from Essex say that there had been such cases, and Mr. W. sought an interview with the gentleman personally, afterwards, and asked him if he could recollect an instance of the kind, in any Convention in this country. And the gentleman very frankly told him, after taxing his recollection, that he could not recall such a case. He would now say, that in the process of forming the constitution of the U.S., not a solitary report of the character alluded to, was made. So when that constitution was submitted to the people of the thirteen states, not a solitary report was made, argumentative or otherwise. And hence the case of Luther Martin, to which the gentleman from Herkimer had alluded with his usual force and eloquence. He felt it necessary to present his views to the public; and did it, as every other gentleman could now. He did not and could not present a report, and hence he addressed his letter to the American people. For himself, Mr. W. said, he came here uncommitted on any question. He did not stand committed to

any change of the judiciary system. He was there open to conviction; and if gentlemen, when the matter was open, should satisfy him that it was expedient to change it, he should go with them. If satisfied that judges should be elected, he would go with those who advocated that principle. But, as yet, he was not satisfied. He repeated, he came there uncommitted on these grave questions. Still, if he were to present a report of any character in writing, he should feel bound to stand by it, and to fortify it with all the power and ingenuity at his command. He might add, that probably not all the philosophers and logicians here, would change his views. He did not desire to be placed in such a position. He maintained that this country would have been involved in endless difficulty, if we could have gone back to the Convention of the Union, and referred to reports for the reasons why this and that provision was inserted, in the constitution of the U. S. Take the question of the power of Congress under the constitution, to grant charters of incorporation, a question which had been discussed with great ability every where—some insisting that Congress had that power, and others denying it.—All would remember that it had been said, that when that question was under consideration in the Convention, an amendment was presented giving in terms the power to Congress to grant charters and that it was voted down. Yet his learned and distinguished friend from Essex (Mr. SIMMONS) would tell him—he had told him, that although that was voted down, it was because the Convention thought the instrument conveyed that power without it. Mr. W.'s opinion was the other way. But suppose a solemn, deliberate report had been made against that amendment, on the ground that the power was there already, how much more difficult the effort on the part of those who contended for a strict construction of the instrument, to keep Congress and the government within the strict line marked out by it. And he was one of those who contended that Congress had no power except such as was clearly and affirmatively given in the constitution. Others, and he need not designate them with more particularity—contended that if the power was not there in so many words, it was there by implication, and they would take it. And it was fortunate for the country that this matter was left where it was, to be determined by the instrument itself, and its plain letter and meaning. So with the question of the tariff—which had given rise to a world of discussion from one end of the Union to the other—one side contending for the power of Congress to pass a protective tariff, and the other against it. In what condition would the contending parties find themselves, were we able to go behind the instrument and its clear intent and meaning to the reports of members who had a hand in framing it? He appealed to the Convention to leave the constitution we might frame in the position in which the framers of the U. S. and state constitutions left the work of their hands—open to such construction as its letter and spirit fairly indicated, and not according to the views of individual members presented in the shape of reports. He asked pardon for having trespassed so long on the attention of the

body—hoping that this question would be settled without further debate.

Mr. LOOMIS here called for the ayes and noes, and they were ordered.

Mr. CHATFIELD had a word to say in relation to the effect of the resolution which it was proposed to reconsider—for he perceived that its effect was misapprehended in certain quarters. It did not prohibit the making of written reports. It was only an expression of opinion that it was inexpedient to do so. If, as the gentleman from Herkimer (Mr. HOFFMAN) represented, it amounted to a positive prohibition, then it would be the duty of the Chair, upon a report being presented, to declare it out of order. Such was not the effect of the resolution—but committees were just as much at liberty to make reports, as if it had never passed.

Mr. STETSON: If not prohibitory, will the gentlemen give us its meaning in unambiguous terms?

Mr. CHATFIELD replied that the resolution was in perfectly unambiguous terms. The gentleman might ransack all the lexicons in the library in vain to find a word more expressive or plainer than the word inexpedient. It was not mandatory or prohibitory; nor could the Chair shut out a report, as out of order under the resolution. It was an expression, to this effect—that the course pursued by the Convention of 1821, could be profitably, and ought to be pursued here. Another reason presented by the gentleman from Herkimer, he desired to remark upon. It was plausible on its face, but when it came to be examined proved to be a *fe'o-de-se*—a two-edged sword, which applied with more force against the gentleman's position than in favor of it. The remark was that committees charged with some special duty, if they could not submit written reports, would delay until the last day of the session, and then either ask a discharge, or report unfavorably. But, if they reported reasons and arguments as the gentleman from Herkimer would have them, against a proposition—and that too on the last day of the session, what opportunity would the friends and movers of the proposition have to defend it?—What fairness or justice would there be in such a course? What equality would that give us, in presenting our views of subjects that might be presented here?

Mr. HOFFMAN (with Mr. CHATFIELD's permission) interposed—saying that any member could at any time take a rule ordering a committee to report. But without such order, a committee opposed to a proposition, and not permitted to report reasons, would delay until the close of the session, and then ask to be discharged.

Mr. CHATFIELD insisted that in practice there would be no difference whatever. A committee opposed to a proposition, that would delay to the end of the session, and then ask a discharge, never would submit a written report before, unless under the order of the body. But Mr. C. would not enlarge further than to say, that in practice the standing committees of a legislative body seldom made written reports.—Select committees were sometimes directed to report a statement of facts, but standing committees reported or not, as they chose, in writing—

as the committees of this body might under the resolution in question. But, he did not regard this body in the light of a legislative body, with two branches acting as checks on each other, and an executive having a check on both. We were a single body, charged with a specific duty, and, as had been said by the gentleman from Westchester, no such body ever yet embarrassed its operations by these written reports. This was the first time he ever heard of the proposition being urged with such pertinacity.

Mr. STETSON: Has the gentleman ever heard of a prohibition?

Mr. CHATFIELD: No other prohibition than the practice of such bodies every where.—That is prohibition enough.

Mr. LOOMIS said the course proposed under this motion was not a new one. No legislative body—not even the convention of 1321—had adopted such a resolution as that which it was desired to reconsider. No body with which he had any acquaintance, had been guilty of the absurdity of referring matters to committees, and then refusing to hear the reasons which had led them to their conclusions. When gentlemen said that reports had not been the practice, they said nothing to the question. He was not prepared to say that written reports had not been the practice in many cases in conventions. The argument here was simply this, that reports of committees were calculated to exercise an undue influence, and gentlemen were disposed to vote against having reports, for fear they should read them and be satisfied with their conclusions.—The gentleman from Seneca (Mr. BASCOM), who put a case respecting a separate chancery jurisdiction, was afraid—no, he was not afraid of its influence on his own mind—but was afraid it would influence others! What man on that floor was ready to confess that he was afraid to read the reasons urged by a committee which the Convention had selected to consider any matter, lest he should get information and be convinced? By the same process of reasoning, they might be induced to shut their ears to the debates on that floor, from a fear that they might be prejudiced on some subject. The Convention sent out a committee to investigate and deliberate, and at the same time they told the committee, you shall not make a written report, lest you should influence us who send you out for that purpose. It was said that the resolution proposed to be reconsidered, was not mandatory. But who were the committees? Representatives of this Convention—not as the gentleman from Otsego had said, possessing the power of the Convention—but bodies appointed to examine and collect information for the body by which they were created; and would such committees act in opposition to such an expressed opinion of the body? Not unless they felt themselves able to appeal again to that body against its own absurd decision—a decision which said in effect, we are disposed to suppress the truth from a fear that we shall be prejudiced in its favor. Some gentleman had assumed that the reports would be erroneous and that they might mislead the people; and that hence they would shut their ears to the process of reasoning by which the committee had come to its conclusions. The same reasoning

would induce them to suppress debates on that floor, for they too might influence the people.—Now, every member was a member of a committee, and each one, if he did justice to the subject committed to him, would sit down and examine it, with his pen in his hand to record his opinions. That was the best mode of thinking, as all had doubtless found, and to think thus, they must have documents before them. He would not detain the Convention further than to advert to a remark of the gentleman from Otsego, imputing to several gentlemen, of whom he was one, sinister designs in desiring to have the committees at liberty to make reports if they thought proper. And he had only to say in reply that such an imputation was unworthy of that gentleman, and was not deserved by those to whom it was applied.

Mr. SIMMONS did not intend to take up much time, but there was a principle involved in this matter. As Dr. Franklin had said, great principles were often found in a very little thing. What was the principle here? It was whether reasons that were to be given by committees, should be rendered in writing, that all might have due notice of them, and examine them as business matters, and be prepared to put down what was wrong and sustain what was right—or whether they should be given orally. Now he appealed to every gentleman who was acquainted—and all were more or less—with private transactions, if when they served on business committees, they put their points and arguments in writing, they did not transact their business better and more satisfactorily?—There could be no doubt about that, whatever. In ancient times, before the art of printing was in use, they were obliged to depend on oral statements, but now we could print much more easily than they could even at the adoption of the Declaration of Independence. It appeared to him that there could be no doubt about this. It was eminently protective of the right of minorities. When he was in a minority in such a body, he desired to put the majority on their written reasons. What guarantee had the public that the result of their labors there would be a good constitution? It was because we were willing to abide by it; to rest our reputation upon it, and if the instrument we produced were a bad one, we should all share the responsibility. He always felt best satisfied when he could get a man on paper, for then he knew what he had to approve or oppose. Some gentlemen had spoken of the Convention as unlike a legislature, and therefore they should not have reports; whereas he thought it was the legislature of a legislature. It was a body, if the people confirmed their acts, making a law which comprehended all other laws. Where was the dissimilarity of their proceedings? When we formed a constitution we formed a body of laws—the organic or fundamental law—and if there was any utility at any time in having the reports and reasons of committees, we should have them then that members might examine and criticise them. It seemed to him, if gentlemen had not allowed themselves to be carried away by their prepossessions, there would be but very little trouble on this subject. He had no doubt a constitution formed by a Convention, acting

upon reports, calmly written and examined, would be a very different thing from a constitution formed by a body under the influence of declamation, and carried away by the force of oratory. He declared that he had rather see debating stopped, nineteen-twentieths of which was for Buncombe, and act on sound, written reasons and reports.

Mr. BAKER here moved an adjournment, but the motion was lost.

Mr. HARRISON rose, saying that he was about to move the previous question. [Laughter, and cries of "it's unnecessary."]

The question was then taken, and there were ayes 52, noes 63, as follows:

AYES—Messrs. Brown, Frundage, Clark, Conely, Cook, Cornell, Cuddeback, Dana, Danforth, Dubois, Gebhard, Greene, Hart, Hoffman, A Huntington, E Huntington, Hutchinson, Kernan, Kingsley, Loomis,

Mann, McNeil, Munro, Nellis, Nico'l, O'Coner, Perkins, Porter, Powers, Rhoades, Ruggles, Russell, St. John, Sanford, Shaw, Simmons, W. H. Spencer, Stephens, Stetson, Tait, Taggart, J. J. Taylor, W. Taylor, Hilden, Townsend, Futini, Van Schoonhoven, Witbeck, Wood, Yawger, J. Young, the President.—82.

NAYS—Messrs. Angel, Archer, F. F. Jackson, H. Backus, Baker, Jackson, Fergen, Houck, Luce, Bull, Burr, Cambreleng, D. D. Campbell, Caudle, Chamberlain, Chaffin, Clyde, Dodd, Lorion, Flanders Forsyth, Gaudart, G. Abam, Harris, Harrison, Hunt, Hyde, Jones, Jordan, Kemble, Kennedy, Kirkland, McNitt, Morvin, Maxwell, Miller, Morris, Murphy, Nicholas, Parish, Patterson, Penniman, Richmond, Kiker, Scott, Shaver, Shepard, E. Spencer, Stanton, Stow, Strong, Swackhamer, Talmadge, Vache, Ward, Warren, Waterbury, White, Vilard, Worden, A. Wright, W. B. Wright, A. W. Young.—63.

So the Convention refused to reconsider.

The Convention then adjourned to 11 o'clock to-morrow morning.

WEDNESDAY, JUNE 24.

Prayer by the Rev. Mr. CLAPP.

Mr. KENNEDY presented the memorial of Archibald Watt of the city of New York, relative to assessments. Referred to the 14th standing committee.

Mr. PERKINS presented returns, in answer to interrogatories, from the First Judge and the Surrogate of St. Lawrence county, and it was referred to the committee of five.

The PRESIDENT laid before the Convention a communication from the Secretary of State, N. S. Benton, esq., furnishing a list or statement of all officers appointed by the Governor alone, and by the Governor, by and with the consent of the Senate, in answer to a resolution of the Convention. It was referred to committee number seven, and 800 copies were ordered to be printed.

STATE OFFICERS—their ELECTION, TENURE, &c.

Reports of committees having been announced as in order,

Mr. CHATFIELD, from the sixth standing committee, said he had been directed by the committee of which he had the honor to be chairman, to make a report. He therefore reported as follows:

The standing committee on "the election or appointment of all officers (other than legislative and judicial and the governor and lieutenant-governor,) whose duties and powers are not local; and their powers, duties and compensation," beg leave to report in part performance of the duties committed to them, the following proposed article, in lieu of section 6 of article 4 of the existing constitution

ARTICLE.—

§ The Secretary of State, Comptroller, Treasurer and Attorney General shall be chosen by the people at an annual general election, and shall hold their offices for two years. The Secretary of State and Comptroller shall receive an annual salary of two thousand and five hundred dollars; the Treasurer shall receive an annual salary of one thousand five hundred dollars; and the Attorney General shall receive an annual salary of two thousand dollars; but he shall not receive any other or further fees, perquisites or compensation for any services performed by him as Attorney General.

§ The State Engineer and Surveyor shall be chosen at a general election, and shall hold his office two years; but no person shall be elected to said office who is not a practical engineer, and has not pursued civil

engineering as a business or profession for seven successive years next before his election. He shall receive an annual salary of two thousand dollars and his necessary expenses while travelling on official business on the line of the canals and public works of this State.

§ Three Canal Commissioners shall be chosen at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one shall hold his office for two years, and one shall hold his office for three years. The Commissioners of the Canal Fund shall meet at the Capitol on the first Monday of January next after such election, and determine by lot which of said commissioners shall hold his office for one year, which for two years, and which for three years, and there shall be elected annually thereafter one Canal Commissioner, who shall hold his office three years. The annual salary of a Canal Commissioner shall be sixteen hundred dollars, and his necessary expenses while travelling on the line of the canals of this state on official business as such commissioner.

§ Three inspectors of state prisons, shall be elected at the general election which shall be held next after the adoption of this constitution, one of whom shall hold his office for one year, and one for two years, and one for three years. The Governor, Secretary of State and Comptroller shall meet at the Capitol on the first Monday of January next succeeding such election, and determine by lot which of said inspectors shall hold his office for one year, which for two, and which for three years; and there shall be elected annually thereafter, one inspector of state prisons who shall hold his office for three years; said inspectors shall have the charge and superintendence of the state prisons, and shall appoint all the officers therein, and shall receive four dollars each for every day actually occupied in official duty at the prisons or at the Capitol, and ten cents for every mile actually travelled on official business. All vacancies in the office of such inspector shall be filled by the Governor, till the next election.

§ The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General, and State Engineer and Surveyor, shall be the Commissioners of the Land Office.

The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the Commissioners of the Canal Fund.

The Canal Board shall consist of the Commissioners of the Canal Fund, the State Engineer and Surveyor and the Canal Commissioners.

§ No law shall be passed creating or continuing any office, for the inspection of any article of merchandise, produce or manufacture (except salt manufactured within this state) and all existing laws authorizing or providing for such inspection, and the offices created thereby, are hereby abrogated.

This was but a report in part for it was pos-

sible other offices might be created by the Convention on which the committee might be called upon to report. He explained further that the report now made was not one in all its details, on which the committee were unanimous; but the committee had agreed that the report should be made, each member of it reserving to himself the right to offer such amendments as he pleased when the report should be considered in committee of the whole. It was not his intention at this time to give a statement of the reasons why some of the proposed changes were recommended in the organization of the departments of state; for he should have an opportunity to do so when the Convention should go into committee of the whole upon it.

Mr. TALLMADGE remarked that the gentleman from Otsego had informed them that the report was not the unanimous report of the committee, but did not say it was in all its parts, the report of a majority; he desired the gentleman to explain how that was.

Mr. CHATFIELD had only to say to his venerable friend from Dutchess that he should hardly venture to make a report from a committee unless he had the authority of the committee for making it. This report the committee had directed to be made, members of it, however, reserving to themselves the right to express their views upon its details in committee of the whole. He now moved that the report be referred to the committee of the whole and printed, which was agreed to—the number to be printed being fixed at 500, on the motion of Mr. RICHMOND.

THE PARDONING POWER.

Mr. RHOADES said he held in his hand a resolution which contained matter in reference to which the committee had in part reported; yet there were matters contained in the resolution in relation to the powers and duties of a class of officers on which the committee had not reported, and therefore he would send up his resolution, striking out so much as had been anticipated by the action of the committee.

The Secretary read the resolution, as follows:

Resolved, That it be referred to the sixth standing committee to inquire into the expediency of amending the constitution so as to provide for the election or appointment of a board of officers, to be denominated the Commissioners of State Prisons, whose powers and duties shall be to prescribe the mode of discipline and general government of the State Prisons, and who, with the Governor of the state, shall constitute the sole power to grant pardons to such offenders as shall be sentenced to the State Prisons.

Mr. NICHOLAS said it appeared to him that the latter part of the resolution more properly belonged to the committee on the duties of the governor: the first part had been reported upon. He would however, ask the gentleman to allow the resolution to be referred to the committee of the whole having in charge the report made this morning.

Mr. RHOADES preferred to lay it on the table until he had had time to read the report made this morning.

It was laid on the table accordingly.

BOARDS OF SUPERVISORS.

Mr. WHITE offered the following, which was adopted:—

Resolved, That the committee on the powers of counties, towns and other municipal corporations, enquire into the expediency of providing in the constitution for the enactment of such general laws as may be deemed necessary for the government of said counties, towns, &c.; and also that the boards of supervisors in the several counties in the state be restricted to the exercise of such powers as are administrative and not legislative.

'JUSTICES' COURTS.

Mr. WATERBURY offered the following, which was agreed to:—

Resolved, That the committee on the judiciary be instructed to inquire into the expediency of increasing the amount of judgments rendered by justices of the peace—that a court of appeal may be formed to settle appeals from justices courts, in such manner that the ends of justice may be reached, costs saved, and difficulties settled with more dispatch.

Mr. TAGGART presented a plan of a judiciary system which was referred to the committee on the judiciary.

COMPENSATION OF CIVIL OFFICERS.

Mr. PERKINS submitted the following resolution:—

Resolved, That all civil officers chosen or appointed for a period of three years, or less, ought to receive a compensation which shall neither be increased nor diminished during the term for which they shall have been elected; so that all laws passed after the constitution shall take effect, relating to the compensation of such officers, shall relate only to the then future incumbents of such officers.

Mr. P. said in submitting this resolution to the consideration of the Convention he did not propose to refer it to any committee. There was no committee that could properly have it especially in charge, for the subject matter of the resolution was diffused in its operation through a great variety of committees. He had supposed when it came here, that the business of a constitutional Convention was to define and lay down propositions of government, principles of legislation, the powers of the executive and judicial departments, and perhaps to limit and define the powers and the reserved rights and privileges of citizens. These he had supposed to be the principal objects to be attained by a fundamental law. But a great variety of resolutions had been offered, and a great variety of matter thrown before them, which seemed to him to be proper subjects for legislation, not for constitutional enactment. The committee to which he had the honor to belong had proposed to fix the salaries, or compensation to be paid to certain officers, as well as their duties and mode of appointment. Another committee previously reported a proposition to fix the compensation to be paid to the governor and to his secretary, together with his house-rent and various other matters, which would appear to be rather subjects for legislative detail, than constitutional provision. Considerable feeling had been excited in the community on account of what had been supposed by some to be legislation prompted by party motives, local hatred, and private passions; and in some quarters also, it had been imputed that attempts had been made to alter the compensation of officers and to lower them for the purposes of local popularity. He apprehended the proposition he had now offered would avoid such imputations on legislation; for if the legislature could not act on existing incumbents, there would be no motive but to

legislate on true principles, as it would not be known what party might succeed them. He had objections to defining the salaries of officers in the constitution. He presumed the Convention hoped to form a constitution which would for some time render unnecessary another Convention; but if we were to form a constitution which would be acceptable to the people and endure for many years, he thought we should not go into details as to compensation.—The value of money, as compared with products and merchandize, might change; the expenses of subsistence might vary, and thus what would be a proper salary at one time, would not be at another. This would be more especially the case in respect to local officers; and he feared that by the adoption of such a system we would bring before the people such a mass of details as would rather set the people to examining them, than those fundamental principles which it was more peculiarly the province of the Convention to lay down. He, however, thought there could be no fear of improper legislation on such matters, if they could not act on the existing incumbents of office. But if we should attempt to fix what should be a reasonable salary for every officer 30, 40, or 50 years to come, when the population of the state may have doubled, when their duties in many respects had become more onerous, when the price of products and necessities of life had augmented, and the value of labor had greatly changed, it seemed to him we should place ourselves in difficulties which would involve the necessity of another Convention. To avoid such a result, he had submitted this resolution, to be disposed of as the Convention might think proper.

Mr. CHATFIELD regretted that his friend from St. Lawrence should have attempted to anticipate the consideration of the report which he had had the honor to make this morning by a proposition in the shape of a resolution. The principle involved in it, was in his judgment an important feature in the changes to be made in the administrative offices of the state. It had been fully discussed in the committee, and though the committee was not entirely unanimous, they had agreed that certain propositions should be reported to the Convention, reserving to themselves the right to express their own views in committee of the whole; but a discussion in anticipation of the debate on the report, before it had been printed and examined, could lead to no result. He did not now design to enter into any discussion, but when the whole subject should be before the committee of the whole, he would adduce reasons for the conclusions to which the committee had come.

Mr. SWACKHAMER moved to lay the resolution on the table, which was carried; also a motion to print, by Mr. LOOMIS.

Mr. PATTERSON moved the printing of an additional number of the diagrams of the house, which had just been laid on the tables. He suggested 5 additional copies for each member, officer, and reporter.

Several gentlemen desired 6 and others 10.—The latter number was agreed to.

On the motion of Mr. E. HUNTINGTON, ordered that 800 be the number of copies to be

printed of the reports of committees hereafter to be made.

THE FOURTH OF JULY.

The PRESIDENT laid before the Convention an invitation from a committee appointed by a meeting of civic officers, benevolent societies, and military and other companies, to the Convention to participate in the celebration of the 4th of July in this city.

After some conversation as to the proper disposition to be made of the invitation, whether it should be referred to a committee for consideration, or be acted upon at once by the Convention, the latter course was adopted, and the invitation was accepted.

THE GOVERNOR AND LIEUT. GOVERNOR.

On motion of Mr. MORRIS, the Convention went into committee of the whole, Mr. CHATFIELD in the chair, on the Article to the constitution heretofore reported by him [and published at length] in relation to the powers, duties, &c. of the Governor and Lieut. Governor.

The CHAIR directed the Article to be read through, and it was partly read—when

Mr. MORRIS suggested that the reading be dispensed with, as it had been printed and laid on the tables—and was unnecessary.

The reading being dispensed with, Mr. MORRIS availed himself of the occasion to state the reasons that had induced the committee to report the article—saying that suggestions had been thrown out from time to time, in relation to it, that seemed to call for it. The committee had embodied in the article all the provisions of the constitution which properly came within it, including those that they did not propose to alter, in order that members might have the whole before them, and be better able to judge of the propriety of the amendments suggested. They had also inserted provisions touching the compensation of the Executive—not entirely from any views of their own, but because they were specially charged with the matter of compensation and were bound to consider and notice it in their report. Mr. M. ran over several sections of the article, correcting, by consent some verbal and clerical inaccuracies—saying that the 1st, 2nd, and 3rd sections were copies of the present constitution—the 4th section also, with the addition of existing provisions of law in regard to compensation. The 5th section was formed of the old constitution, the statute and some new matter. To this he proposed to add a clause which was in the present constitution, which the committee left out, from a fear that they might trench on the duties of the legislative committee. But upon reflection, it seemed so intimately connected with the subject as to require its retention. It was a clause to the effect that in case of a suspension of a sentence for treason until the next meeting of the legislature, the legislature should either pardon, direct the execution of the sentence, or grant a further reprieve. The 6th section was copied from the old constitution, with the addition of another cause of disability. The 7th was also old, except with the like addition. The 8th was new, taken from the statute, fixing the compensation of the Lieut. Governor. The 9th was new—the 10th was taken from the statute, and involved a serious question

perhaps—whether the matter of delivering up criminals to foreign governments did not belong entirely to the United States government.

Mr. JONES enquired why the committee had omitted a provision for delivering up fugitives on the requisition of the executives of co-states?

Mr. MORRIS replied that that was provided for in the constitution of the United States, in so many words. It made it the duty of state executives to deliver up such fugitives.

Mr. JONES asked the gentleman to point to the section of the United States constitution that required this of state executives.

Mr. MORRIS said he would refer the gentleman to it by and by.

Mr. JONES was under the impression that it was made the duty of states to do it, but by whom was not specified.

Mr. WARD read from the constitution of the United States, the section in question (article 4) as follows :

“ § 2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.”

Mr. JONES replied, that it would be seen that there was no obligation imposed there upon any state officer to deliver up fugitives.

Mr. MORRIS replied that the law of congress imposed that duty on the executive—and went on to say that the 11th section was taken from the statute; the 12th also, with a little alteration. The 13th was also taken from the constitution, altered by striking out clerks and registers, leaving sheriffs only removable by the executive.—The 14th was new in part, and for that he desired to offer a new section, being the original re-modelled, and with additions requiring the yeas and noes on every bill, and giving the governor ten days after each session to approve of bills, as follows :

§ 14. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor. If he approve he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter the objections at large on their journal and proceed to reconsider it. If, after such reconsideration, two thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present it shall become a law. If not approved by two-thirds of the members present, and if, at the next ensuing session of the legislature, the same bill shall be again passed by the vote of the majority of all the members elected in each branch of the legislature, such bill shall become a law notwithstanding the objections of the governor. And upon the final passage of every bill the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall by their adjournment prevent its return; in which case it shall not be a law, unless the governor shall approve of a bill, within ten days after the adjournment. The omission of the governor in such case to approve of a bill, within ten days after the adjournment, shall have the same effect as if such bill had been returned to the legislature with his objections.

This, and the several other alterations (chiefly verbal) suggested by Mr. MORRIS, were as-

sent to, as modifications of the original article.

Mr. MORRIS then moved that the committee take up the first section of the article.

Mr. SHEPARD enquired of the chairman of the legislative committee, whether they intended to consider the veto power?

Mr. STETSON did not know that he could answer with precision. The committee of which he was one had had some of these matters partially under consideration; but as to the veto power, it was viewed as connected with the powers and duties of the Governor. To a certain extent it was. In the existing constitution it was placed under the legislative department. They ran into each other, to some extent, evidently. From the shape now given to this article, it regulated nearly all legislative power at the close of the session. There were many considerations of importance connected with legislation at the close of a session, most of which had received consideration at the hands of the committee on the legislative department.

Mr. MORRIS remarked that when we came down to the last section, it would be for the convention to determine to which department the subject belonged. While up, he would state, that the committee unanimously agreed that this article should be reported to the Convention; but that no one of the committee was to be understood as being wedded to any suggestion in it. They came in with it, as entirely open to conviction as any member of the body, and free to adopt any suggestion that might strike any of them as an improvement. He hoped, therefore, gentlemen would feel at perfect liberty to make any suggestions that might occur to them.

The CHAIR stated the question to be on taking up the first section.

Mr. PATTERSON hoped that in taking up the article by sections, the usual course would be adopted—that is, if no amendment was proposed, to pass on to the next, and so on, until the whole had been gone through with and perfected—taking no final question on any section.

The CHAIR understood that to be parliamentary law.

Mr. KIRKLAND had doubts whether time would be usefully employed in taking up this article by sections. He believed the Convention should reject the entire article. How that question could be discussed by taking up the first section he did not know. But he believed that overpowering reasons could be presented why this article should be rejected as a whole—in other words, why the article of the existing constitution on the same subject was fully sufficient for all purposes.

The CHAIR stated that after the article should have been perfected by sections, it would then be under consideration as a whole, and every part of it would be open for discussion.

Mr. KIRKLAND went on to say that he regarded the act under which we had assembled, as a special power of attorney—as the chart on which our course was marked out. He did not regard it as any part of our duty under that act, to propose to the people, for approval or rejection, parts of the old constitution which we did not propose to amend. Yet here were three or four sections of the existing constitution

embodied in this article, without the alteration of a letter. Without intending the slightest disrespect to any member of the committee that reported it, he must say that he thought it a waste of time to go through it, and discuss the propriety of submitting to the people for approval or rejection, sections copied word for word from the present constitution. Nor would it be within the line of our duty, which was specifically to propose amendments to that instrument. He trusted, therefore, before the committee took up this article section by section, that members might be allowed to express their views on the other question—whether the article should not be rejected *in toto*. If not out of order, he would now proceed to state his views on that subject.

The CHAIR stated that it would not now be in order; but that after the article had been gone through with, section by section, and the question came up on reporting it to the house, then the remarks of the gentleman would be in order.

Mr. KIRKLAND replied that time might be saved, if the committee should first dispose of the question he wished to raise—though the same result might be attained in the mode suggested by the Chair.

Mr. RUSSELL suggested that, as the committee would probably soon rise, the gentleman could then attain his object by moving to recommit the article with instructions. The article ought to be printed, as now amended, and the new parts distinguished from the old, by italics.

Mr. KIRKLAND thought it would be incurring a useless expense to print.

Mr. SWACKHAMER called the gentleman from Oneida to order—and

There was a great deal of desultory conversation on the point of order—whether under a motion to take up the first section, debate was admissible on the propriety of rejecting the entire report. In the course of this conversation, Mr. SWACKHAMER waived his call to order—and finally, on motion of Mr. WORDEN, and by consent, it was ordered that the article be taken up section by section for consideration and amendment.

The first section having been taken up,

Mr. KIRKLAND desired to say a few words on the point to which he had before adverted. The parts of the present constitution which were to be altered, were those which they should submit to the people for approval or rejection—not provisions with which they found no fault, but with which all were satisfied; and he objected to this mode of proceeding. In his judgment it would lead to a useless expenditure of time, and involve them in difficulties from which they would find it almost impossible to extricate themselves. In his judgment, no report should come from committees to the Convention, other than amendments to articles of the existing constitution, which committees might specifically submit. They had a very good and salutary example in the mode of proceeding by which the constitution had been heretofore amended.

The CHAIR inquired if the gentleman from Oneida proposed to debate the first section?

Mr. KIRKLAND said he did not.

The CHAIR remarked that debate was not in order unless he moved to amend the section.

Mr. KIRKLAND proposed to strike it out.

The CHAIR replied that that was not in order.

Mr. KIRKLAND then proposed to show that the section ought not to be adopted.

The CHAIR reminded the gentleman that the question was not on its adoption. The first section was open for amendment; and if none were proposed, it would be passed over, and the next taken up.

Mr. KIRKLAND enquired if the merits of the first section were not debateable?

The CHAIR explained that they were not at this stage of the business, unless an amendment were offered.

Mr. KIRKLAND enquired if no vote was to be taken on the section.

The CHAIR replied, that there was not, but votes might be taken on any amendments that might be offered.

Mr. STETSON explained, for the information of the gentleman from Oneida, and to help him out of his dilemma, that one fact had been lost sight of, which would explain the whole matter. It was this: that the Convention had accepted the report of the committee, and now it was their act.

The CHAIRMAN also explained, that the gentleman from Oneida would have opportunities hereafter to accomplish his purpose, which he specified.

Mr. KIRKLAND moved that the committee rise and report progress, which was carried by a vote of 49 to 36.

The PRESIDENT having resumed the chair, stated the question to be on granting leave to sit again.

Mr. TILDEN suggested that as the committee from whom the article had been reported had made pretty numerous amendments to it, it might be convenient to have the report, in its amended form, printed under their direction; and it would also be desirable that the amendments should be distinguished from the parts of the old constitution by a different type. He moved the printing as he had indicated.

Mr. MANN thought the question should be first taken on granting leave to sit again.

Mr. TILDEN thought his motion involved that.

Mr. RICHMOND desired to know what necessity existed for this additional printing. Was it because the committee had corrected some clerical errors?

The PRESIDENT remarked that the question was on granting leave to sit again.

Mr. RICHMOND said he was in favor of granting the committee leave to sit again, and on this report as it is, for he liked the shape in which it had been presented. It was in a shape to suit every common sense man, and with which they could see what they were about.

Mr. NICHOLAS said the object of the gentleman from New-York (Mr. TILDEN) could be attained and yet the committee have leave to sit again. He admitted the manner in which the report was printed was defective; a great embarrassment was thereby occasioned; for here were twelve or thirteen sections, with nothing to distinguish between the amendments made

and the provisions of the old constitution. He hoped that leave would be granted to sit again and that the report would be printed, distinguishing the amendments by printing them in italics.

Mr. WARD desired to make one suggestion. Very few amendments had been made by the committee and they were merely verbal.—After the report had passed through the committee of the whole, when the amendments had been made which other gentlemen might desire to offer, would be the proper time to order the printing. If, however, they were to act on the suggestion of the gentleman who had preceded him, this report would now be printed at some cost, and it would have to be printed again when the individual amendments of gentlemen should have been made. There was no sort of necessity for it now, and he hoped there would be no further desultory conversation in relation to it, but that they would grant leave to sit again, and to-morrow go into committee again. Gentlemen had amendments, some to make the election of Governor annual, others to strike out the age prescribed, and there were others of a different description, and he trusted they would all be permitted to exercise their rights, by attempts to make the article perfect.

After a few words from Messrs. TILDEN, WATERBURY, TAYLOR and DANA,

Mr. TOWNSEND suggested to Mr. KIRKLAND, that the remarks he desired to submit, might now be in order.

Mr. KIRKLAND said he had been so much troubled with points of order, that he scarcely dared to venture on another attempt to give his views on the subject of the merits of this report; but if he were in order he would say a few words. As he understood the duty of this Convention it was to amend the existing constitution of the State of New York; and if they confined themselves to amendments of that instrument which were demanded by the people, and by the interests of the people, without going beyond their duty or over ground with which they had no manner of concern, he thought they should find themselves well occupied for two months to come. Some gentlemen might differ from him, but he was of opinion that they were assembled on that floor by virtue of the act calling a Convention, and they should follow the course which that act prescribed. This was a very important matter, as the Convention would find before they got through their deliberations.

Mr. TOWNSEND moved an adjournment, Mr. KIRKLAND having yielded the floor for that purpose; but it was negatived 54 to 28.

Mr. KIRKLAND resumed in reference to the act which called the Convention together, and the duties which were devolved upon them by that act. He found that the 6th section prescribed their duties to be to take into consideration the constitution of this state, and to make such alterations therein as the rights of the people demanded, and as they might deem proper.—Now he apprehended that in the performance of that duty they were not called upon to report from committees the articles in the present constitution, but they were called upon to make such amendments therein as the rights of the people demanded. He found no fault with the committee from whom this report came, for they had been on an untried path, and were the first to report without having any instructions from the Convention as to the mode they should adopt; but if this mode of reporting were to be adopted, it would be necessary that every other committee should report to the Convention articles and sections of the present constitution, and even those in which no amendments whatever were to be made. By an analysis which he had made of the report of the committee, he found that there were seven sections of article three of the existing constitution reported, most of them substantially unaltered. There was one section of article first, and also one section of article four, reported in the same manner. Now it seemed to him this would lead to great confusion, and would give to the committees and to the Convention unnecessary labor without being productive of any important benefit. He thought the proper course was that pursued by the last Convention which he again described, and then they would have the amendments in a proper shape to submit to the people. It was desirable that this matter should be settled now, because this was the first report from a committee, and whatever was now approved would prescribe the course for all the rest. It had been found in all the states of this Union, and perhaps in other countries, that excessive legislation was the bane of the land, and the people had sent them here to guard against it, and he hoped they would not give a worse example, that of excessive constitution making.

On the motion of Mr. BASCOM the convention

Adjourned to to-morrow morning at 11 o'clock.

THURSDAY, JUNE 25.

Prayer by the Rev. Mr. FISHER.

The PRESIDENT presented to the Convention returns in answer to interrogatories, from the assistant register in Chancery at New York, setting forth the number of causes on the calendar, &c. Referred to the committee on the judiciary.

Mr. RHOADES offered the following which was agreed to:—

Resolved, When reports of committees hereafter presented which embrace proposition to amend the constitution, and in which sections or parts of sections of

the existing constitution are embraced, that such parts be printed in italics.

THE CANALS, PUBLIC PROPERTY, &c.

Mr. F. F. BACKUS called for the consideration of his resolutions offered a few days since, requesting the Comptroller to furnish certain statements and estimates in relation to canals, the public property, &c., [heretofore published at length,] and they were agreed to.

RIGHTS OF MARRIED WOMEN.

Mr. WOOD submitted the following, which was adopted:—

Resolved, That the committee on the rights and privileges of citizens of this state enquire into the propriety and expediency of securing to married women by constitutional provision, the right and power to control and manage their real and personal estate or property they may have at the time of their marriage, or which they may afterwards be entitled to by descent, devise, bequest, contract, gift, or any other proceeding which may entitle them to the right of property, to empower them to make bargains and contracts for the same, to bind them by such contracts or agreements, relating thereto, and that the said property be liable for the debts individually contracted by them, and also for their support and the support and maintenance of their children, and that they may by last will and testament devise and bequeath the same, and that laws may be passed by the legislature for the descent of such estate or the distribution of such property in cases of intestacy, and also to secure to the husband the same interest in his wife's estates and property, that his wife would by law be entitled to in his under similar circumstances, and that a married woman may before or after the death of her husband, enforce any contract or agreement made with her during marriage, for her support and maintenance.

REMOVAL OF OFFICERS.

Mr. PERKINS offered the following resolution:—

Resolved, That a select committee of seven be appointed by the Chair, to consider and report appropriate amendments and provisions for the suspension of officers suspected to be guilty of malversation, from office, and for their removal on proper proof; and for supplying vacancies *ad interim*.

Mr. PERKINS said it seemed probable that the deliberations of this body would result in the election by the people of a large number of officers that now renewed their appointment in other modes. There were some provisions in the present constitution for the removal of officers elected by the people; but for the most part, officers elected by the people, could only be removed by impeachment—a majority of all the members elected to the Assembly being necessary to initiatory proceedings, and two-thirds of the Senate to convict. Members of the two houses might be expelled by those bodies. Yet it was probable, that officers elected by the people, with a term of office prescribed by the constitution, would not be removable until the expiration of such term by force of legislative enactment; and hence it might be necessary to make provision in the constitution, for the removal of officers under such circumstances, and to supply vacancies *ad interim*. It had been proposed here to elect officers of the government, very extensively. How far that would be carried into effect we could not yet determine. We had received one report making all state officers, canal commissioners, and inspectors of state prisons, elective by the people. It met with approval, in many quarters, and it might be that surrogates and district attorneys, and perhaps other officers, would be made elective. A large portion of these officers were the receivers and disbursers of public moneys. Under the constitution of the U. S., all receivers and disbursers of the public moneys were appointed and removed through the instrumentality of the President of the U. S., by himself or subordinate officers. There was a similar provision in the old constitution of '77. Under that of '21, there was not a very large number of officers made elective, and their tenure of office prescribed. Sheriffs were the principal officers. They were receiving and disbursing agents and

officers elective by the people, and there was provision made for their removal, and various instances of the exercise of that power had occurred. The removal and suspension of officers under the present constitution had been generally regulated by law, and not by constitution, and if it could be so regulated, it was perhaps better to leave it there. He entertained strong doubts, if the constitution should prescribe an election by the people, and the tenure of office should be one, two, three, or five years, whether any such officer could be removed or suspended, without constitutional provision—prescribing the mode in which it should be done. Under the system we were about to introduce, it would be found necessary to provide that receiving and disbursing officers, when found guilty of malversation, should be speedily suspended from office; otherwise they would be unable to arrest the abuses of defaulters, except to use a common expression, by shutting the door after the horse was stolen. These views sincerely entertained, had induced him to submit this resolution. It would be perceived by turning to the Revised Statutes, that the Governor had power to remove officers appointed by him, and to supply vacancies thus created; but if he was correct in the views he had now taken, it would be necessary to make constitutional provision for the removal of officers elected by the people.—He had submitted his resolution, because under parliamentary rules, he could not place his views on record in any other way. If, however, the Convention should send his resolution to the judiciary committee, he should interpose no objections.

Mr. STRONG thought the gentleman from St. Lawrence had had ample opportunity to express these views in the committee of which he was a member; where the question involved had been debated from day to day; and with that the gentleman should have been content. Now, however, the gentleman asked for a special committee; but why, Mr. S. was at a loss to determine, inasmuch as the gentleman, if dissatisfied with the conclusions of his own committee, could offer an amendment carrying out his views, when the Convention should go into committee of the whole on the report. Then also he might be heard in explanation of his views, and the Convention could act accordingly.

Mr. PERKINS said it was true he had heretofore made some of the suggestions which he now made, in the committee of which he and the gentleman from Monroe were members; but he had not then understood, nor did he now understand that that committee was charged with the duty of introducing constitutional provisions to meet cases such as these. He apprehended the duty rather belonged to the committee on the executive department.

Mr. CHATFIELD said the committee of which he and the gentleman from St. Lawrence were members, had considered this subject, and he hoped that gentleman, in the movements he had made in reference to the action of their committee, did not intend to cast any reflection either on its ability or its willingness to discharge its duty. The resolutions, however, which the gentleman had offered yesterday and to-day would seem to have that aspect. This whole

subject was brought to the attention of the committee by another member, almost in the precise words which the gentleman from St. Lawrence had adopted; and after much discussion, finding that there was not a unanimity of opinion upon it, it was thought better to defer its further consideration until the Convention should be in committee of the whole on the report of the gentleman from New York (Mr. MORRIS), as this was deemed to be a part of Executive duty, and that provision should be made for it by an amendment to that report. He (Mr. C.) was satisfied that that was the proper view to take of the question, and he had therefore prepared an amendment which he entrusted to a colleague (being himself the chairman of the committee of the whole on the report referred to); and he was somewhat surprised to find that they were now anticipated by a resolution to refer to a select committee. Mr. C. was opposed to such a reference, for it would appear to imply that the committee of which he was chairman was incompetent to consider it. If it were to be sent to a committee at all, he claimed, as a matter of parliamentary courtesy, that it should be sent to his committee.

Mr. SWACKHAMER made that motion, so as to refer to committee number six.

Mr. PERKINS perceived that the chairman (Mr. CHATFIELD) of the committee to which he belonged, seemed to suppose that any movement made by him in relation to any matter here, was in derogation of the powers conferred on Mr. C. as chairman, and an imputation on the committee itself. Mr. P. confessed to some surprise and astonishment at the view the gentleman took of his movement to-day and yesterday. The Convention had determined that they would receive no reports or expositions from these committees. Now, the report made yesterday from the committee of which he was a member, in many of its provisions had his cordial approbation—whilst some of its details did not meet his assent. And yet the gentleman from Otsego seemed to regard it as a personal indignity to him, that he (Mr. P.) should make any movement here implying that he did not assent to every item and article of that report. Now, in the ordinary course of parliamentary proceedings, it would have been his right, and not discourteous in him, to have expressed in writing the views he had indicated—that expression would have come before the Convention with the report, and the implication would not have arisen, as now, that he assented to the entire article. Again, in offering his resolution yesterday, he desired in that way to indicate his views in relation to the matter of fixing the compensation of officers—anticipating that the article reported by the committee on the Executive department (Mr. MORRIS's) would come up, and that standing on record in favor of that proposition, by the report made by his committee, he should be placed in a false attitude, if he should, as he intended, take ground against that provision. He did not desire to be placed in that position; and had the ordinary course been pursued here, he should not have been compelled to stand in that attitude. Mr. P. did not know what was intended. The gentleman from Otsego, (Mr. CHATFIELD,) his associate on the committee, had

made a speech against written reports; and if a minority wished to place themselves on record, they must at least write something—perhaps in the form in which he had chosen to do it here. But as it was—between the action of the Convention on one side, and what was deemed courtesy on the other, the mouths of a minority of a committee were closed. They could not bring their views before the Convention, except when a report came up in committee of the whole. Was a course of that kind to be put down the throats of the Convention, and of such minorities? If country required it, he would submit: for he designed no disrespect to anybody, nor did he think he had been guilty of any. Minorities of committees; when a report was made, should be allowed to stand on record, as early as the residue of the committee, that the views of both sides might be before the body. He did not understand until now, that this matter appropriately belonged to committee number six. If the gentleman from Otsego wanted to have charge of it, Mr. P. had no objection. The gentleman claimed it, and Mr. P. was willing he should have it—or any other committee. But he did not regard it as within the range of the powers delegated to that committee. It reached beyond—to other officers—to the Executive—to all local officers—perhaps to the judiciary committee. He did not know that the gentleman from Otsego had exclusive jurisdiction over this subject. But Mr. P. had no objection to his having it; Mr. P. did not desire to have it himself; for he apprehended, it was not a matter so easily disposed of. He confessed he did not understand this matter as some of the committee did—though he presumed they were right about it. The subject was introduced before the committee, by whom he would not pretend to remember—and he was certain that it was mooted and talked about—and that the declaration was made and assented to, that some stringent provisions would be necessary. And then the matter dropped—nothing being said as to who was expected to perform that duty. Had he supposed that it belonged to the committee of which he was one, he should have proposed that provisions be drawn up in detail for consideration. He did not happen to hear the suggestion of a mode of effecting the removal of these officers, if it was claimed that they were made as a step towards the committee's framing such provisions. And he was at a loss to understand when, and from what source, and on what ground these imputations were attempted to be cast on him of disrespect towards the chairman of the committee to which he belonged. Mr. P. disclaimed any intention to forestall the committee. He repeated he had no desire to be on the select committee. If the gentleman from Otsego desired to have the framing of such provisions as he had indicated, he hoped the Convention would gratify him.

Mr. CHATFIELD did not mean to say that the gentleman intentionally cast any imputation on him, or on the committee. But he did say what he repeated now, and what must strike the common sense of every man here, that the course pursued by that gentleman could not be regarded in any other light than as an imputation on the action of that committee. He had

never yet known, in his parliamentary experience, a select committee raised on a subject before referred, unless the previous committee refused to act, or had acted in an improper manner. What he complained of was, that a select committee should be proposed to be charged with a duty which had been devolved on a standing committee. If that was not a reflection or imputation on the committee, then he was unable to see what was. Mr. C. did not arrogate to himself the right to discharge a duty which properly belonged to another committee—but the classification of subjects adopted by the Convention, gave to the committee of which he was one, the charge of this subject most clearly.—And it would be their duty no doubt to provide for the mode of appointment, &c. of other officers than those specified in the article reported yesterday—for it was probable that offices might be created, by the action of other committees, not known now to the constitution and laws; and hence it was that the committee, reporting as they did in advance of all the other committees but one, reported in part only, reserving the right of reporting further, should the action of other committees make it necessary. But the gentleman from St. Lawrence had made his resolution a sort of peg to hang a speech on against the action of this body a few days since, in relation to written reports—and the matter of complaint seemed to be that he had no means of placing himself on record on this subject. He would ask that gentleman if it was not in his power, in committee of the whole, to make known his views, and by way of amendment to place himself on record? Was there any prohibition—any gag in force here? Was there any necessity for a select committee to enable him to do that? Was there not another mode also in which the gentleman could have placed himself on record? Certainly there was nothing in the recent expression of this body, to prevent a minority on a committee from presenting propositions counter to, or varying from the proposition of a majority; both might be presented at the same time, and both go on record together, and that would have been perfectly parliamentary. It did seem to Mr. C. that this resolution, or rather the speech accompanying it, was not made in a very amiable spirit. He might have mistaken the gentleman's feelings; it would be uncharitable not to believe that the gentleman had no bad feeling or motive about it. Be this as it might—there was a short and proper mode in which the gentleman could attain everything he sought to effect by this resolution—and that was when we came into committee on the article which was up yesterday, to move sections by way of amendment, providing for the suspension of officers guilty of malfeasance, by the executive, until they could be impeached by the legislature; and Mr. C. could say that that was the view entertained by the committee of which he was chairman, of the proper mode of reaching this question.

Mr. SIMMONS remarked that it was very evident we should not soon arrive at results which the people of the state were anxiously looking for, if every now and then personal feelings and reflections were to be indulged in. All this difficulty had obviously grown out of a mistaken

idea on the part of the gentleman from St. Lawrence, that minorities on committees were precluded from making reports. No doubt, the gentleman could have presented a counter proposition here, when the report alluded to came in. And having inadvertently omitted to exercise this right at the proper time, the gentleman ought perhaps to have it restored to him; so that before we went into committee on the proposition of the majority, we might have the counter proposition before us in print. Technically the tenure of office, was not a matter referred to committee number six, but looking at the spirit of the classification adopted by the Convention, it fell within the scope of that committee—and for one he should like to have the benefit of the views of the gentleman from St. Lawrence on this important subject, where he was evidently at home. He need not enlarge on its importance. The history of the country showed that there had always been a necessity for praying that we might not be led into temptation. The people were sometimes mistaken in individuals—and it was highly proper that we should provide some mode of reaching persons for mal-conduct. As had been well suggested, the old-fashioned mode of impeachment had become so obsolete, as to be ineffectual, even in *terrorem*. And, on the other hand, it was an arbitrary and unsafe mode to allow the governor to remove, on mere suspicion. It was a subject which ought to be considered—and to enable the gentleman from St. Lawrence to present his views on the subject, Mr. S. had drawn up a resolution, which he should offer, if assented to by that gentleman, and the chairman of committee number six.

Resolved, That the report submitted by committee number six, be recommitted to afford the minority of the committee an opportunity to make the report inadvertently omitted by the minority.

Mr. CHATFIELD.—Strike out the last sentence. It was not inadvertent, and would be untrue.

Mr. SIMMONS.—I mean inadvertently on the part of the minority.

Mr. CHATFIELD.—That is not true.

Mr. PATTERSON suggested that as the committee had only reported in part, the minority could report hereafter.

Mr. SIMMONS waived his motion.

Mr. DANFORTH asked the gentleman from Otsego where minorities of committees received authority to bring in minority reports?

Mr. CHATFIELD.—From parliamentary law—as old and universal as parliamentary bodies themselves.

Mr. DANFORTH.—But according to parliamentary law, committees bring in written reports, and assign reasons.

Mr. CHATFIELD.—True; but parliamentary bodies may limit their action in that respect, and have done it.

Mr. DANFORTH was aware that that had been done here—and hence it was that the gentleman from St. Lawrence had felt constrained to take the course he had. He had the honor of belonging to committee number six. He did not assent to all the provisions of their report.

Mr. CHATFIELD.—Did not the gentleman assent to the report being made?

Mr. DANFORTH did assent, because it was

only a report in part. But now, if the committee wished to present their views—how were they to do it, until a very late day? He should like to have the gentleman from Otsego inform him.

Mr. CHATFIELD had tried to inform the gentleman that when we came into committee of the whole, any member could present his propositions and argue them. No difficulty about it—not a particle.

Mr. STOW stated his view to be that this matter of the removal of officers, by implication, though not in express terms, was given to committee number six, and there was no necessity for raising a select committee.

Mr. KEMBLE, as a member of this committee number six, felt called on to say that the subject matter of this resolution was informally discussed in that committee; but that there were doubts expressed whether it did not properly belong to the committee on the powers and duties of the executive. The committee, therefore, in view of the fact that the subject might come before them, under the report of other committees, concluded to postpone the subject for future consideration, and to report in part, as the committee had done—reserving this subject.—Under these circumstances he moved to lay the resolution on the table. The motion prevailed.

ROYAL GRANTS

Mr. MURPHY called up his resolution, referring to the committee on the rights and privileges of citizens, the expediency of striking out of the constitution certain clauses in relation to Royal Grants [as heretofore published.]

Mr. SHEPARD had no objection to an appropriate reference, but he thought that direction had not been given to it. The clauses referred to, related, the one to grants of land, the other to charters of incorporation. He suggested that the subject of grants to individuals belonged to the committee designated, but not the other.—Perhaps there was no appropriate committee for the other branch of the enquiry, unless it was the 14th, on the powers and organization of cities and incorporated villages. But it was very clear that a vested right of property in a city or village was not a matter of city or village organization. Under these circumstances, as this was a matter of vast importance to the city he in part represented, he moved the reference of the subject to a select committee of five.

Mr. MURPHY was happy to hear the gentleman say that the resolution did not affect the rights of citizens of any portion of the state.

Mr. SHEPARD meant to say that it did not so particularly affect citizens as to require its reference to the committee on their rights, &c. Every thing that could be done here must affect every citizen directly or indirectly.

Mr. MURPHY understood the gentleman.—But the gentleman, in speaking of this reference, had fallen into the very error, which it was the design of the resolution to remove.—Mr. M. originally proposed a reference to two committees; but upon reflection, gave the whole a direction to one committee—to that on the rights and privileges of citizens—and as he stated the other day, because the clauses proposed to be struck out, were in that article of the constitution which related entirely to that sub-

ject. True, so much of the resolution as related to corporations was not technically referable there. But in reality, the subject intimately concerned the rights and privileges of citizens. Now Mr. M. did not propose to interfere with vested rights, as seemed to be supposed. This resolution, in fact, contained a reservation in favor of vested rights. He did not wish to attack vested rights. He did not want that question inquired into here. But he did propose an examination into political power, as exercised by corporations—which gentlemen seemed to regard as in a measure sacred, and beyond our examination. That he denied. He held with a distinguished writer who flourished many years ago, that the rights of man, were not the rights of one generation—that they could not be monopolized, but belonged to all.—Powers which interfered with the political rights of man, must fall before the spirit and genius of our government. They could not be vested. The gentleman had also fallen into a further error in supposing that there was any thing peculiarly strong in a royal grant. The people of this state succeeded to all the rights and prerogatives of royalty before the Revolution. Whatever the king of Great Britain might have done, they could now do, and what they could not do, the king could not do. He desired to strike out of the constitution clauses which he deemed mischievous. We found men in high places, we found members here—we found legislative bodies, putting constructions on the constitution which had been repudiated by our own courts, and by very eminent men. These clauses had led to monstrous errors—not only in case of the city of Albany, to which he alluded the other day, but in the legislature. He had a case now in his mind which occurred in 1830—when it was sought to divide a town in Suffolk county, where his venerable friend on his left, (Mr. HUNTINGTON) resided. A remonstrance was presented, setting up this same question of Royal grant. It was a royally chartered town. The legislature gravely referred it to the then Attorney General (now Chief Justice,) to determine whether the legislature had the power to divide the town of Huntington. The Attorney General reported, as Mr M. contended the law was—that a division of empire worked no change in the rights of property—and that in regard to public rights, the legislature had full power. If gentlemen would refer to the then Attorney General's opinion, they would find that he declared these clauses which Mr. M. proposed to expunge, to be a perfect nullity, and as having no business there. Why then should not this subject go to a committee selected from the body of the house, and peculiarly qualified to take charge of the rights of citizens, whether of the city of New-York or any other part of the state. And he knew that there were those in this city and New-York, who did not believe that chartered rights were of such a nature as to prevent an exercise of sovereignty here, with a view to correct evils. No. The spirit of a Leggett still lived there, and there were many, very many there, who wished to see this doctrine of vested political rights broken up. With a view to have this matter brought before us dispassionately, and by a

committee composed of no member from such parts of the state as were peculiarly interested in it—he had moved the reference to committee number eleven, at the head of which was one of the most venerable and distinguished members of this body.

Mr. SHEPARD remarked that to examine the section which the gentleman from Kings had introduced, would be to discuss the merits of the question, with which at this time we had nothing to do. The gentleman had not answered his objections. Supposing that the seventh article of the present constitution was entirely made up of an enumeration of the rights and privileges of the citizens of the state, that would prove nothing in favor of the proposed reference, because they had appointed eighteen standing committees and referred to them various subjects, without reference to the various parts of the constitution in which they might be now.—His colleague (Mr. MORRIS) had reported on the veto power, and on some other things which were not found in the same article of the present constitution. The gentleman from Kings had placed in his (Mr. S.'s) lips, arguments which he had not used; and these the gentleman had answered, not those which Mr. S. had in fact used. Now, he did not stand there the advocate of royal grants, except so far as they were sanctioned by the people, and such vested rights he had supposed were secured, though the gentleman seemed to think they were not. They were protected by the genius and spirit of our laws. Now, there was a large class of rights which the city of New-York exercised. It was an extensive corporation, and stood in two relations to the people at large—first, as a large political corporation, exercising rights of political government; and next, as a large private corporation, exercising the rights of a private corporation. Those rights had been secured by a long chain of statutes and charters, and it appeared to him it would be unwise, as the gentleman stated, to avoid a popular misconception, hastily and without examination to cast aside sections of the constitution which were inserted by a wise foresight by the convention of 1821, for the purpose of securing these private rights.—He wished the examination to be made by the proper committee. He had no objection to the committee of which the venerable gentleman from Dutchess (Mr. TALLMADGE) was chairman, except that according to the order which the Convention had adopted, that committee had nothing to do with the subject. This he thought a conclusive objection. He saw no alternative,—but he saw in the magnitude of the question itself everything that could call for a special committee.

Mr. MORRIS agreed with the gentleman from Kings that the proper reference was to the committee on the rights and privileges of citizens. He also agreed with the gentleman as to the law on this subject, and he was not aware that there had been any different opinion entertained since the delivery of the learned opinion to which the gentleman had referred. No man contended that political power given to a corporation could not be touched, but all contended that it required a two-third vote under the constitution, whether the power was granted by king or given by peo-

ple. There had been no difference of opinion on that subject. There had been no man any where, even though the spirit of Leggett were not there, that would contend for a doctrine such as his friend had so eloquently argued against. And when we lawyers said private rights, we meant the rights of corporations as well as of individuals. The proper committee, no doubt, was the committee on the rights and privileges of citizens—citizens in the largest sense—whether made by God or manufactured by legislature.

Mr. SHEPARD was not before aware that corporations were citizens. He was obliged to his colleague for the information.

The question was then put on referring to the eleventh standing committee, and it was agreed to.

ELECTIONS BY THE PEOPLE.

Mr. CLYDE offered the following, which was agreed to:—

Resolved, That it be referred to the committee on the appointment, tenure, &c., of local officers, to acquire into the expediency of providing in the constitution for the election by the people, of county treasurers, district attorneys, and surrogates.

TRIAL BY JURY.

Mr. MILLER offered the following, which was agreed to:—

Resolved, That it be referred to the committee on the rights and privileges of citizens of this state, to examine into the expediency of incorporating into the constitution the following article:—

The right of trial by jury shall forever remain inviolate, but the legislature shall have power in its discretion to fix the number and to determine the manner of drawing and selecting, and to fix the compensation both of the Grand and Petit jury.

The PRESIDENT presented to the Convention a communication from the Secretary of State, containing a list of all officers whose duties are local, as required by a resolution of the Convention.

On motion of Mr. ANGEL, it was referred to the seventh standing committee; and 250 extra copies were ordered to be printed on the motion of Mr. SHEPARD.

The PRESIDENT also presented a communication from the Comptroller, in relation to the Common School, Literature, and Deposit funds—called for by resolution. Referred to the committee on common schools, and ordered to be printed.

UNFINISHED BUSINESS.

On the motion of Mr. STRONG the Convention proceeded to the unfinished business, which was the question of granting leave to the committee of the whole to sit again on the article reported by Mr. MORRIS, defining the executive powers, duties, &c.

Mr. KIRKLAND having the floor, continued and concluded his remarks which were interrupted by the adjournment yesterday. He did not intend to detain the Convention long, for the debate of yesterday had elicited concessions which would render unnecessary much that he should otherwise have felt inclined to say.—When we adjourned yesterday he was speaking of the form of the report, which was a general proposition and applicable to no particular part of the constitution. It had been conceded that

the report should have shown on its face, what amendments were proposed to the existing constitution, and thus a part of his object had been substantially attained,—an object which had been carried out by the resolution adopted this morning, directing the printing to be done, so as to distinguish the amendments recommended from the old constitution. That would enable the members of the Convention to see what changes were proposed. But hereafter another question would arise, whether the amendments themselves should be submitted to the people, or whether the entire constitution should be submitted, both such parts as were old and such as were new. But on that he would not now dwell. Many members and many citizens had almost come to imagine that we were here for the purpose, not only of proposing amendments to the constitution, but for the purposes of general legislation; and he was exceedingly apprehensive, unless we were very guarded, that we should be found committing the great fault of imagining ourselves really a legislative body, rather than a Convention.—This was not original with him, for it was the remark of many gentlemen of the Convention. He objected to the form of this report, because it contained subjects which were entirely within the scope of the legislature. He referred, for illustration, to the section fixing the Governor's salary at \$4,000. This was a matter which should be left to legislative control, as it had been for the last 25 years, and for which there was now ample provision. So in regard to the section fixing the remuneration of the Lieut. Governor. He objected to it because it contained trifling and unnecessary amendments, and because he believed that the constitution should be amended only where amendments were indispensable. He objected further, because it contained provisions that would be nugatory. He alluded particularly to the section by which it was proposed to give the Governor power to surrender fugitives from justice to foreign powers—a section which would conflict with the constitution of the Union. In support of the position he quoted a decision in the case of Holmes, Jameson and others, from 14 Peters' Reports. He also referred to the treaty of Washington, by which this government entered into stipulations with the government of Great Britain for the surrender of fugitives; and since, like arrangements had been made by treaty with other powers. He also quoted the language of the Chief Justice in the case referred to, in support of his position that the constitution should be devoid of unnecessary verbiage, which would give rise to complexity in its interpretation. Being so objectionable then in itself, as well as in point of form, he thought the committee should not have leave to sit again upon it.

Mr. STRONG said he had looked forward with a great deal of anxiety, and he believed the people of this state had been looking with equal anxiety, to the time when this Convention would go into committee of the whole, and begin to do what might be called the substantial work of the Convention. They did yesterday enter upon this order of business, and he had heard a number of members express their surprise that they should be deterred from

going on with that business, in the manner they had been. They expressed great disappointment, for they had expected when they got into committee, that they should go to work earnestly. But Mr. S. was not disappointed. He well knew that his honorable friend from Oneida was charged with a speech, and if he did not deliver it, it might prove injurious to him. [Laughter.] He was satisfied also, that that gentleman would take the very first opportunity to deliver it, and in that too he had not been disappointed; for the gentleman had taken an early opportunity, and not a very proper one for his purpose. He would not have said a word on this occasion but for that speech of the honorable gentleman. It was calculated to mislead, if not met with a prompt reply. There was great danger to be apprehended from the eloquent speech of one who had the ability to spread out his views in such glowing language and in such sailing sentences, [laughter] and therefore he would attempt a brief reply on one or two points. The gentleman had referred to the report of his honorable friend from New-York, (Mr. MORRIS)—who Mr. S. might as well here say, needed not his aid to defend that report: he wielded a giant tongue [laughter]—and had taken various objections to it. The gentleman said that they were assembled there to carry out the act of the legislature, which he interpreted to be simply to make amendments to the Constitution. Now it was the easiest thing in the world for a man to begin with false premises, and to come to such conclusions as he desired. He did not know much about the phrases that the lawyers would use on such an occasion, but when their case was a hard one—when they had up-hill work—they always began with false premises, and the conclusion was of the same character. Now the gentleman started in the first place with the assumption that the Convention had no other power and authority than that which was given it by the act to which he had referred. Where did the gentleman learn that? Mr. S. went beyond that act. He would ask the gentleman—and he asked the question in all kindness and good feeling—where he found authority for the legislature to pass such an act? Was there a word in our old constitution to confer it? How then came they by the authority to pass an act respecting this Convention in any manner? And yet they had restricted this Convention in many respects—its pay for instance—but they had no authority to do that. We were under no such control. We were not bound by one line of that act; because the Convention was a legislature over and above the legislature by which the act was passed. [Laughter.] Now if these were correct premises, on what foundation did the gentleman base his argument? The next subject which the gentleman took up was one which Mr. S. found it difficult to answer, not understanding all about it. [Laughter.] If, therefore, he did not get it right, he hoped he should be excused, and not charged with intentional misconstruction. Perhaps it would be better to read from the notes which he took of the gentleman's speech, where he found these words: "the gentleman says something about several sections of the report

being in *hock verby*." [Roars of laughter.]—Now, being a layman, a plain farmer, he honestly confessed he did not understand that—[Laughter.]—but he did not believe the gentleman intended to lay a clap-trap for us [Laughter.] He did not know how, or he would explain; he'd give reasons on this subject but he did not understand the terms. [Laughter.]—He however would illustrate it by an anecdote. There were two French barristers disputing one day about some law point, but they could not settle it. At length one said to the other we'll leave it to the judge, and that being agreed on, one of them stated the case, but the judge made no reply—he merely shook his head. "Ah!" remarked the other barrister, "when my lord shakes his head *there's nothing in it*." [Renewed laughter.] He would now come to the gentleman's third proposition, that according to the language of the act, they were to make amendments only; and here he would say a word on behalf of his friend's report. Suppose his friend had made a report containing sections with but a few words altered; if he had left out all but the new words, what sort of a skeleton would it have been? If we altered a section but one word, was it not then an amendment? If we were to send it to the people as the gentleman from Oneida desired, we would send nothing but snatches of a constitution—a little here and a little there—and the people would not know what it amounted to. He thought it was our duty to send it down so that the people might understand it—not in such a shape that they must take the old constitution, and perhaps both the old constitutions, to see how it would read when amended, and may be, have to consult a lawyer to know what it means.

Mr. DANA remarked that he was not a little surprised the other day, after he supposed we laymen would be permitted to put our thoughts down on paper, and read them there in the form of speeches, to hear his right honorable friend from Monroe (Mr. STRONG) bringing up a parliamentary rule even against that. But he found that gentleman to-day, availing himself of that privilege pretty freely, by using a brief of some length, in the speech he had just delivered.

Mr. STRONG replied that the rule had a little more to it. The rule was that you should not read a written speech for the mere purpose of consuming time.

Mr. DANA stood corrected—adding that the gentleman from Monroe had something of the lawyer in him too. [Laughter.] Mr. D. went on to say that having written out some remarks in reply to the gentleman from Oneida, and not having committed them to memory, he would read them, with the permission of the House. The question was, whether we should go again into committee on this report? He would do this as an act of courtesy to the committee from whom it came—and there have it fully discussed, whether it was made up of parts of the old constitution, or was new—that amendments might be offered to it. He had amendments to offer himself. Among others, one to abolish the office of Lieut. Governor.—Several other members, he knew, desired to offer amendments. The position of the gentleman from Oneida, that we were bound by the act calling us together, to submit naked amendments only to the people, he thought an unfortunate one. For it happened that the very section of the Convention act to which the gentleman referred to sustain it, was nearly in the precise language of the act of '21, so far as it prescribed the duty of the Convention of that year. And yet that convention did not submit naked amendments—but an entire constitution, which the people ratified, and thus endorsed their action. Nor did Mr. D. see any greater force in the objection that some of the sections of this article were proper subjects of legislation. That was no reason why we should not go into committee on it—nor any insuperable objection to making such constitutional provisions. Again if this article contained provisions in conflict with the constitution of the United States, the stronger the reason why we should go into committee on it. And as to the remaining argument that the course adopted by the committee, was not the course called for by the people, Mr. D. had only to say, that it was begging the question—taking for granted what should have been, but was not attempted to be proved. Mr. D. concluded by urging it was due to the committee not less than to the subject to go into committee on the entire report.

The question was taken, and leave was granted to sit again.

Mr. TILDEN moved the re-printing of the article as amended—which was agreed to.

Adj. to 11 o'clock to-morrow morning.

FRIDAY, JUNE 26.

Prayer by the Rev. Mr. FISHER.

Mr. MANN presented the memorial of Archibald Watt, in relation to proceedings in chancery and it was referred to the committee on the judiciary.

The PRESIDENT presented a communication from the Secretary of State, in answer to a resolution in relation to the distribution of the common school fund, which was referred and ordered to be printed.

Mr. MORRIS offered a resolution directing the reports of committees to be printed on sized paper, to enable members to write amendments

thereon,—which after being amended by Mr. STRONG, was adopted.

Mr. J. J. TAYLOR moved a change of reference of certain returns which had been sent to the committee of five, to the committee on the judiciary, which was agreed to.

Mr. J. J. TAYLOR stated that the returns from surrogates were all in except 13, and from county clerks except 15, and he desired to have some intimation whether the committee of five should complete and report their abstract, or wait for the residue.

Mr. BASCOM said he thought sufficient had

been received to accomplish the object contemplated, and therefore he moved that the committee be instructed to report, with all convenient dispatch, an abstract of those already received. This motion was agreed to.

FUNDS IN CHANCERY.

Mr. RHOADES called for the consideration of his resolution offered some days since, and laid on the table at the suggestion of the gentleman from Ontario (Mr. WORDEN,) and the gentleman from Herkimer (Mr. LOOMIS,) in relation to the funds under the jurisdiction of the court of chancery. [It was published at the time it was offered.]

Mr. WORDEN suggested (the resolution having been taken up) an amendment to the first section. He supposed the object of the gentleman from Oronotaga to be to ascertain the amount of the funds belonging to suitors that are at the disposal of the court of chancery, embracing every description of funds. That information he supposed would be very important when they should come to consider whether the court of chancery should be abolished, for it would be necessary, he apprehended, to make some constitutional provision in regard to those funds.—It might therefore be proper to extend the enquiries to the clerks of the several equity districts—the clerks of the vice-chancellors' courts; and hence he would move to insert the words "and the clerks of the several vice-chancellors' courts," which would enable the Convention to get returns respecting all the funds in chancery.

Mr. RHOADES had no objection to any modification that would accomplish the object contemplated, and as he perceived the gentleman from Ontario had in view the same object as himself, he adopted the gentleman's suggestion to make perfect the resolution which his sources of information had not enabled him to make sufficiently comprehensive.

Mr. WORDEN then suggested an amendment to the last clause, to add the words "and property" after the words "all other funds."

Mr. TALLMADGE said as he understood it the resolution proposed to call upon the chancellor to direct the clerks and registers to make certain specified returns, and he submitted if it would not be better to change the phraseology so as to call upon the chancellor to cause full returns to be made of all moneys and property under the jurisdiction of the court of chancery, as that would embrace every thing by a more comprehensive expression. He also suggested that the returns should only be called for up to the 1st January instead of the 1st of June.

Mr. RHOADES assented to the latter suggestion, as that would answer every purpose.

Mr. RUGGLES suggested that certain returns were annually made to the Chancellor by the clerks to the 1st of January, of the funds in their possession, and he had now in his possession those returns from the second circuit; if then, these returns were called for, they could be procured without much difficulty; but if the more comprehensive returns were called for, they would make a large document, to prepare which would take time.

After some other conversation the resolution, as amended, was agreed to.

EXTRA COMPENSATION OF OFFICERS—POWER TO SUIT THE STATE.

Mr. SWACKHAMER submitted the following resolution, which, after being verbally corrected, was adopted:

Resolved, That the committee No. two be requested to report an amendment to the constitution, prohibiting the legislature from granting extra compensation to any officer, agent, servant or public contractor after such public service shall have been performed or contracted for; also prohibiting the payment of money out of the treasury, when the same shall not have been provided for by pre-existing law; also, to provide that any person having claims against the state, may sue for such demand in like manner as is now the practice between individuals in similar cases.

LECTURE BY MR. OWEN.

Mr. MORRIS offered the following, which was adopted, after he had explained that Mr. Owen, a distinguished philanthropist, was in the city, and as he had devoted much thought to certain subjects in which this convention was interested, many friends desired to hear him:—

Resolved, That the Convention grant to Robert Owen, esq., the use of this chamber this evening for the purpose of delivering an address therein.

DUPLICATE OFFICEHOLDING.

Mr. STOW offered the following, which was adopted, after an explanation of the reasons why he desired it to go to committee number six there being no other standing committee to which it could be properly referred:

Resolved, That no person holding any civil office under the government of this state, shall hold any civil office under the government of the United States, or any office from any foreign state; and the acceptance of any such office from the U. S., or to sign state or government, shall vacate any office held under the government of this state.

EXECUTIVE POWERS AND DUTIES.

On motion of Mr. MANN the Convention resolved itself into committee of whole on the report made by Mr. MORRIS from the fifth standing committee, on the duties and powers of the executive. Mr. CHATFIELD in the chair.

The Chairman stated the question to be on the first section, as follows:—

§ 1. The executive power shall be vested in a governor. He shall hold his office for two years; and a lieutenant governor shall be chosen at the same time and for the same term.

Mr. DANA offered an amendment to strike out the entire section and insert the following:

The executive power of this state shall be vested in a governor who shall hold his office for two years, but he shall not, during his term of office be eligible to any other office or public trust.

Mr. WORDEN suggested as an amendment to the amendment to add to the word "trust" the words "under the government of this state."

Mr. TILDEN enquired if this would apply to trusts *ex officio*.

Mr. DANA said he so intended it.

Mr. TILDEN did not see any particular reason why they should exclude trusts of that nature. There were many little public trusts which it might be very convenient that the governor should execute; for instance if he was one of the Regents of the University and as such one of the trustees of the State Library. Now was there any objection to that? He was also a trustee of the state capital and of the public buildings, and he could not see that there was any impropriety in the governor's executing

those duties; on the contrary, the governor was always here—he was connected with the public buildings in the performance of his executive functions—and hence he was an extremely fit and proper person in common with other officers similarly situated, to execute such trust. The governor was also a trustee of Union College, as had been intimated by a gentleman near him (a voice, and the Sailor's Snug Harbor) - and the "Sailor's Snug Harbor" as he was informed.

Mr. MORRIS:—What, the Governor? I think not, sir.

Mr. TILDEN said at any rate there were various little functions conferred on the Governor that were peculiarly consistent with his other duties, and in regard to which it seemed to him that no object of public utility was to be accomplished by excluding the Governor from the performance of those duties. If any reasons could be offered for the amendment he should be glad to hear them. If there were any mischiefs arising therefrom which it was meet that they should remove or prevent, he should like to be informed of them that they might apply a specific provision as a remedy, and not a general provision which would disable the Governor from the performance of certain duties which it was extremely convenient and by no means improper that he should perform.

Mr. DANA wished the Governor to be separated from all other employments and devoted exclusively to the office of Governor of this state. If however, the committee should be of opinion that the Governor should hold other offices *ex officio* he would not object, but would consent to the addition of the following words, "for which he may receive no compensation."

Mr. RHOADES thought there was a great deal of force in the remarks of the gentleman from New-York (Mr. TILDEN), respecting the proposition of the gentleman from Madison, and he hoped that gentleman would be induced to modify his amendment so that the Governor might be able to hold certain *ex-officio* offices of trust. According to certain indications, they were about to divest the Governor of a great part of his duties and responsibilities which devolve upon him under the existing constitution; and besides, it might at times be convenient for the legislature to clothe the Governor with certain powers, such as had been confided to him heretofore—for instance, the location of the state prison in the North; to do which the Governor, he believed, was associated with the Attorney General, and he thought the Comptroller also. There was great propriety in this, for the Governor was an officer known to the people, and in whom the people would have more confidence than they would in a gentleman who was not so well known, or who might hold no office in any part of the state. He repeated his hope that this provision would not be adopted; and he also hoped that the gentleman from Madison would see the propriety of modifying it so as to permit the Governor to discharge such duties, for it was probable that the duties of the office of Governor would hereafter be comparatively light, as there was a disposition manifested to divest him of all patronage and of all power to grant pardons.

Mr. SWACKHAMER was in favor of strip-

ping the governor of every vestige of power beyond the necessary executive power. They had been told that the governor was trustee of certain institutions. To this he was opposed; for the governor would naturally imbibe strong prejudices in favor of those institutions with which he might be thus connected, and thus facilities might be afforded to them to prey upon the state. If the governor was to be deprived of all but the necessary executive power—and he had reason to believe such would be the result of their deliberations—he hoped they should go further and take away from the legislature the power to confer upon the governor such authority as had been adverted to.

Mr. WORDEN, after a word or two of explanation, withdrew his amendment, and the question recurred on the original amendment.

Mr. LOOMIS said the object of this amendment appeared to him to be, to strike at the office of lieutenant governor. Now, he was a reformer; but he had no disposition to reform things unnecessarily. It appeared to him they should have an officer who might become governor in certain contingencies, such as the death or incapacity of the governor. It was also desirable that there should be a president of the senate. With respect to the other offices which the governor might hold, he was not aware of any complaint that had been made. That the executive had been charged with too many duties, as to the appointing power, had been the subject of complaint; but he was not prepared to say that he would deprive the executive of that in all instances. He desired to reform and to amend the constitution wherever they found abuses have existed under it, but he looked upon the executive of the state as one of the great branches of the government—as representing more than any other department, the sovereign will and authority of the people. The executive was not less the representative of the people than the legislature; he was the representative of the whole, while the members of the legislature were representatives but of part, and hence the beauty of our system. He was disposed to leave the governor and lieutenant governor as at present constituted, merely correcting such errors as practice and experience had shown to exist, especially in respect to the appointments of local officers. There were amongst those who objected to all the appointing power being centralized here, many who thought that each locality was competent to discharge the duty of appointing their own local officers. He was not prepared to say, at this stage of the debate, that he would not leave with the executive the appointment of certain officers. He could well see, if they elected all officers whose jurisdiction was general—and he regretted that he had not a list of them before him, for there were many more than were contained in the list which they had received, whose jurisdiction related to the whole state and not to any particular part of it—he could well see, if they elected all state officers by general ticket, and the judiciary also, that there might be some difficulty. But he was departing from the question. He should merely add, that he should vote to retain the section in relation to the lieutenant governor as it now stood.

Mr. DANA thought we should have no Lieutenant Governor. If it was in order to discuss that question, he would state why he thought it was desirable that we should not have such an officer.

The CHAIR replied that it was perfectly in order.

Mr. DANA continued—The only reason which the gentleman from Herkimer had given for the continuance of the office was that they might have a presiding officer of the senate, and a person to discharge the duties of Governor in case of the disability of the Executive—both of which could be provided for without employing a person at \$6 per day for a contingency. In regard to the presiding officer of the senate, he believed the senate was competent to elect its own presiding officer; and in case of the death or disability of the Governor to perform the duties of the office, he supposed in this state as in others, the President of the senate might act. In a large majority of the states of this Union there is no such officer known as a Lieutenant Governor, while here one is employed at a cost of \$6 per day, and mileage for his travelling to preside over the senate, (although he had no vote there) and to be ready to occupy the office of Governor if we should have a vacancy in that office. Now he was disposed to make radical changes and reforms—he would dispense with every officer that was not necessary for the wants of the people; but if it was necessary that the senate should have some officer to preside over their deliberations, and the people would be benefited by it, he should not object. He had yet to learn, however, that such necessity existed. Some gentleman had suggested that the Lieutenant Governor's casting vote might be necessary on an even division in the senate; but he did not suppose that the presiding officer that the senate might elect would be deprived of his vote as a member of that body, and if there should be a tie, either he could possess the power to give the casting vote, or in such case the motion might be considered lost, as in this body, on a tie vote. One gentleman had given some reasons why the Governor should *ex officio* perform other duties; to which another gentleman had replied that he might thereby become unduly interested in those institutions. Now this was an important reason why the Executive should not be thus employed. He might form improper prejudices in favor of certain institutions or portions of the state which he might be called upon to visit. He trusted they should be able to guard against any such consequences, and that they should make such constitutional provisions as would enable the senate to elect its own presiding officer, by whom the state would be as well represented as it had been by the existing system.

Mr. BURR was in favor of the amendment, so far as striking out was concerned. He had intended to propose that amendment himself. The other part of the motion he had not intended to include in his. And he should prefer now to have the question divided—so that it might be taken on striking out the provision in relation to the Lieut. Governor. He desired to strike that office out of existence. He had always regarded it as little better than a sinecure—as a use-

less wheel in the machinery of government—and it had better be dispensed with. The expense was a matter of no consequence. If we needed such an office he should be willing to pay for it. Other states had dispensed with this officer altogether—among them Ohio, New Hampshire, Maine, Alabama, Virginia, Delaware, New Jersey, and some others. Indeed, were he to take a model of a constitution from any state, he would take that of New Jersey, recently adopted. Unless he could see more necessity for retaining this office than he now saw, he should vote for so much of this amendment as proposed to strike it out.

Mr. RICHMOND took ground against abolishing the office of Lieut. Governor. Other states, it was said, had no such officer, and got along equally well with us. He presumed we should get along well enough without; but still, this was a large state. It had been very justly called the empire state; and being the empire state, probably we should have a Lieut. Governor as well as a Governor. He apprehended that we were not going to make a saving of all that was paid to this officer now, if we should have none. The presiding officers of the senate and assembly were in the habit of receiving a larger compensation than individual members of those bodies. And very justly and properly—for they had more laborious duties to perform—duties, when the house was not in session also. Heretofore, or ever since members received \$3 a day, the speaker of the house had received \$6. [Several gentlemen corrected Mr. R. here, and he took that back.] But if the compensation of the Lieut. Governor was too great, reduce it—not dispense with the office. A word as to stripping the Governor of all offices except those appertaining to his department. His first impressions were against this: but on reflection, he was disposed to sustain the proposition in part—not in full. But there were cases where he would prohibit the Governor from holding other offices. For instance the office of trustee of the higher seminaries of learning. That looked well enough on the face of it, but on examination, it might not be found so well by and bye. These institutions were in the habit of coming here every year, asking donations to aid them in carrying on their operations. He would not say that it was not proper to aid these higher seminaries; but he knew that this practice had been very much abused, and he believed that the Convention would agree with him, that the Governor, by being connected with these institutions, even as a mere matter of honorary station, might become enlisted in their favor, farther than he would be otherwise. To show the abuses that had existed, Mr. R., without giving names alluded to the case of the New York University, which, he said, when chartered, received a large donation from the state, and in the course of its operations became involved in a heavy debt for building materials to the agent of one of our state prisons—or rather individuals had become obligated for the amount. These individuals, however, who were abundantly able to pay, and were not connected with the institution as officers, came to the legislature to be released from their bond, and the legislature

passed a bill for that purpose, and the Governor signed it. He only mentioned this to show, that a Governor, by being connected with these institutions, might be swayed from his duty, by the fact of such a connection. Now so far as these institutions were concerned,—and he was in favor of learning in all its length and breadth—he wished to see the Governor entirely separated from any trusteeship in them. Having to review and sign these bills, he wanted him to stand there untrammelled and uncommitted. As to the Governor's being trustee of the state buildings, Mr. B. had no objection to that. He was as suitable a person as any other; and he believed he would have the confidence of the people more than any other—because they elected him.

Mr. MARVIN would not now consider the question raised, in relation to the Governor's holding an executive trust—because he apprehended it was best to pass this section in simple terms, and if it was desirable to impose restrictions not heretofore imposed, an opportunity would be presented before we got through with this article. He expressed no opinion on it now. He had supposed that one great object of electing a Lieut. Governor, was to have a man to take the place of the Governor, in case of his death, or a vacancy existing from any cause—and that he should be an officer elected by the whole people. He had supposed that was democratic—that it was altogether a more democratic mode of filling the executive chair, than that in vogue in Pennsylvania or New-Jersey.—He had supposed too that this was the most convenient mode—designating at the same time who should be Governor, and who should act as such, in a certain emergency. The people acted directly in the choice of both; and when the Governor died, every body knew who was to take his place, as did the Vice President recently on the death of the President. There was no commotion, no confusion. The people had ordered it all in the fundamental law. Those who proposed to get rid of the Lieut. Governor, must provide for filling the office of Governor, if he died, in some way.—Would they say that the presiding officer of the senate should act as such? But how was he to be made presiding officer? How was he to be elected, in the first instance? Mr. M. took it for granted that we were to have senate districts. If the districts remained as now, then we should have a governor placed over us, in whose election originally, only one-eighth of the people participated. If there were more districts, a still less number would have a voice in his selection. Was this democratic? Gentlemen might say that he would be chosen by the whole senate. Very well. Was not that one remove from the people? Would not the people give up the power of electing their Governor, and confer it on men elected in different sections by the people of the localities? But Mr. M. had extended his remarks further than he intended. But he had always supposed it to be democratic to provide for filling the office of Governor by the direct action of the whole people. He submitted to the gentleman from Madison and others whether that was not the correct, democratic view of the subject. [Cries of "question," "question."]]

Mr. BURR asked if it would be in order to call for a division of the question?

The CHAIR replied that under the rule recently adopted, a motion to strike out and insert was indivisible.

The question was here put on striking out and inserting, and lost.

Mr. HUNT now rose to move an amendment, but gave way to

Mr. SIMMONS, who moved to amend, by adding, after the word Governor, where it first occurs, as follows:—

"and in such subordinate officers as are created by this constitution, or may be at any time constituted by law for that purpose."

Mr. SIMMONS apprehended that these words or something to that effect, were inadvertently omitted in the present constitution. Because, as it now stood, it was evidently false. It was not true in fact that the executive power could be vested in a governor, if we had subordinate executive officers in the state. The supreme executive power, it was true, might be vested in a governor. But it would be well to have the three departments appear in consistency with each other. We should not say that the judicial power should be vested in the highest court, but in the whole judiciary. The supreme executive however was in the governor; but it would be proper to say, and insuch subordinates as are created by this constitution, and by common law or statute. Blackstone told us that the governor was the sheriff of the state, and that every sheriff was conversely a kind of a governor as to the executive power of his county. All ministerial and administrative officers were exercising executive power subordinately to the Governor. To say that the executive power was vested in the Governor alone, would not be consistent with what we say of the legislative and judicial departments. Judicial power was vested in a supreme and subordinate courts.—The executive was supreme, but there were subordinates. This was something more than a mere matter of form. The same question once arose in the U. S. government—and excited more feeling and a more able discussion than any question of power for a number of years.—And the matter was never settled until adjudicated by the supreme court of the U. States. The case was that of Kendall, who claimed, as the supreme executive power was vested in the President, without naming subordinates, and as the President nominated the heads of departments, he had the authority of making certain adjudications and decisions in his department, and that he was not therefore accountable to the legislative acts of congress. After solemn argument, the supreme court unanimously decided, that in distributing powers to subordinate executive officers, they must be taken to be subject to law. He urged that it would be well, both to secure propriety of language and to avoid dispute or collision, to put his amendment in some form in this section. And the best form that had suggested itself to him, was the one he had put in writing.

Mr. SHEPARD agreed with the gentleman from Essex in his view of this section. It certainly was incorrect in its terms. He would suggest, however, a shorter form of avoiding the

inaccuracy—a form used in the constitutions of Maine, Massachusetts, Connecticut, Missouri, and others. He would suggest the word “supreme” executive power. Or, if the gentleman liked it better, he would use the word in the constitution of Virginia, the “chief” executive power shall be vested in a Governor. He moved to insert the word “chief” before executive.

The CHAIR suggested that this was not strictly an amendment to the amendment now under consideration—and

Mr. SHEPARD waived it for the present.

Mr. SIMMONS was not tenacious about the form, though he apprehended the word supreme might lead to some difficulty. The governor might say, I am supreme as to a question between him and subordinates. Still it would do better than chief. We might say that supreme executive power should be vested in the legislature, and yet we gave some legislative power to other bodies. The better way would be perhaps to say that all executive power is vested in a governor (who was supreme of course) and in such subordinates, &c. as stated in his amendment.

Mr. MORRIS said it appeared to him that the form of expression in this section, properly considered, taken as it was from the old constitution, was infinitely preferable and less likely to be misunderstood, than the amendment of the learned gentleman from Essex. Such a form of expression as that proposed, would make all these subordinates equal to the Governor; for every thing in it applicable to the one was equally applicable to the other. Certainly that was not the intention. Least of all could the gentleman intend that the legislature that we had come here to place within reasonable and proper bounds, should by this constitution be authorized to make a supreme executive power in the state, as often and as many as they chose. Mr. M. supposed the gentleman's intention was precisely what this clause, in Mr. M.'s judgment, expressed—that the executive power should be vested in a Governor. What executive power? The executive power of the state. What was that? The supervisory power over subordinate executive officers in the counties—such as your sheriffs. One of these sections provided that he should take care that the laws be faithfully executed. That came within the executive power, and was co-extensive with the state. He was to see that the laws were faithfully executed. By whom? By subordinates, who had local and special executive powers. If we should say the supreme executive power of the state, the question might arise whether there was not a shade of difference intended between the supreme power and other power co-extensive with the state. It might be regarded as conveying less power than we intended, or than was now given to him. His impression was that the clause of the old constitution, being shorter and more comprehensive, carried out fully the intention of the people in regard to the Governor.

Mr. SHEPARD supposed the section to be incorrect. He did not agree with his colleague (Mr. MORRIS) in regard to its accuracy. There were other executive officers in the state besides the governor. The only constitution in the

whole Union, that he recollected at the moment, that contained this form of expression, was the constitution of New-Jersey. It was suggested to him, however, that the United States constitution contained the same phraseology. But it was incorrect, for all that. There was no practical inaccuracy about it. All knew what it meant. But, as the gentleman from Essex had suggested, there was a clear, verbal inaccuracy here. That had been avoided in other states by using the word supreme or chief executive power—or by saying that the governor shall be the chief executive officer, and defining his powers in the constitution, leaving the legislature to define the powers of other and local executive officers. Nearly all the constitutions in the Union had avoided this difficulty. We could, and it seemed to him desirable to do so. He preferred, on the whole, to vary his proposition so as to say, the chief executive officer of the state shall be the governor. That would relieve it of any odious interpretation that might be given to the word supreme, and would leave a perfectly clear and definite meaning.

Mr. SIMMONS admitted that no practical difficulty had ever arisen under this section. The only reason for inserting it, would be to avoid any possible implication, that by virtue of all executive power being vested in the governor, all subordinates were necessarily to act at his discretion, and not by law. He had very little choice, as between his own amendment and the proposed addition of the word supreme. Perhaps it was not worth while to alter it at all.—But it was false in itself on the face of it. Or else it created a monarchy. If all executive power was vested in a governor and he found it out, he would live in the state no longer. [A laugh.]

Mr. DANA inquired if the law should create officers with executive powers, whether they could not exercise such power, notwithstanding this?

Mr. SIMMONS replied that that was the very question here. Gentlemen differed about phraseology. As the section stood, it vested the whole executive power of the state in the Governor. If that were so, then every sheriff, every constable, every administrative and executive officer in the state, was a mere hand or finger (as he was called at Washington) of the Governor. And the question might be whether these officers were amenable to the Executive or to the law. The new constitution of Iowa gave the supreme executive power to the Governor. If that was sufficient to indicate the proper functions of the Governor, giving him a supervisory executive power over subordinates, leaving them not merely the fingers and hands of the executive, but organs of the law, then he should be content. We wanted no subordinates who could shield themselves from the law under the wing of executive direction and control.

Mr. STOW said he should not have taken part in this debate, did he not suppose there was a principle involved here beyond that immediately involved in the amendment. The proposition was to alter the phraseology of the section, without changing its substance. Now, all professional men were aware of the important consequences,

that sometimes resulted from the change of a single word, even in the statute law. These consequences the wisest men could not foresee. If we were to commence in the first section of the new constitution, to alter well defined and well settled language, there would be no end to the alterations we should make, and no end to the difficulties that must grow out of it. His objection was that here was a phrase the meaning and intent of which was well known—and which for half a century had received a practical, undisputed construction. All knew the meaning of it. And if so, why adopt language that all might not know the meaning of? Gentlemen seemed to think they could express the same thing more definitely. But could they agree among themselves as to what the new phraseology meant? And if we, who were to adopt it, could not agree as to its meaning, how were those who were to come after us, the judiciary, the executive, the legislature—the people, to understand it? He repeated that it was dangerous to change written and well settled law. The alteration of a single word in the English law in relation to frauds, cost the people of England more than fifty thousand pounds sterling—and yet it was extremely doubtful whether the intention of the legislature was to change the law in substance at all. Hence it was that in our own state, when the laws were revised, the principle was adopted not to change the phraseology of law that had received a practical construction for a series of years, and that construction all one way. Did any one ever hear a doubt expressed as to the meaning of this section? He had heard none. Why raise a doubt about it? Why, especially, attempt to substitute words the meaning of which we could not agree upon? As to this phrase, supreme executive power, he denied that that was American doctrine. He insisted that there was no supreme executive power in our government—overruling and controlling, as the phrase implied, the judicial, legislative and all other powers in the state. It would be asserting a principle at war with the history and genius of our government. He appealed to members to consider well before they set the precedent of changing the fixed and well settled law of the land.

The question was here taken, and Mr. SIMMONS' amendment was rejected.

Mr. SHEPARD now proposed to insert before the word "executive," the word "chief."

The amendment was negative.

Mr. DANA proposed to change the form slightly of the section—changing the word "he" to "who", with a period after the word years. Also striking out the word "and" and making a new sentence of the portion relating to the Lieutenant Governor.

The amendment was lost.

Mr. HUNT moved to strike out "two" before "years," and insert "three."

Mr. HUNT remarked that by extending the Governor's term of office to three years, as was the case under our old constitution, our election for Governor and that for President would very seldom occur at the same time; consequently, our state executive would be chosen with more express reference to state interests than is now the case. By making our elections less frequent,

the people would have more time for other matters than the election of officers, and our officers would have more time for their legitimate duties. The conduct and policy of our government would be less uncertain and unstable. By extending the term of offices generally, we should have more competent officers, and fewer bungling apprentices in office. Experience, (said Mr. H.) is requisite for the right and prompt performance of the duties of every office. He who has it not, must be to some extent a deputy to his own clerks, who often have ends of their own to accomplish, and are never responsible to the people. It may be said that by extending the Governor's term of office, we increase his power for evil as well as for good. Admitted. He could do more of voluntary good or harm during his third year, than he could during the first two years of his term, because he then knows precisely what springs to touch, what wires to pull, in order to effect his object. But to compensate for this we should have fewer official blunders, which are to be guarded against as well as crimes. Besides, it does not follow that because an experienced engineer can blow up his engine more effectually than a mere learner, that he would therefore be more likely to do so. Some will say that by prescribing short terms of office, the people can get rid of an unfaithful or incompetent officer with less delay than they could if the term were lengthened. True, but the people have no right to elect an unfit man for their Governor; and whenever they may do so, I would sentence them to live under his administration for the full term of three years, without a hope of reprieve or pardon. The punishment would not be a whit too great for the offence, and the people need not subject themselves to it unless they choose. Hundreds of my constituents have complained to me of the frequency of our elections; none, that our elections are too few. If we choose our Governor for three years and our legislature for two, we shall reduce the present election tax upon our time and faculties nearly one half, and the public will be much better served.

The amendment was lost.

Mr. DODD proposed to remodel the section, so as without changing the meaning, to express it in fewer words.

Mr. W. TAYLOR thought it not worth while to change words merely, when the meaning was settled and clear.

Mr. DODD'S amendment was negative.

Mr. STOW moved to add at the end of the section, as follows:

"But the Governor and Lieutenant Governor who shall be chosen at the next election, shall hold their respective offices only for one year."

Mr. STOW said the effect of his amendment would be to change the time of holding our elections and his object was to separate our state elections from the presidential contest. He thought we should not blend our state elections and policy with that of the general government. But he would not argue the question. He submitted it to the good sense of the Convention whether we had not better submit for once to a little inconvenience, than to have our state elections forever hereafter mingled up with national politics.

Mr. BURR remarked that the propriety of the amendment would depend on the time fixed for the election in the new constitution.

Mr. STOW replied that a governor must be elected this fall, and for two years, unless this clause was inserted—and in reply to an inquiry by Mr. DANA, said his object was that the election for Governor and President should not fall together in the same year.

Mr. TILDEN suggested that it was uncertain, as yet at what particular period the new constitution would go into effect. It was rather premature to assume now at what particular period the election for governor under the new constitution would first occur. Better defer this until that question came up.

Mr. STOW replied that we must elect a governor this fall, to come in next January.

Mr. WORDEN was glad the proposition had been brought forward, and he should be unwilling to see any vote taken now which would be regarded as decisive against it. He agreed somewhat with the gentleman from New York that this was an after consideration, coming up more appropriately when we had determined on some other matters. But he did not see how it could well be laid over. We must take a vote on it. At present he thought he should vote against it. He concurred however, in the propriety of separating these elections. If we did not so arrange it, he should be for returning to this, and giving it a fair and full consideration. If voted down, the gentleman could renew it in the house.

Mr. STOW preferred to withdraw it.

Mr. WARD suggested that if the gentleman withdrew it, he could not renew it in the house.

Mr. STOW said he would then adhere to it.

Mr. SIMMONS said the policy of every state and of this nation was infected with the disease which was peculiar to liberty—instability and change. The best form of government had its peculiar inconveniences. The person who consented to live under a monarchy was exempt from some inconveniences to which we were obliged to submit for the sake of a greater good. And how were these changes, and how was the instability of policy occasioned? Why by the great volume of public sentiment being concentrated in executive officers. It had ceased to be of much importance who members of congress were, but when the executive was to be elected, parties were organized for the election, and why? Because it was felt to be a truth that was developing itself gradually in practice, that whatever party had the President would have the Congress; in other words that the progress of our institutions was such as to render the legislature more or less subservient to executive power; and instead of having the great mass of public intelligence represented by or embodied in the representatives of the people, to shape the policy of the state, they all felt it to be a truth that after all it was embodied in the person of a Governor from one term to another. And so it was in respect to the election of President for the nation; and it was obvious that the accidental coincidence of the election for the state and for the nation had a strong influence in bringing about a wrong drift of the public sentiment. Now if they could have these elections—especially in the great state of New-

York—at different times, it would be obviously advantageous.

Mr. MORRIS interposed to suggest—and thereby he might save the gentleman from Essex the necessity of going through his argument—that if this should be adopted, it could not go into operation until after next fall. The Governor must be elected in November next. The new constitution could not be submitted to the people before that time, and therefore could not go into operation this year, and thus the election would hereafter be brought so as to coincide with the presidential election.

Mr. SIMMONS said that might be, but it was immaterial, for he was only calling the attention of the Convention generally to the importance of the question. He thought every lover of liberty would see the necessity of so arranging the elections as to avoid the concurrence of two drifts of public sentiment, which would identify it with the executive chiefs rather than the representatives of the people.

The question was then taken on Mr. Stow's amendment, which was negative.

The CHAIR then announced the question to be on the second section, which was read by the Secretary as follows:

§ 2. No person except a native citizen of the United States shall be eligible to the office of governor, nor shall any person be eligible to that office who shall not have attained the age of thirty years, and have been five years a resident within this state, unless he shall have been absent during that time on public business of the United States, or of this state.

Mr. MURPHY moved to amend by striking out the word "native" in the first line of the section. He said if the committee should adopt this amendment, he should follow it up by another of a more general character, believing that qualifications for the elected differing from the qualifications for electors, to be inconsistent with the spirit of our government. As had been remarked by the gentleman from Onondaga (Mr. RHOADES), the Governor to be elected under the constitution that this Convention was likely to frame, would have little or no power or patronage. His office will be purely administrative. They intended to confer on the people—and in that he concurred—the power to elect their officers of almost every description. He might say the tendency of this Convention was to give to the people the election of all officers; and yet they proposed in this section to say that although the people are capable of electing every officer in the state, they are not capable of electing a proper one, and therefore they must be restricted to a *native*. The provision was inconsistent with other positions of this proposed article of a constitution.—Nobody would contend there that they should require the members of the legislature to be native born, but they would allow persons of alien birth to be elected to legislative office, where really all the power to do good or mischief in the government rested. Where no power existed but to administer the law, the occupant of office must be native born, and yet they would without restriction, put the supreme legislative power, probably, in the hands of foreigners! Now, this was contrary to the practice of all free governments. There was not perhaps a case throughout this Union of such qualification being incor-

porated in any constitution. A gentleman near him said there was in the U. S. constitution, but he asserted that the provision in the U. S. constitution was not so broad as this, because they could elect a foreigner, provided he came here before the adoption of that constitution.— Besides, the difference between the two governments was very great and very apparent. In the state, the Governor was elected by the people, but it was not so with the President. In that case, there were agents interposed between the people and the President to do it. The President was elected by "electors," and not by the people directly. The people were too numerous, and that perhaps was a sufficient reason for such a distinction between the two governments. But in all free governments the principle prevails of allowing aliens who have become citizens and entitled to all the privileges, duties and immunities of citizens, to have the supreme power conferred on them. A foreigner might be King of England, but he could not be Governor of the state of New-York, and thus we were adopting more stringent principles than even monarchies. We were also inconsistent with ourselves; for while we submit to the people the result of the labors of this Convention, such a restriction exhibited a distrust in the intelligence of the people, for it was in effect saying to them, "we cannot intrust you with the discretion to select a proper man as Governor." Now, if that principle were true, there were several members in that Convention who had no business to be there, and thus they would be deprived of the services of several intelligent and patriotic men. Now he had no fear but that the people would do right, and he had no wish to keep here what was introduced into the constitution by the Convention of 1821, as a restriction. It was not in the constitution of 1777, and he hoped they would restore the constitution to what it was, and thus follow the example of their illustrious ancestors who first formed a constitution for this state.

Mr. PATTERSON was exceedingly gratified that the gentleman from Kings had made the motion to strike out of the first line the word "native." He had himself prepared an amendment for that purpose, which he should have sent up if the gentleman from Kings had not anticipated him, and he now expressed his thanks to that gentleman for his motion. He did not see any necessity for any difference between native born and naturalized citizens of the state. Why, if this principle had prevailed at the earlier period of the history of this country, who was there that could have held the office of governor of this state? Who were the earliest settlers of this country? They were all foreigners who left their native country and came here as to an asylum for the oppressed; and when foreigners come here and take the oath of allegiance to this country and its government and become citizens, why exclude them from holding any office in the gift of the people? He agreed with the gentleman from Kings (Mr. MURPHY) that it was a distrust of the people themselves, to say by the constitution that the people should not be permitted to select such men as they believed to be competent to discharge the duty of the executive government. He was

surprised when this report was thrown upon their table, to see that word in the second section of the proposed amendment. He said he was surprised, because he had supposed that the keen and penetrating eye of the chairman of that committee (Mr. MORRIS) would have discovered that that word was not a proper one to be there, and that if no other gentleman had done so, that the gentleman from New-York would have been the first to strike it out. True, it is in the present constitution, and he was bound to suppose in charity to that committee that they passed over that word without notice—that the copying of the old constitutional provisions was done by the chairman of the committee, but it was to him very singular that the gentleman from New-York, in copying it, should not have allowed his pen to slip over that word, and not have written it at all. Retain that word there and what portion of that gentleman's constituents would be debarred from ever holding the office of Governor of the state of New-York? He knew not the number, but it was doubtless very great. He had been many years in the legislature of the state, and he had never known a time when there were not amongst the representatives of the city of New-York some gentlemen who were naturalized citizens, and this he presumed was an indication that such citizens were numerous in New-York. Why they had there a venerable gentleman from New-York, a delegate in this Convention, who was not a native born citizen, (Mr. CAMPBELL P. WHITE,) and would they exclude him and all such citizens that the people might think proper to elect? He had in his mind's eye many naturalized citizens for whom he should be willing to vote for the office of Governor, and among others one from the western part of the state who had represented old Ontario in congress, and who had resided in this country longer than he (Mr. P.) had had an existence (Mr. GREIG), and he knew of no gentleman in the whole circle of his acquaintance, for whom he would sooner vote, and if whose services in congress they would have been deprived if this principle had prevailed. He hoped the amendment would be adopted, and that the word "native" would be stricken out by a unanimous vote. There were other gentlemen in this Convention who were not native born. He saw before him his aged friend from Steuben (Mr. KERNAN), and the gentleman from Cayuga on his right (Mr. SHAW), and where would they have been if this principle had prevailed, and been made applicable to this Convention?— They must have remained at home and left those who were fortunate enough to be native born to the monopoly of seats here. He, (Mr. P.) thought our forefathers were as good men as we are. He thought his grandfather who came from the other side of the water was as good as he was. And the election of such men he would leave to the people. He had confidence in the people that they would elect the best men. There was another amendment which he desired to see made in that section.— It was to strike out the words which would require a Governor to be 30 years of age. If the people thought proper to select a young man, and a young man should have got so far above

everybody else at that age, he was not disposed to interpose any obstruction. He would not ask a man that the people were disposed to elect, whether he was 29 or 30 years of age. He would leave that to the people themselves. All that he would require would be that the person so elected should be a citizen of the state. He was in favor of the amendment now, because it was not in order to move to strike out the whole section, but he doubted very much the propriety of allowing any part of it to remain.

Mr PERKINS had intended before this amendment was offered to move to strike out the section entirely. He did not see any thing in the section that it was desirable to retain even when the word "native" was stricken out. He would add in reference to the motion of the gentleman from Kings that it was unlikely that a person would be elected governor of the state who was not a native born citizen unless he had rendered some remarkable service to the state, and in that event they should not desire to exclude such a citizen from the office. There were coming into this state annually a large number of foreigners who brought with them children, some of them were infants—who were brought up here from their earliest years; some of these might probably render as efficient service to the state as any citizen could render to his country, and would it be desirable to exclude from the office of governor such citizens, if the people were disposed to elect them? Would it be desirable to exclude from that office by constitutional provision any such citizens of foreign birth merely who might be possessed of extraordinary talent? Again, the manufacture of such a principle into our constitution might result in an incongruity. On a reference to the constitution adopted by the convention of 1821 it would be found that there was no such restriction on the office of lieutenant governor. But the 6th section, both of the present constitution and the proposed article of the new constitution, declared that in case of the impeachment of the governor, or his removal from office by death or otherwise, the powers and duties should devolve on the lieutenant governor. This was like the provision in the United States constitution, by which a vice president had succeeded to the presidency of the Union for it was agreed on the death of General Harrison that Mr. Tyler became president to all intents and purposes. Now, if they require a certain qualification in their governor, and no such qualification for lieutenant governor, and a vacancy should happen, it would be matter of construction and doubt whether the lieutenant governor could take upon himself and discharge the duties of governor of this state.—Probably it would be construed that the express declaration that the lieutenant governor should in such an emergency exercise all the powers and duties of the governor, would control the previous language, and he might succeed to the office of governor or to the execution of his powers and duties, but certainly there would be room for controversy, doubt, and partisan strife in relation to it, which it would be prudent to avoid. Now, if this section should be retained, he should feel it to be his duty to move to put the same restrictions on the qualifications of the

lieutenant governor to prevent any incongruity in the constitution.

Mr. CORNELL, like other gentlemen, had prepared an amendment to meet the case for which his friend from Kings had sought to make provision, and to that gentleman he tendered his thanks for the step he had taken. For himself, at present, he had but one remark to make. It was this, that although there was but one constitutional provision similar to this, and that was in the constitution of the U. S., he apprehended there was a strong reason weighing on the minds of the Convention by which that instrument was framed for the adoption of such a provision, that could have no application to the election of the Governor of this state. It was that the President of the U. S., in the discharge of his official duties, was brought in contact with foreign governments, among which might be one of which the President might have been a native born citizen. It might therefore have been supposed that some undue influence might reach him in negotiating with such powers that would not reach him in treating with other governments. But in the case of a Governor of this state, that principle could not apply, inasmuch as the government of this state has no legal existence in reference to foreign governments. For that reason—and it was a very weighty reason—the provision in the constitution of the U. S. could have no authority or weight here.

Mr. RHOADES was in favor of the proposition to strike out, for the reasons which had been given both by the gentleman from Kings and Chautauque, and for some others. When our forefathers entered into the struggle for liberty, they invited the friends of liberty from all parts of the world to join them. That invitation was accepted by many friends of liberty in the old world. It was accepted and acted upon by emigrants—by those who were not native born citizens. Since that period the Congress of the United States had shown by the facilities they had granted to persons emigrating from foreign countries to become naturalized citizens, that they meant the invitation to be still held out to the oppressed in all parts of the world. And this state, by the provisions which had been made, and the rules which had been relaxed, in relation to the rights and privileges of those who were not citizens, in regard to holding real estate, had intimated clearly that we were willing to assure them an asylum here—that we desire to have them all as part and parcel of one people. Now whatever any man might think of the danger of foreign immigration, one fact was settled—it was a "fixed fact"—that this country is destined to have a still larger portion of immigrants than it has at present. Immigration is going on year after year; and his desire was that when people came from foreign countries, with the view to settle among us and to become citizens of the United States in reality, that there should be nothing left to indicate to them that they were to be regarded as a different class from the native born citizens. He wished to see all distinctions abolished. He wished them to forget all they could that they had owed any allegiance to any government but this; he wanted them to feel that they were American citizens, and if there was

any danger to be apprehended, as he believed there was not, from foreign immigration, it was the danger that was to be apprehended from the adoption on our part of some rules, or statutes, or party organization that might drive them together into clanship. Under such organizations they were liable to be misled, and the sooner they could be brought to feel themselves to be American citizens the better. He had seen organizations in this state of military companies, for instance, which he regretted to see. There were organized German military corps and Irish companies and others of a distinctive character. He hoped to see them all sunk into simple American citizens; and the sooner we got rid of every thing in our constitution and laws that would tend to perpetuate national distinctions, the sooner would the naturalized citizen forget that he had come among strangers.

Mr. BASCOM was obliged to the gentleman who had offered this amendment, and to those who had advocated it. He should vote for it, but he hoped by so doing he should not be regarded as a convert to all the reasons which had been assigned for it. He approved it for the

broad reason that these principles of restriction were wrong, for they were restrictions on the popular right to delegate power to, or to elect whom it pleased.

The question was then taken and the amendment was adopted, only two voices being heard in the negative.

Mr. PATTERSON moved further to amend by striking out the words which fixed the eligibility at 30 years of age.

Mr. RUSSELL desired to offer an entire substitute for the section, in the form of an affirmative proposition, that any person who is a citizen of the U. S. and a qualified elector, shall be eligible to the office.

Mr. SHEPARD also desired to strike out the section.

The CHAIR replied that such a motion could not now be made.

Mr. PATTERSON'S amendment was then agreed to.

The committee then rose and reported progress, and obtained leave to sit again;

And the Convention adjourned to 11 o'clock to-morrow morning.

SATURDAY, JUNE 27.

Prayer by the Rev. Mr. FISHER.

The PRESIDENT laid before the Convention a memorial asking that causes before justices of the peace may be decided by jury—Referred to the judiciary committee.

Also, a report from the clerk of the sixth circuit, furnishing the number of causes on the calendar, &c., in answer to a resolution of the Convention—Referred to the judiciary committee.

Also, a report from the clerk of the fourth circuit, in answer to a resolution requiring returns of the value of the real estate of infants sold, moneys invested, &c.—Referred to the judiciary committee.

DOUBLE TAXATION.

Mr. STRONG called up his resolution which was laid on the table a few days since by consent—as follows:—

Resolved, That there be in the Constitution an article containing in substance the following provisions: That all bonds, mortgages, judgments and all other evidences of debt which are liens on real estate, shall not be taxed as personal property; and that all real estate shall be taxed to the owner or occupant at its fair value; and that any person or persons owning or holding any bond, mortgage, judgment or any other evidence of indebtedness which are liens on real estate, shall be liable to the person or persons to whom the same shall have been taxed for his, her, or their portion of said tax, in proportion to the interest he, she or they may have, hold or own in said real estate.

Mr. KENNEDY suggested to the mover the propriety of changing the form of the resolution, so as to make it one of enquiry merely.

Mr. STRONG did not prefer that course. If there were in his resolution any erroneous principle, he should be willing to have it pointed out; so far as the details were concerned he was not much wedded to them. He had prepared it on the reflection of a few moments, and though there might be an error in form, he believed it

contained correct principles. He would not say that a provision should be made in the constitution precisely in the terms he had used; his object was such a provision in substance. That there was something wrong about the taxing of real estate and personal property, he believed every gentleman would admit. One object he had in view was to correct a system by which a large amount of property was subject to double taxation; another was to reach a large portion of personal property which every body knew had not been taxed at all. He had said, and it was not denied, that there was in the existing system something wrong; but he might be answered that the remedy should be left to the legislature. But looking at the past, we might form some judgment as to what might be expected for the future. We should obtain no remedy unless some provision like this were engrafted on the constitution.

Mr. SHEPARD moved the reference of the resolution to the fourteenth standing committee.

Mr. RHOADES objected to the form of the resolution—amounting as it did, to an affirmative expression of opinion.

Mr. SHEPARD thought that immaterial, as the Convention would express no opinion by sending it to a committee.

Mr. RHOADES said he should have no objection to the resolution if it were not in fact one of instruction.

Mr. MARVIN said the gentleman from Onondaga was right. The resolution called for a positive expression that there should be in the Constitution an article in substance like that embodied in it. The mover himself did not offer it with the view of sending it to a committee to enquire into the expediency of such a provision, but it was in such a shape as to be imperative, if adopted. And if we attempted to incorporate

provisions like this into a constitution, we should have a constitution more voluminous than any ever yet made, and we should be required to remain here a much longer period than any of us dreamt of. He submitted that the legislature had always had power over this whole subject of taxation, and that it must have that power. But if we attempted to go into such details we should involve ourselves in difficulty. He concurred with the mover of the resolution, and for the purpose of saying so he had risen, that there was an evil in the mode of assessing the burdens of taxation.

The PRESIDENT interposed:—the merits were not debateable under the motion of reference.

Mr. SHEPARD then withdrew his motion to refer, and

Mr. MARVIN continued:—The occupants of land were taxed as the owners, while in point of fact, the property might all be in the land owner, being held on contracts. There were difficulties requiring perhaps attention—but he apprehended that in framing a constitution we were not to attempt to lay down a system of taxation. On looking over this resolution, it would be seen, that it seemed to suppose that the subject was before us as a legislature. It took the position that bonds and mortgages should not be taxed, but that the land on which they were an encumbrance should be, and that the occupant should deduct a proportionate share from the person who had a lien on it by judgment, mortgage, or otherwise. How would this operate? Here was a judgment of \$1000. It might be a lien on half a dozen farms, but the owner of the judgment was worth \$1000, for the judgment was worth \$1000 to him. When the occupant of one of these farms was taxed, was he to call upon the holder of the lien to refund in part; and was his neighbor also to do the same? These were difficulties which should satisfy the gentleman from Monroe that this matter should be left to legislation. There were other difficulties also in the way, which he would not advert to now, further than to say, that on framing a constitution we were not to interfere with vested rights, and contracts. If we should incorporate such a provision into it, he knew not to what it might not lead.

Mr. STRONG replied that it seemed to be conceded that there was something wrong in our system of taxation. But the objection was that we had nothing to do with it, and that it belonged to the legislature. Now, he took another view of the subject. Here was a wrong that had existed as long as he could remember—and the legislature with full power to remedy it, had not done it, and never would. This was a day of reform. The people had sent us here to get the reforms which they could not get through the legislature. Hence it was that this or some similar principle should be in the constitution. He had heard the difficulty suggested before that you could not apportion the tax where a judgment covered several pieces of property—but it was a very easy matter to calculate how much should be refunded to the occupant or owner of each farm. Any body could cypher that out. But another case—the opposite, had been brought up—the case of a mortgage of

\$5,000 on a farm assessed at only \$2,000. In that case, it was said the man who held the mortgage would pay the whole tax on the land; That would be so under his proposition; but how would it be under the present system? The man who held the mortgage, unless he covered up his lien, would have to pay taxes on \$3,000 besides—whereas, under his system, this \$3,000 would pay nothing. Was there any thing in that operating against the mortgage holder?—And on the other hand, the interest of the occupant would be to bring into the assessment these mortgages that now escaped taxation in a great degree. Mr. S. had no objection to having his resolution referred; but he did object to its being laid on the table to sleep there. And there was nothing in the mere act of referring it that committed the Convention to it—any more than there would be in referring a petition or memorial. If the Convention passed a direct vote on the resolution, that would be adopting the principle. But he did not ask that. He only desired a reference of it—and he now moved to refer it to committee number two, which had already the subject of taxation before them.

Mr. RHOADES had no objection to a reference; but as he asked the privilege of selecting his own committee, Mr. R. insisted that he should put his resolution in the shape in which all resolutions of enquiry had been put. But he had a word to say on the merits.

Mr. STRONG interposed—saying that that would not be in order.

The PRESIDENT so ruled—the question being one of reference.

Mr. RHOADES said the gentleman from Monroe had gone into the merits, and then made a motion which precluded a reply. Mr. R. would not insist on going into the merits. But he would move to make it a resolution of enquiry.

The PRESIDENT remarked that that was in effect the motion now pending—to refer.

Ms. CROOKER thought there was an unusual degree of sensitiveness as to the form of the resolution. No matter what the form of it was, a reference committed nobody to any part of it. And it was no more than courtesy to the mover of a resolution to allow him to have it in the shape he desired—for reference. Mr. C., however, thought a reference to committee number fifteen would be the most appropriate. Still, if the mover was tenacious of number two, he had no objection.

Mr. TOWNSEND differed with the gentleman from Chautauque (Mr. MARVIN) in the idea that this was a subject which peculiarly belonged to legislation. He thought the gentleman from Monroe was entitled to the thanks of the Convention for bringing this matter directly up for consideration, in this form. No doubt, the object was to give more importance to the subject than would be given to it by a mere resolution of enquiry. And Mr. T. was in hopes that it would have drawn out the opinions of gentlemen on the subject of taxation.

The PRESIDENT reminded the gentleman that the merits of the resolution were not debateable.

Mr. TOWNSEND said he would then move to amend the resolution, so as to bring himself within the rule of order.

Mr. KENNEDY inquired if that would supersede the motion to refer?

Mr. TOWNSEND had but a remark or two to offer. He went on to say that a gentleman who had held the office of canal commissioner, and more recently that of ward commissioner in the city of New-York, and in this capacity had had before him more immediately the subject of taxation, had deliberately avowed, after full reflection and an enlarged view of the subject, that in his judgment the public interest would be promoted essentially by levying taxes on real estate alone. He alluded to Mr. Ruggles. And a strong illustration of the truth of the position would be found by a reference to a single fact connected with taxation in the city of New-York.

The PRESIDENT interposed, saying that the motion to refer taking precedence of the motion to amend, the latter was not debateable.

Mr. TOWNSEND said he would not occupy five minutes longer. He was going to say, that by a reference to statistics which were within the reach of every body, it would be found that the city of New-York paid about one-half the half mill tax. This must arise from an unjust mode of assessment. But to return to an illustration drawn from his own city. There, the whole amount of property returned for taxation, was about \$240,000,000. Of that, about \$170,000,000 was real estate, some \$40,000,000 was bank and insurance stock, leaving about \$30,000,000 only to represent the personal property of the city. This fact illustrated the importance of this subject, and he had said all he intended in calling attention to it. He differed with gentlemen as to this being altogether a matter for legislation. If we could make such constitutional provision on this as on many other subjects, that would exempt us from legislation in regard to them, we should have done a great good. Whether this could be effected or not, was yet to be determined. He hoped the reference would be made to number two, as desired by the mover.

The resolution was so referred.

Mr. W. TAYLOR asked a discharge from some returns from the Register in Chancery, referred by mistake to his committee. Agreed to.

TITLES OF BILLS.

Mr. TAGGART offered the following:—

Resolved, That the second standing committee consider and report on the expedient of incorporating a provision in the constitution, providing that every law passed by the legislature shall in its details, be in accordance with its title.

Mr. TAGGART asked indulgence whilst he adverted to one or two cases in explanation of the kind of legislation intended to be reached by this resolution. He had before him "an act concerning passengers in vessels arriving at the port of New York." At the close of one of the sections of this act he found a clause authorizing the corporation of New York to regulate the rates of wharfage to be charged on vessels discharging at or near any of the piers, slips, &c. He had also before him another act, passed in '41, purporting to be, by its title, "an act to amend certain portions of the Revised Statutes, in relation to bringing appeals and writs of error." The 31 section of this act repealed the 31st section of the act of 1840, "concerning costs

and fees in courts of law," which section provided that liens by judgment or decree docketed after the act took effect, should cease after the expiration of five years. Here was a section repealed which had no reference to costs and fees, &c., and yet, at the same session two acts passed which had direct reference to the act concerning costs and fees, and another expressly regulating liens on real estate.

Mr. RICHMOND was glad his colleague had introduced this subject. It reminded him of some bills that had passed the legislature whilst he was a member, which showed the importance of some regulation of this matter, that the people might know what the legislature were about, and might remonstrate before it was too late. A bill was introduced in '41, professing in its title to be a "legal reform" bill, but in reality it increased the fees of legal gentlemen about 25 per cent. The public were led to believe that it reduced the fees of lawyers—and he had to work himself up to a strong point of courage to vote against a bill with such a title. He however did vote against it, after in vain trying to get the title changed. He hoped the subject would be referred.

Mr. STRONG also favored the enquiry. He recollected an instance of this kind of legislation. A bill was brought into the house to compel the Utica and Schenectady rail road to carry freight. At the same time those who were interested in this road were here about our lobby and very anxious that the bill should pass—urging that though it was a hardship on them, it was necessary to pass such a law for the benefit of the people of this state. But there was a difficulty about this that gentlemen did not foresee. They sometimes went on and specified some things in the title of a bill that were correct, and then added "and for other purposes." How would the gentleman get over that? [A laugh.]

Mr. NICOLL was decidedly in favor of the resolution, but on grounds different from those urged by the mover. Every lawyer must feel the importance of it; for to the profession there could be no greater annoyance than to find themselves unexpectedly, as the phrase was, floored, in court by one of these incongruous statutes. He recollected a case of this kind. By the laws of this state, it was supposed to be impossible for a husband to apply for a divorce on the ground of cruel treatment by the wife. On a bill being filed by a husband on that ground, it was declared to be a case not within the purview of any law; but the counsel for the applicant referred at once to a law, the title of which purported that it was a law changing the terms of one of the local courts, but in which was a section authorizing this proceeding on the part of the husband. It would be a great convenience to the profession, not to be obliged to hunt through local statutes for general principles.

Mr. W. TAYLOR had no objection to this enquiry at all. But if we were going on to adopt a constitution covering not only all the principles of legislation, but the manner of it, it would not be easy to say when we should get through. But to glance at the case stated by the gentleman from Genesee (Mr. RICHMOND)—the case of the bill to reduce the fees of lawyers. The gentleman found it increased the fees in some in-

stances. Would he have had the bill entitled an act to reduce and increase the fees of lawyer!!—for Mr. T. presumed that the bill did both.

Mr. RICHMOND: It was all increase—no decrease.

Mr. W. TAYLOR: That was a matter of opinion perhaps. Some might suppose there was a reduction; but practically it might increase them—and if so, under such a provision as this, the law would be unconstitutional. This then might be going further than the mover intended.

Mr. TAGGART'S resolution was adopted.

A RECESS.

Mr. WARD here moved that all intervening orders be laid on the table, for the purpose of resuming in committee the unfinished business.

Mr. RUSSELL asked the gentleman to waive that motion. He desired to offer a resolution for a recess of ten days in the month of July—

Mr. WARD: We can settle that on Monday. We've wasted an hour now on similar matters—quite enough for one day.

Mr. RUSSELL: Then I must resist the motion to go into committee.

Mr. WARD: I should be very happy to accommodate the gentleman; but if that matter is taken up, there will be no time left.

Mr. RUSSELL insisted, as a matter of order, that the motion to go into committee was irregular unless the motion was to lay the pending order on the table.

The PRESIDENT: That is part of the motion.

Mr. RUSSELL: Then I hope it will be voted down.

Mr. WARD would not persist in his motion, under the circumstances.

Mr. RUSSELL then offered a resolution in blank, providing for a recess of ten days, in the month of July—leaving the time to be fixed by the body. He thought it important to know whether we were to have this recess or not, some little time in advance. It was known to all that a large proportion of us were disappointed as to the probable time through which the session would extend. Most of us supposed it would be two months, and had arranged our business at home accordingly. He was now satisfied that three or four months would be required before an entire constitution could be framed—for it was perfectly evident now that we were to form an entire new instrument, instead of presenting a few detached amendments, as he supposed when he left home. If we had this recess fixed some days ahead, that those who were compelled to go home to arrange their business might avail themselves of that opportunity, we could re-assemble after ten or twelve days absence, and do what we had to do here in a better manner and conclude our labors earlier than we should without, for the reason that a majority of us would be compelled to go home, by our private affairs, between this time and September—leaving perhaps through a great part of the session not more than two thirds of all the members here, and making it necessary in many cases to review questions taken in their absence and to re-open the debate again. Whereas, if all left at the same time, probably, we should be

able, on re-assembling, to keep nearly the whole body here during the remainder of the session. He hoped the question would be settled to-day, so far as to determine that there would be a recess, that all might be apprised of the fact, and make their arrangements accordingly.

Mr. BASCOM said, however much his personal convenience might be subserved by this recess, he must vote against it. As yet, we had accomplished so little in reality—and to the community it no doubt appeared less than it really was—that he dared not undertake to decide that it was proper to separate, until we gave some evidence that some substantial reforms were to be effected by this body. One good thing might result from a recess; and that was this: if we went home and heard the complaints of our constituents about our dilatory proceedings, we might learn the great importance of grappling in earnest with our business. He began to get letters of complaint already. He would read an extract from one of them to show what the people at home had begun to think of our doings. It was in the form of a mathematical calculation, which any gentleman could solve easily. Mr. B. read: "If it takes a month to get ready to do business, how long will it take to do it?"—He insisted that we ought to grapple with the business before us, and make some progress therein, before we asked of our constituents leave to sit again.

Mr. MANN was opposed to an adjournment for any considerable time, but he was willing that gentlemen should adjourn over the National Anniversary, as some desired. He believed the ten days's adjournment would be doing injustice to many who lived at so great a distance that they could scarcely get home and back in that time; while others could go home in a few hours. For the former must either submit to that inconvenience or remain here, while others were passing their time at home. He moved to strike out "Thursday" and insert "Friday," and strike out "ten" days and insert "three."

Mr. A. W. YOUNG thought this a subject upon which gentlemen residing in more distant parts of the state should be heard. He had come here with the idea that it would require three months to do the business of the Convention; and he had made arrangements accordingly. He thought members would not be justified in going home and attending to their private business at the expense of the state; and before coming to a conclusion upon this subject, other questions ought to be determined. One of these questions was that of constructive mileage. He had heard members say that if the Convention should adjourn, they would be entitled to mileage in going home and returning; but if a recess should be taken, they would be entitled to the usual per diem compensation. He did not wish to lose the fortnight which he should if the Convention adjourned for so long a time, besides being subjected either to the expense of remaining here, or to that of going home. There were several questions to be taken into consideration in determining the action of the Convention on this subject.

Mr. PATTERSON did not think it right or proper that we should take a recess for two or three weeks. On the question of pay, he

expressed the opinion that we should not be entitled to it, unless we were at work for the people. He, however, thought an adjournment for one day over the 4th of July, would be proper; it might be well to adjourn over from Friday to Monday; but beyond that he would not go.

Mr. LOOMIS thought the recess should not be taken. If gentlemen must necessarily go home, let them obtain leave of absence for that purpose from the convention on.

Mr. PERKINS thought it would not be well received by the people, if we should adjourn for ten days or a fortnight. We had been talking about reductions of salaries, and extensive retrenchments, but if we were to set the example of adjourning, and put the state to an expense of from 5,000 to \$10,000 for travelling fees, the people would have reason to complain, and to charge us with inconsistency. Besides, if necessity called any member home—his business, or sickness in his family—he had only to ask leave of absence to obtain it.

Mr. RUGGLES concurred with gentlemen who had preceded him, that we ought not to take this recess; and, among other reasons, because the result of our labors was to be submitted to the people in November. If the Convention was to sit four months, we should be brought to the first of October, leaving but a single month for the publication and distribution of the new constitution through the state and for the people to reflect upon what we should have done. We should under any circumstances, probably remain in session a considerable length of time—three months certainly—possibly four months. If then we use our best diligence in accomplishing the work before us, the people would have a very short time to examine and reflect on what we should have done—and to give an intelligent vote on the amendments that might be proposed. He should therefore be opposed to a recess, unless it was for one or at most, two days, over the 4th of July.

Mr. SIMMONS doubted if the Convention had the power to adjourn as had been proposed.—The idea of a Convention called together in conformity with law, having a power inconsistent with that law, was futile. A Convention that should set up any power inconsistent with the spirit and meaning of the law by which it was called into existence—a law made by and with the consent of the existing government—would be a revolutionary Convention and not a constitutional one. We could as well adjourn over until next December, or next summer, as take a recess of a fortnight or three weeks.

Mr. CHATFIELD had no objection to a short adjournment from Friday to Monday or even Tuesday, in honor of the national anniversary—but beyond that he was unwilling to go.

Mr. BURR concurred in the opinions expressed by the gentlemen from Otsego, Chautauque and Dutchess, that we ought not to take so long a recess as two or three weeks, but remain here and attend to business, with the exception of the 4th July.

Mr. STRONG spoke briefly on the subject of the adjournment, to which he was opposed, and on the question of payment of per diem and tra-

velling fees during such recess—which he thought we should not be entitled to.

Mr. RUSSELL said he introduced the resolution at the request of many gentlemen who were not usually talking men, and he did it with the impression that if members travelled 100, 200 or 300 miles to their homes and back, that they would be entitled to their travelling fees and their per diem compensation. He thought it proper that a few days should be given to us in the heat of the summer, to visit our homes and attend to our business. Nor did he believe that the people of his county would care a copper for the compensation, if we in the end presented to them a constitution worthy of their acceptance and of ourselves. His own impression was, that the adjournment should commence about the 10th or 17th July, or so late as to enable us to receive all the reports from the committees, to have them printed and before the people.—Gentlemen might then take them home with them, and during the recess examine and reflect upon them, and confer with their constituents in relation to them, and hear their suggestions of any modifications they might deem necessary. By such a course ten days would be well spent.

Mr. MANN accepted the amendment to adjourn from Friday the 3d to the succeeding Tuesday.

Mr. RUSSELL said he was opposed to any adjournment, if it was to be merely for a furlough on the 4th of July.

After a few words from Mr. J. J. TAYLOR, and Mr. MORRIS, Mr. RUSSELL withdrew his resolution, and the matter dropped.

THE GOVERNOR AND LIEUT. GOVERNOR.

The convention in committee of the whole, Mr. CHATFIELD in the chair, resumed the consideration of the article reported by committee number five—the second section being still under consideration for amendment—as follows:

§ 2. No person except a [native] citizen of the United States, shall be eligible to the office of Governor; nor shall any person be eligible to that office, who shall not have attained the age of thirty years, and have been five years a resident within this state; unless he shall have been absent during that time on public business of the United States, or of this State.

[The words included in brackets were struck out yesterday.]

Mr. PATTERSON, on behalf of Mr. DANA, (now absent) moved to insert after the words "five years," the words "next preceding the election."

Mr. WORDEN:—That is the meaning now.

Mr. PENNIMAN here desired, as one of the committee number five, to say a word in explanation of the course of that committee—particularly in regard to the word native. He asked if that would be in order now?

The CHAIR replied that after this amendment had been disposed of, the gentleman could move a reconsideration.

Mr. WARD suggested that when the Article was reported to the convention, it would be in order to move to restore the words struck out, or to renew any amendment, and have the ayes and noes on it.

Mr. PENNIMAN wanted to go into a full review of the action of committee number five—so far as it had been called in question here.

The question was here taken on the amendment moved by Mr. PATTERSON, and it was negative.

Mr. RUSSELL now moved to strike out the entire section, and insert as follows:—

"Any citizen of the United States, qualified to vote at the general election at which he may be elected, shall be eligible to the office of Governor."

Mr. R. said this was designed to supersede the section by an affirmative proposition that any qualified elector should be eligible—leaving all other qualifications to the judgment of our common constituents. He would not strike out the section and insert nothing, as had been suggested—for that would leave it so that a female or a minor might be eligible—and it was customary in all constitutions, to prescribe some form of eligibility. But he would have it in the simplest form possible—that of any citizen of the United States who is a qualified elector at the time of his election.

Mr. JONES suggested that a person might be eligible but not elected. The phraseology of the amendment should be altered.

Mr. RUSSELL said he would vary his substitute so that it would read—

"Every qualified elector shall be eligible to the office of Governor."

Mr. JORDAN inquired whether the gentleman intended to make colored people, who were worth \$250, and therefore now qualified voters, eligible to the office of Governor?

Mr. RUSSELL:—If the people so choose. Every person who is an elector should have the fullest privilege of eligibility.

Mr. JORDAN:—I understand the gentleman. That is all I desired.

Mr. HARRISON hoped the committee would bestow a little more consideration on this subject before they passed upon it. He was surprised yesterday, and the people of this State, he thought, would be surprised, at the summary manner in which this second section was treated then. The action of the committee was in conflict with the congregated wisdom of the people of three-fourths of the States of this Union. They had deemed it necessary not only to provide that native citizens alone should be eligible, but that age also should be taken into consideration. The inquiry made by the gentleman from Columbia (Mr. JORDAN) was very pertinent; and if we passed upon this section in the hasty and inconsiderate manner in which we were about to pass upon it, he presumed that our action would be visited with severe censure on the part of our constituents. He begged gentlemen, therefore, to bestow a little consideration on a proposition so uncalled for. He hoped also that we would consider that we had no charge from our constituents to act on this subject. No complaint had reached him that there was any dissatisfaction as to the present qualifications for Governor. These considerations and others which he would offer at a more suitable time, he hoped would induce the committee to hesitate.

Mr. SIMMONS doubted whether the gentleman from St. Lawrence, had carried out in his own mind the full bearing and extent of his proposition. It left the qualifications for Governor and of electors, in one respect, to the action of

Congress. It usually required now three years residence for an alien to become naturalized. In some instances five—always three. Suppose Congress, who alone were entitled to make uniform laws of naturalization, should reduce it to three days. And he should not be half so much surprised at that as he had been at some of their acts. Then our next Governor would probably be Mr. O'Connell—though it would be necessary for him to come here. And if Congress, in their horse race speed to show their love for foreigners, should go further and naturalize persons before they became even residents, and allow all foreigners to vote here by proxy, without coming over, declaring them to be citizens of the U. S. *ex gratia*, we might have an *ex-gratia* Governor who never saw the country.—Then we should be in the same condition that we were before '77. They appointed them in England now, and sent them over to Canada. Mr. S. was willing to throw off the world native. But there was great propriety, as our own citizens were subjected to a certain quarantine, before they could be made Governor,—and certainly adopted citizens could not complain that they should be subjected to the same rule. He would not have a person, three days after he came into the American world, whether by birth or importation—entitled to become Governor. There should be a little time to become acquainted with our institutions—a short period, if the Convention should think proper—but a probation equally applicable to all—three years might do. But he would not have it so that this period should be liable to change from the mere caprice of Congress, in regard to naturalization. We at first began with fifteen years—then it was reduced to one—and then it was carried back to three or five. He knew that the matter was the sport of party in violent party times, and we might possibly have violent party times again. Hence he would have some restriction in the constitution as to residence and as to age, bearing equally upon all—and not liable to fluctuation with the fluctuations of national legislation. It appeared to him that thirty years was not too many. There was a similar limitation in the U. S. constitution. And why not take care to strengthen state rights in this respect—instead of removing safeguards which were necessary to prevent the states from becoming mere joint stock corporations under the general government, rather than independent sovereignties. We should not have a raw boy for governor. Some of the states had had them. Michigan, he believed, had one, and the last Mr. S. heard of him, he gave strong indications of his age. The great state of New York—the pattern state of the Union—should at least require its governor to be 30 years of age, and to have resided in the state three years preceding his being voted for. And such a provision might be so framed as to throw no reproach upon adopted citizens, but on a principle of perfect equality. A friend had sent him an amendment, which, if in order he would offer—as follows:—

"Every qualified elector who has resided in the state five years next preceding the election at which he may be voted for, shall be eligible to the office of Governor."

Mr. HARRISON moved to amend the amend-

ment, so as to make the age of 30 years a qualification.

The CHAIR ruled the amendment out of order.

Mr. SHAVER should vote against that. He did not concur with the gentleman from Richmond (Mr. HARRISON,) as to the construction which the people would put upon this substitute of the gentleman from St. Lawrence. He did not believe the people would find fault with us for entrusting them with the selection of their candidate for governor. He did not believe they would rebuke this Convention for entertaining the opinion that they were capable of selecting a candidate of their own for that office. As to the contingency alluded to by the gentleman from Essex (Mr. SIMMONS)—Mr. S. had only to say that when the time came when the people were willing to send across the water for a governor, it would be of very little importance to him whether that man were Daniel O'Connell, or Louis Philippe, or Queen Victoria. He believed that no such state of things was likely to arrive—and for one, he should sustain the substitute of the gentleman from St. Lawrence.

Mr. WORDEN hoped that in the outset, in framing a constitution, we should have some regard to the element that constituted a democratic or republican form of government—and endeavor, if possible, to frame it on the principle that should govern in the construction of such institutions. It would be conceded that the popular will was the true source and fountain of power in this government—and in his judgment, that government was best constituted where the popular will was left free to act, with as few restraints as could possibly be thrown around it. Every attempt to throw obstructions in the way of the free and full exercise of the popular will, served only to make an artificial machine that would not and could not work beneficially for the public interest. Now, it was conceded on all hands, that the people of this state were quite competent to elect their governor. Nobody proposed to restrict them in the exercise of that right. Yet whilst gentlemen seemed to concede that, they conceded it with the qualification, that though they were competent to elect a governor, they were not competent to select the individual, and that if this whole subject was left open to their agency, they might fall into some great and egregious error. Mr. W. could subscribe to no such doctrine. He believed if the people were competent to vote for governor, they were competent to select the man. Suppose, as the gentleman from Essex suggested, the people should be inclined to select Daniel O'Connell for Governor? Mr. W. did not see why gentlemen need to place obstacles in the way of the exercise of that determination. If they saw fit thus to strike at the foundation of their own government and overturn it, that could not be prevented by any provisions in the constitution. Mr. W. did not think any such contingency was likely to arise. He believed the people would exercise a sound discretion in the selection of a person to act as governor—and if he were a citizen of the state, and a competent elector, that was about as much as he would require. For as he had said in the outset, this attempt to curb and restrain and limit the action

of the public would, only operate to derange the whole structure and machinery of government.

Mr. NICHOLAS thought there was a rule in practical life which it would be discreet in us to observe; and that was, to avoid unnecessary changes. We had now a qualification of a five years' residence. He had never heard any objection to that provision. It had worked well; and this being so, he could see no reason for making a change. His colleague had alluded to the deference due to the popular will. Mr. N. made in all cases a distinction between a sound, healthful, deliberate public sentiment—or, to use his colleague's phrase, popular will—and popular clamor. He would be second to no man on earth in bowing on all occasions to the former; and he was as free to say, that on all occasions he was determined not to be led by the latter. The public sentiment of the state, when deliberately formed on any subject, he considered as imperative with him, as placing him under obligations to defer to it implicitly, here and on all occasions. But he had never heard any complaint as to this qualification of residence. And when gentlemen talked to us about the obligations resting on members of a republican government, he must claim the right to consider himself a republican of the old democratic republican school of '93, as he honestly believed himself to be, in maintaining a due respect for the rights of the state. He had no idea of a mere stranger coming here—he cared not whether from England, Ireland, or Scotland—or even from a bordering state, and being eligible to the Chief Executive office of this state—at any rate not until he had been here long enough to make himself acquainted with the peculiarity of our government, with the institutions and wants of the state, the defects in our system, if any, the requirements of our laws, and with the various local interests of the state. This kind of knowledge was indispensably necessary to qualify a man for a useful and efficient discharge of Executive duty. And Mr. N. thought it became every man who was a republican in sentiment, thus to respect the right of state of which he was a citizen. He could see no good reason for making a change here. The standing charge against all republican institutions was instability and love of change. And it did appear to him that where any part of our system had worked well, for a long series of years, the people subjected to no inconvenience by it—the safe course was not to tamper with it. In all these cases, the only safe course was to avoid change. He was ready and willing to unite in making all necessary changes; wherever evils existed, he would remove them. But he never would substitute mere experiment for experience, nor undertake to improve on what had stood the test of time, for the mere sake of experimenting; and we had too many and too important interests in charge, to venture on such a path. We were now embarking on this work. This was the incipient step in it. And he thought the admonition could not be too often inculcated, that we should in all cases avoid unnecessary changes—avoid mere experiments—and adhere to the experience of the past. He repeated, however, that a respect for the rights of the state, its dignity and character, if no other con-

siderations, would induce him to retain this requirement as to residence. He would require every candidate for governor to have been a resident of the state five years.

Mr. PENNIMAN (after enquiring of the Chair what course of remark would be in order and what not, in reply to attacks on this whole article)—went on to urge the retention of all the qualifications in the second section—those of age, nativity and residence. He would retain the word native—first because it was in a considerable portion of our state constitution—it was in the constitutions of Maine, Missouri, and virtually in that of Arkansas. Nor was there a state in the Union that did not require a residence of five years and upwards. Virginia virtually required that a governor should be native born. Maine, as he had said, required the same qualifications as were provided in this section. New Hampshire required a seven years' residence and a property qualification—which Mr. P. did not believe in. New Jersey required a citizenship of twenty years. Maryland a residence of five years, and a property qualification. Virginia required five years' residence, and the native qualification, or what was equivalent citizenship, at the adoption of the federal constitution. So Missouri required that a governor should be native born or a resident of the Louisiana territory when it was ceded by France, which amounted to the naked native qualification. So in Ohio, Arkansas and Tennessee, all these qualifications, and more stringent ones, were required. And he ventured to say that there was scarcely a state in the Union that did not require a long period of residence at least, and of them the qualification of age, and many of them what was equivalent to nativity in this country. Mr. P. alluded to the attempt yesterday to force down this section not by the cry of democracy, but by showing that its advocates distracted the people. The love of the people, the dear people, was generally on men's tongues—whether they always acted in accordance with that sentiment, was another question. [A laugh.] Now, he had shown, by reference to the constitution of Virginia, that this section required no more, it as much as the constitution of that state did. And whilst he was a native of New Hampshire and held to Virginia doctrine, he took it no high-priest of party could unchurch him. [A laugh.] And here he begged leave to state that the political feuds in his section of the state, were not between native citizens and foreigners—but between native citizens of different stocks—such as the Yankees and the Dutch, both however born here. That was the case in his old town in Orleans, one part of it being settled by persons of New England, and the other by persons of Dutch descent—and they went generally in a body against each other. And this was the case, he had been informed, in other parts of the state. Now what would be the practical result of striking out the word native. Obviously, that each party would bid for foreign votes, by selecting foreigners as candidates, or they would bid for native votes by putting up native candidates—and the tendency could not be otherwise than injurious. Retain the word, and neither party could go into that game. Mr.

P. said he could not take his seat without alluding to the course taken in debate here in relation to committee number five and its report. He had felt something on his conscience, under these attacks. But he had got over that. He felt tolerably good natured. Perhaps the committee had been treated decorously—he was bound to believe that no intentional disrespect was intended. The gentleman from Oneida (Mr. KIRKLAND,) made something of an attack on our report the other day. But he was merely the vanguard, as Gen. Hull said, of a greater force. [A laugh.] He was followed by the gentleman from Orange, (Mr. BROWN,) on Monday, who enlarged and amplified the ground of attack. Next came the gentleman from Essex (Mr. SIMMONS,) who, no doubt without intending any disrespect, alluded to the absence of a report in this case, saying that had the committee written out one in support of this article, it would have been a different thing—intimating distinctly either that we had not investigated the subject or else that there was not talent enough in the committee to write out a report. [Laughter.] This attack was followed by the gentleman from Orange again—and then the gentleman from Oneida again, who outdid the whole, if he did not outdo himself. [Laughter.] Last, though not least, came his venerable friend from Chautauque (Mr. PATTERSON)—who was about half related to him, coming as both did from the old Granite state. That gentleman, in his excessive charity, presumed that we were too ignorant to investigate the subject—and threw all the blame upon the gentleman from New York (Mr. MORRIS), our chairman—because he did not run his pen over certain words in the old constitution—supposing that the rest of us could not either write or read, or both. [Roars of laughter.] His mantle of charity covered all the rest of them up! That, Mr. P. said, was the "most unkindest" of all, and he was almost led to exclaim with Cæsar, "and thou too, Brutus!" [Renewed laughter.] Now Mr. P. had a proposition to make. He was not tenacious about it on his own account. We (committee No. 5) all lie dead, except our chairman—[laughter]—and the recesses of his vitality lie too deep for any small shaft to reach—but though not dead, he sleeps. [Renewed laughter.] Mr. P.'s only fear was that the President might be blamed—for committee number five were all dead, down, used up. [Renewed laughter, during which, and all along here Mr. P. could scarcely be heard at the Reporter's seat.] Why under Heaven, it might be asked, did he (the President) select almost all the talent here to put on the judiciary committee—and leave poor number five without any?—[Laughter.] We had two lawyers on our committee, but they were small lights compared with the gigantic, towering intellects on the judiciary. [Roars of laughter.] Mr. P.'s first idea was that the three distinguished gentlemen from Oneida, Orange, and Essex, (Messrs. KIRKLAND, BROWN and SIMMONS,) should be committee number five, and that we should retire. But he had a second—a dying request, [laughter]—that the learned and eloquent gentlemen from Orange and Essex (Messrs. BROWN and SIMMONS) should be all the commit-

tees of this convention, [laughter] except Nos 5—and that the gentleman from Oneida (Mr. KIRKLAND), if he had time to spare from his arduous labors on the judiciary, should constitute number five [laughter]; and that the gentleman from Chautauque (Mr. PATTERSON) be the Convention, [laughter, long and loud]—that he should submit every thing to the dear people—no—that he should be the dear people himself, [renewed laughter]. Mr. P. begged the Convention in its wisdom, to provide some way in which poor committee number five might be relieved—for, as a high dignitary once said, “our sufferings is intolerable.” [Laughter.]

Mr. MORRIS said he rose principally to say—“Robin’s alive, and alive like to be.” If his learned associate upon the committee (the gentleman from Orleans) had had the experience Mr. M. had (though his years might be more) he would not have been so sensitive, and would have known that no disrespect was intended by gentlemen, to committee No. five. Mr. M. knew each and all of the gentlemen and that they intended no disrespect whatever. They had merely used committee No. five, and its report, for days,—and whether that report was under discussion or not—to make their Buncombe speeches. [Laughter.] Gentlemen did not intend to censure the committee. There was no committee of the body to which some gentlemen should be so much indebted as to committee number five, for its report had afforded them for a long time, as he had said before, whether under consideration or not, subjects for discussion, and had enabled them to throw off their superabundant patriotism. Instead of censure—and he knew no censure was intended, the committee should receive a vote of thank, from gentlemen, for giving them a foot-ball to kick and thus bring themselves prominently before the public. (A laugh.) That however had now passed,—the cork had been drawn,—the effervescence had escaped, and we had arrived at the serious, legitimate business of the Convention. The question before the committee was the time specified in the section that the citizen should be a resident of the state before becoming eligible to the office of governor. The section specified five years; and there was a proposition to make it three years; and, he understood, there was to be another proposition to strike out the whole section. It was said by some of his learned associates, that to require in the constitution any qualification for a citizen to become a candidate for governor, or in the least to trammel electors in their choice, was an imputation upon the intelligence of the people. If so, why have a constitution? and what object was there in a constitution but to provide checks and guards? Why did we have two deliberative bodies in our legislature, the one elected for a number of years, and the other for but one year, but to produce checks and guards—to enable the whole to reflect and deliberate upon the subjects of legislation? If he might also imitate his friend from Orleans (Mr. PENNIMAN) by using a quotation, he would say, that checks and guards were established, to secure the “sober second thought.” This was the object of these checks and guards, and had always been the object of provisions creating

qualifications of age and residence, in a Governor. Now all the gentlemen would remember—he remembered some one or two, and others might remember more—exciting political campaigns, when the whole state was excited from one border to the other—during which the people were addressed at their meetings of tens of thousands, and were carried away by the burning eloquence of gentlemen from other states of this Union. In his argument, he was not driven to cross the Atlantic nor did he wish to do so, for his illustrations, for it brought so far, on the one hand he should perhaps be charged with reflecting on those citizens who were of foreign birth, or on the other, it might be suspected that he too, was speaking to Buncombe, or fishing for political capital. And as neither was his object, he did not wish to rest under such imputation. He should only allude to the citizens of other states. It might be that during some excitement of the kind alluded to, the people, enchanted and carried away by fervid and impassioned eloquence, might elect a gentleman ignorant of our local laws and institutions, and of the necessities and requirements of the people. It was to secure in our governor the local knowledge, and the proper feeling of state pride and interest, that he deemed it prudent that he should be a citizen, and have resided among us sufficiently to become acquainted with our local laws and institutions, and to appreciate the necessities and requirements of the people.—What was there improper in this? It might be said it was a useless provision—that the people could never be guilty of such folly. This might be true, and it would no doubt always be so, unless under the influence of some great public excitement. There had been temporarily, great public excitements, that overbore all efforts to stay it, and threatened to destroy a prominent feature in our republican institutions. He asked, if when that excitement was at its height, whether any man from any state, if nominated, could not have been elected? It was not necessary to mention the excitement he alluded to, for it occurred so short a time since, and was so extensive, that it could not have been forgotten. Such excitement almost laid in ashes the chief city of a neighboring state. He deemed it wise therefore that there should be this qualification in the constitution—that a man to be Governor, should be a citizen, and have resided long enough in the state to become acquainted with our laws and institutions.

Mr. SWACKHAMER said the arguments which had been used for the restrictive qualification were all based upon the assumption that the people could not nor would not judge properly. He wished it to be distinctly understood that this was the foundation on which all the arguments of gentlemen on the other side were based. The gentleman from New-York (Mr. MORRIS) had enquired why they made a constitution at all. To which Mr. S. replied that it was to protect the rights of the people, and not to prescribe to the people who they should elect to office, or to dictate the mode in which they should proceed in their selection. As to the matter of time or age, he was of opinion that it was of very little importance further than that it involved the fundamental principle that the

people were not competent to judge of all matters affecting their own interests. He agreed with some gentlemen who had preceded him, that the people were capable; and in saying this, he distinctly denied that he was talking for Buncombe. He came here an advocate of that principle which was the foundation of our republican government. The gentleman from Essex had made some remarks to which it was not necessary now to reply. He could not do so satisfactorily, inasmuch as they were out of order; but this he would say, that that gentleman had assumed false positions. After commenting

on the speech of the gentleman from Orleans, Mr. S. proceeded to notice the observations of the gentleman from New York (Mr. Morris) in relation to the great excitements that sometimes prevailed, contending that good invariably arose out of such excitements.

Mr. SIMMONS and Mr. PENNIMAN both made brief explanations.

Mr. KENNEDY then moved that the committee rise, which was agreed to, and the committee rose, and obtained leave to sit again.

The Convention then adjourned to Monday morning at 11 o'clock.

MONDAY, JUNE 29.

Prayer by the Rev. Dr. WYCKOFF.

The PRESIDENT laid before the Convention returns from the clerk of the 6th equity circuit, in relation to infants' estates, &c., in compliance with a resolution of the Convention.

BANKS AND CURRENCY.

Mr. CAMBRELENG, from the committee on currency and banking, said he was instructed by that committee to make the following report, which was read by the Secretary.

The committee, to which were referred the subjects of banks and currency, and a resolution to enquire into the expediency of making a constitutional provision, that the stockholders of banks shall be individually liable for the debts of their respective corporations," respectfully reports the following resolution and amendments:

Resolved, That so much of the 9th section of the 7th article of the constitution as relates to the incorporation of banks, be and the same is hereby abolished.

PROPOSED AMENDMENTS.

The legislature shall have no power to pass any law granting special charters for banking purposes, but associations for such purposes may be formed under general laws. The legislature shall have no power to authorize, or to pass any law sanctioning in any manner the suspension of specie payments, by any person, association or incorporation, issuing bank notes of any description.

All individual bankers, and the stockholders in every association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, hereafter authorized or formed, shall be responsible in their individual and private capacities for all debts and liabilities of every kind, incurred by any such banker or association.

The legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require for the redemption of the same in specie, ample security by pledges of property.

No individual banker, nor banking or other institution of any denomination, shall, after the year 1855, issue bank notes or any kind of paper credit to circulate as money, except under the provisions and upon the conditions prescribed in the preceding sections.

From and after the year 1855 all perpetual charters granted for banking purposes, or to companies or associations for any other purpose, and exercising banking powers, shall be revoked and annulled.

Mr. C. said this report was but a report in part, as there were some other subjects still under the consideration of the committee. He moved to refer the report to the committee of the whole.

Mr. RUSSELL, (from the committee,) claimed the indulgence of the Convention, to make a few remarks before the reference of this report was made. It was due to the importance of the subjects embraced in the report, to himself indi-

vidually, as an inexperienced member of that committee, and to the Convention itself, to prevent possible misapprehensions arising from the submission of naked propositions, unaccompanied by any reasons, facts or arguments, to justify the general scope of these propositions. The Convention had decided that the reports of all standing committees should be made in this manner. To this order he yielded cheerful acquiescence, as every member should, to every decision of the body fairly expressed, whatever his own opinion of the propriety might be. Upon the great and intricate subject of currency and banking, a report embracing merely specific provisions of fundamental law for its regulation, without any exposition of the facts and principles upon which such provisions are founded, and without previous discussion, was a novel idea to his mind. Yet it might be all right. By this course, however, members of the standing committee were individually responsible for the entire report, unless a dissent in some form was expressed, because the report itself was nothing but the conclusions of the committee, upon the whole subject. The report might be able and correct as a whole, yet if any member partially disagree, his dissent so far, to avoid inconsistency, should be expressed upon the first opportunity.

With all deference to the honorable chairman, and to the other members of the committee who united in the report, and with unfeigned distrust of his own opinions, he could not yield entire assent to one position contained in it. He could not see the force or propriety of the distinction taken by the committee, as to personal responsibility in one branch of banking business, between two classes of bankers performing the same business. If circulating notes should be made secure by pledges of stock and other security, and by superadded personal liability, he could not see why the persons issuing this doubly fortified currency, should be held to more stringent constitutional provisions relating to other branches of banking business, than were numerous other banking associations, that did not issue the circulating medium. In other words, if the legislature were permitted to establish, upon the principle of limited copartnership, associations for the business of discount, exchange and deposit merely, why not entrust to the law-making power, the regulation of the same branch when transacted by others, who,

in addition, shall furnish a safe currency, based upon ample security and unlimited personal liability? To him, the distinction appeared invidious and unrescuable.

The committee unanimously agreed, that all persons, authorized by government to issue paper for circulation as representative of coin, should, in addition to other securities, be personally responsible for the certain redemption of such paper. This regulation of the currency was emphatically demanded by our constituents. Concerning other branches of banking, as with all other kinds of business connected with commerce, might not the control of government, if at all necessary, be safely entrusted to legislation without constitutional restraints? If constitutional law should enforce full personal liability upon individual members of all associations, who might issue registered and secured notes as money, for all other contracts of associations, and should relieve, from similar liabilities, members of other banking associations engaged in the same business, because they did not issue such notes, he feared this discrimination might tend to throw the issue of currency into weaker hands, who might be willing to hazard greater liabilities. Such was the opinion of several gentlemen of much experience, with whom he had recently conversed. Besides, it would create an onerous preference in favor of the bankers of our commercial emporium, against those of other sections of the state. It was well known, that the amount of circulating notes issued by the large banks of New York city bear but a small proportion to the amount of their capital, discounts and exchanges. The notes of these city banks were not their real circulation. Persons, obtaining discounts from, and selling exchanges to these banks, did not receive their notes, but simply credits on their books, which were withdrawn by drafts or checks of the depositors. These drafts and checks, rather than the notes of the banks, were the real circulation furnished. This currency was safe, because it had the individual responsibility of the drawers, as well as the bank credits upon which it was based, and was promptly returned for payment, in the ordinary course of business. The New York city banks could easily withdraw their circulating notes, and still not materially diminish their business. Not so with country banks. Their notes performed the office of checks and drafts, in nine-tenths of the ordinary business exchanges performed through the agency of these banks. Country banks, of necessity, must be banks of issue, as well as of discount and deposit.

These were some of the considerations, which induced in his mind the opinion, that it is unwise to insert in the constitution any provision going beyond the enforcement of personal liability of all bankers for the redemption of their paper circulated as money. All persons, authorized by law to circulate paper as a substitute for coin, should be held to unlimited responsibility for its redemption in coin. But in his judgment, every other branch of banking business should be placed on the same ground with other commercial operations. These suggestions were thrown out with great diffidence, and with most respectful deference to the opinions

of other members of the committee. It gave him much pleasure to be able to state, that upon other questions before the committee, they had been unanimous in the conclusions expressed in the report, and the chairman, by his experience, research, and industry, had greatly aided in the attainment of this unanimity. With the single exception before explained, he concurred fully with every part of the report. Under present impressions, he would amend the report, in the latter clause of the second proposed amendment, by striking out the words, "debts and liabilities of every kind incurred," and by inserting the words, "such notes on paper credits." There was at least a doubt of the propriety of a constitutional provision enforcing unequally liabilities growing out of the same kind of business, merely because one class of persons, transacting this business, conduct also another branch of business, which was made perfectly secure without this controlling inequality. It was better to leave the question open to legislative action, than to incorporate in the constitution a provision of doubtful tendency. He trusted when the report shall go to the committee of the whole, this subject would receive the attention of members much abler than himself to give it appropriate discussion.

Mr. CAMBRELENG said he would not violate a parliamentary rule—which he was very sorry to say had been so frequently violated that nearly a month had passed in discussing questions of reference, under which the merits were only to a very limited extent under consideration. Mr. C. did not interrupt his associate on the committee, because at the outset, he was willing that the gentleman should have an opportunity to present his views. He must be indulged in answer—not to anticipate discussion, for he would not permit himself to be drawn into it now—with a single remark. The point, and the only point the gentleman made was this—that he would impose personal responsibility to the extent of the circulating notes. Now, the committee had already required, by these amendments property as security for these notes. We had endorsed these banks. They were government banks; and being government banks and acting under its authority, the rule which was good for the circulation was good also for the widows and orphans having deposits with them. Another point—that of inequality—required perhaps a remark. The distinction and the only distinction recognized by the committee was this. Banking, legitimate banking, was a business with which government had nothing to do, any more than with any other branch of business. Currency was the business of government with which banks should never have had any thing to do. But having something to do with it, under the authority of government, the latter was bound to protect the community against their excesses. The committee proposed to put every bank, after the year 1355, on the same footing. Every bank issuing currency, must be under the control of government. Banks not issuing currency might do as they pleased. What was the actual condition of things now? Here were four and twenty country banks, owned by individual bankers who were liable personally for every debt in

every form. What a spectacle was presented here! Four and twenty banks commenced by some of the soundest capitalists in the state, issuing circulating notes secured by pledges of stocks, and personally liable for every debt; whilst your privileged associations, doing the same business, were not personally liable for any debt.

Mr. WORDEN, with great deference, inquired where these 24 banks were?

Mr. CAMBRELENG: I have a list of them.

Mr. WORDEN: Does it embrace free banks?

Mr. CAMBRELENG: Free banks.

Mr. WORDEN: Does not the gentleman know that none of these are personally liable?

Mr. CAMBRELENG: I have the authority of the Comptroller for it, and the law. I find also at the Comptroller's office, that the notes run "I promise to pay," signed by the individual banker.

Mr. WORDEN: The statute expressly provides that associate bankers shall not be personally liable.

Mr. CAMBRELENG: Not the shareholders in joint stock associations, but all individual bankers are liable. Mr. C. went on to say that these amendments were not designed to disturb any existing banking institution. Every banking institution, now in existence, would after 1855, be allowed the option either of withdrawing its notes from circulation, or coming in under these amendments. On a proper occasion, he should attempt to show that this was an operation by no means difficult. One of the banks in New York had now withdrawn its circulation, because it did not choose to come under the provisions of the general banking law. But he would not anticipate further. All he had to say was that these amendments were proposed without any view of disturbing any existing institutions. Ten years hence, if these amendments were adopted, they must determine whether they would remain currency banks. If so, they must come under these general provisions—and every bank, individual banker, incorporation or association, must stand on the same footing.—He added, in regard to the mode of making reports—that he observed the members of committee number five appended their names to their report. He should be much mistaken, if in the end, all of them were found sustaining all the provisions of that article. The parliamentary rule was the best—which was that reports were to be regarded as the act of the majority of the committee. Nor was it to be regarded as any thing more than the result of an informal conference—any member even of the majority being at liberty to reverse his opinion or his vote, if he should be convinced that he was in error. In this case, two or three of the committee did not concur entirely on every proposition—though upon every one of them there was a majority, and upon the whole a majority.

Mr. PATTERSON rose to give notice that hereafter he should feel obliged to call gentlemen to order who undertook to discuss the merits of a proposition, on a mere question of reference. This whole debate had been out of order, and too much time had already been wasted in such discussions.

Mr. RUSSELL said, that whenever a report

was made from a committee of which he was a member, in which he did not concur, he should claim it as his right to have his views come before the Convention in some shape, simultaneously with the report. It was necessary that all should have this right, in order that their subsequent action might not be misconstrued into inconsistency. And unless the gag law was in force here, he should expect to be heard.

Mr. PATTERSON had no objection whatever to a minority of a committee rising and expressing their dissent, and stating wherein they dissented. But he did object, and it was disorderly to make that the excuse for a full discussion of the merits, pending a motion for reference.

Mr. RUSSELL said the motion for reference was made before he got the floor.

The PRESIDENT understood the gentleman to ask and to have obtained consent to express his views on this subject.

Mr. WORDEN also so understood it—that the gentleman from St. Lawrence asked and obtained leave, as did the majority of the committee when they reported, to present his views. He thought the gentleman was entirely in order; and he doubted whether it was not competent for him or any other member, on a question of reference to go into the merits so far as to show that the report was not such an one as should be considered in committee of the whole, but should be re-committed.

The report was referred to the committee of the whole, and on motion of Mr. FLANDERS, an extra number of copies were ordered to be printed.

LIMITATION OF THE OCCUPANCY OF LAND.

Mr. WILLARD offered the following resolution, which was adopted:—

Resolved, That it be referred to a committee number eight, on "on the erection and division of estates in lands," to inquire whether the character and permanency of our institutions would not be increased by multiplying the number of freeholders, and the expediency of forbidding all future accumulation of the soil to exceed 320 acres per man, and to provide some equitable mode for the gradual reduction of the present landed monopoly as they now exist.

RECESS OF THE CONVENTION.

Mr. STRONG submitted the following:—

Resolved, That when this Convention adjourns on Thursday next, it will adjourn to meet again on Tuesday the 7th July.

Mr. S. said he thought it desirable to have this question of adjournment over the 4th of July settled. He was satisfied that on Friday there would be very few members, certainly not a quorum in attendance, and it would be hard to require the President to come here simply for the purpose of adjourning the Convention. He was himself ready to be here every day, but he had no expectation that other gentlemen would be. He had not offered this resolution now for the purpose of leading to debate; he was desirous to avoid debate, and he should prefer withdrawing the resolution to such a result; but he was desirous to have it known what the Convention had determined to do.

Mr. MILLER hoped the gentleman would not withdraw the resolution. If, as was admitted, there was not to be a quorum here on Friday, it would be better to pass the resolution,

that those might go home who were within a convenient distance.

Mr. RICHMOND thought the resolution should be better understood—that one of two things should be done. If we were to adjourn, it should be for such a time as would give an opportunity to all to go home, which could not be done by adjourning from Thursday to Tuesday. If we were not all to have sufficient time to go home the adjournment should not be longer than from Friday to Monday. (Question, "Question.")

Mr. CHATFIELD moved to strike out "Thursday" and insert "Friday."

The amendment was negative the vote being 32 to 59.

Mr. CHATFIELD then demanded the yeas and nays on the resolution and they were ordered, and there were yeas 50, nays 53, as follows:

AY!—Messrs. Angel, Baker, Bascom, Bonck, Brown, Bull, Cambreling, Conely, Cook, Cruell, Dana, Faulstich, Dodd, Dubois, Gebhard, Graham, Greene, Harris, Hoffman, Hutchins, Hunt, A. Huntington, Hutchinson, Hyde, Kennedy, Mann, McNeil, Miller, Nelson, Nicoll, O'Conor, Riker, Shaver, Shaw, St. John, Stephens, Strong, Tait, Tallmadge, Townend, Turhill, Vache, Van Alen, Van Alst, Ward, Warren, Waterbury, Wittbeck, Worden, Yawger, A. W. Young—50.

NO!—Messrs. Ayrault, F. F. Backus, H. Backus, Bowdish, Brayton, Brundage, Burr, R. Campbell, Jr., Cander, Chatfield, Clark, Crocker, Borton, Flanders, Harrison, Farr, E. Huntington, Jordan, Kerwin, Kingsley, Kirkland, Marvin, Morris, Nellis, Nicholas, Parish, Patterson, Penniman, Perkins, Powers, Rhoades, Richmond, Ruggles, Russell, Salisbury, Sanford, Sears, Sheldon, Shepard, Simmons, Smith, E. Spencer, W. H. Spencer, Stanton, Stow, Taggart, J. J. Taylor, W. Taylor, Wood, A. Wright, W. B. Wright, J. Youngs, Mr. President—3.

So the resolution was lost.

SERVICE OF MEMBERS.

Mr. TALLMADGE offered the following resolution:

Resolved, That when the members of this Convention make application to the President for certificates entitling them to their consent on, they be severally required to certify upon their honor, the number of days which they have severally attended the sittings of this body; and that the President deduct all the days which any member shall have been absent, except such time as he may have been detained in this city and prevented attendance by sickness.

Mr. T. said he had not lost one hour of attendance on the sittings of this convention; but on Monday week he found there were 43 members absent, and on other occasions there were many who were not in their seats, and of those who were the most frequently absent on Saturdays and Mondays, he found that the majority on the vote just taken was mainly made up. With a knowledge of these facts he had offered the resolution, which he was willing to lay on the table for a short time, to afford the Convention time to consider it.

The resolution was laid on the table accordingly.

EXECUTIVE DEPARTMENT.

On motion of Mr. MORRIS, the Convention went into committee of the whole on the article reported by the committee number five on the powers, duties, &c., of the Executive, Mr. CHATFIELD in the chair.

The CHAIRMAN stated the question to be on the amendment of the gentleman from Essex (Mr. SIMMONS) to the substitute of the

gentleman from St. Lawrence (Mr. RUSSELL), for the second section.

Mr. NICHOLAS desired to offer an amendment to the amendment.

The CHAIRMAN on reading it, said it was not strictly in order.

Mr. NICHOLAS remarked that the amendment of the gentleman from Essex was designed to add after the word "elector" the words "who has been five years a resident of this state," and his amendment was designed to extend that time.

The CHAIRMAN replied that the amendment went further—it was designed to provide that the governor should not be less than 30 years of age and to prescribe a residence of not less than seven years.

The resolution was read for information, as follows:—

The Governor shall not be less than thirty years of age, and shall have been for twenty years at least a citizen of the United States, and a resident of this state seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this state.

Mr. BASCOM said he had but a single suggestion to make, and he believed it was connected with the dispatch of their business. It seemed to be proper in the opinion of the Convention at one time that there should be some general qualification for office—for officers of every description and grade, for the Convention had referred to committee number four this very subject, of the qualification of officers. In his opinion there was but one single line necessary in the constitution to embrace not only the subject under consideration, but every other of a like character that would occur. He was therefore against the pending amendment. He should be in favor of taking a test vote on the proposition of the gentleman from St. Lawrence (Mr. RUSSELL) because he thought it would be the rule that was proper to adopt not only in reference to this but to all other offices. He thought we should have a rule, and he cared not if it was this one, by which the qualification of every officer should be defined. And in the hope that if they adopted the qualification of the gentleman from St. Lawrence, they would without debate, adopt it as the qualification of every officer under the Governor, he should vote for that proposition. It would perhaps, however, have been better if some general provision had been reported, as seemed once to have been intended.

Mr. HUNT: I would respectfully ask the mover of the amendment before the committee, to withdraw it for a time at least, in order that a vote may be taken as to the propriety of our dictating in any way to the electors of the state what class of persons they shall elect to office; for if we have no authority in the premises, as I think we have not, it is idle for us to waste time in discussing how we would exercise such authority if we had it. I stated this objection to the second section of the report of committee No. five, soon after it was presented, to some of my colleagues in whose judgment I have great confidence, and they admitted its force. I stated, as my view, that this Convention should regard itself in the light of an attorney, acting for its client the people of the state, and that the

constitution we are drafting should be regarded as a simple power of attorney, or code of instructions, to be usually executed by our client or principal, for the direction of such agents as they may hereafter employ to transact the business of government in their behalf. The great questions we have to consider are—What offices shall be created? How shall the people designate their officers or agents? What powers shall be delegated to them, and what specifically withheld? It is proper for the people to prescribe the duties and limit the power of their *deputies*, for otherwise their deputies would become their masters; but they cannot limit *their own* discretion in relation to the choice of their own agents without forfeiting their sovereignty. Who, in granting a power of attorney for an agent, would ever think of inserting any clause limiting his own powers—of tying his own hands in order to keep himself from picking his own pocket? Now, as our Governor is to be chosen not by an electoral college, not by deputies, but by the people in person, why say a word about his qualifications here? I admit there are many qualifications which it is important that our Governor should always possess, for instance: he should be a white man—he should be not only a native citizen, but a native of Greene county—for, to quote the great argument of the natives, there are enough competent Greene county men in the state to fill all the offices of the state. He should be a good Jeffersonian—not less than 6 feet 2 in height—able to read and write and say the Lord's prayer, the creed, and the ten commandments—in a word, I would insist on all the qualifications that I possess myself; but inasmuch as I doubt whether the people of the state have constituted me their guardian, I dare not usurp that office, and therefore present the above qualifications, not in the light of sovereign mandates which they must obey, but as the sincere advice of a disinterested friend. Entertaining these views, I desire that we should first decide whether we have any right to interfere with the freedom of elections," and then it may be in order to determine how far our interference shall extend. I would not waste a whole week in arguing what restrictions upon the free choice of electors should be imposed, while certain that we have no right to impose any restrictions at all. Every moment spent in discussing propositions upon which we cannot act, is a moment lost; and if we thus waste our moments now, we may be compelled to act hastily hereafter upon those great matters which come within our legitimate sphere of duty.

Mr. CROOKER hoped the gentleman from New York would diminish his standard some six inches, for in every other respect he (Mr. C.) was possessed of that gentleman's qualifications for the office of Governor, and might be disposed to become a candidate. [Laughter.]

Mr. JORDAN thought it would be well to settle a principle in regard to their course of conduct in the Convention. He was desirous of calling out from the Convention an expression of opinion, whether they were to have anything left of the old constitution, or whether they were to confine themselves to those parts of it which in practice had been found inconvenient, and respecting which the people of the state had been

calling for reforms? He supposed this was as favorable an opportunity to call out such an expression as any other, for they were just entering upon the substantial business of the Convention. He confessed that he came there with the impression that they came to correct abuses or defects in the old constitution, where in its operation it was found defective—where there were evils existing, of which their constituents had complained, and not for the purpose of joining in any attempt to alter the constitution where it operated to their satisfaction—where there was no complaint—where there was no voice raised in the whole community in regard to its operation. Now he submitted to the Convention that there had been no inconvenience arising from the provision under consideration, requiring a candidate for the governorship to be eligible, to have resided within the state for five years—There had not been a murmur raised by the people against the provision of the constitution as it now exists, and therefore a vote upon it would settle the question which he desired to have the opinion of the Convention upon—namely, whether they had come to correct defects in that instrument, or to tear the whole fabric up by the roots? In this he did not wish to be any wiser than their predecessors, any further than the lights of experience had given him wisdom. As to matters of theory and speculation, he felt disposed to defer to those who have gone before us in establishing the fundamental law as well for this state as this Union and all the states of this Union. In the first place we have the constitution of the United States, adopted by the wisest men of this nation. In that instrument there is a provision requiring that the candidate for the office of President of the United States shall be at least 35 years of age; and he would ask them where in their experience had shown that to be improper? He asked what defect had been discovered? What voice had been raised against that provision in this state or nation? He asked again if it was not in itself a wise provision, that they should have experience as well as capacity? He admitted there were gentlemen under 30 years of age capable of governing this state, but he had yet to learn if a gentleman who had the capacity and learning to fit him for the office, would not be improved by ten years more experience? He had had put into his hands by a friend a sort of statistical view of the constitutions of other states, and he found that there was not a single instance, except Rhode Island and Connecticut, and he might add not over three, where there was not some provision of this kind. In Connecticut a man must have gained a settlement, and they had only to refer to the statute law of that state to discern how long it takes to gain a settlement there, and what residence is necessary to make a man eligible for the office of Governor. [A Voice, one year.] But he found in two states of the Union the term of residence was two years. In four states the term was four years viz: Alabama, Missouri, Ohio, and Vermont. He found the term was five years, including New York under the existing constitution, in Maine, Maryland, Virginia, North Carolina, Indiana, New York and Illinois. He found in three—Delaware, Kentucky, and Louisiana, the term of residence was six

years. In Massachusetts, New Jersey, (under her new constitution,) Tennessee, and New Hampshire the term of residence is seven years. In South Carolina and Arkansas it was ten years. In Georgia it was twelve years. Thus in many of the states of this Union they had restrictions as to age much longer than in New York; and he asked why change this restriction unless it is for the purpose of launching out in the ocean of speculation and conjecture?—His opinion was that where they found things in the constitution well enough as they are, they had better leave them as they are. They had enough to do with the revision and correction of that instrument in those respects, where its operation was found defective or inadequate to the advancement of the public prosperity. They had enough to do to consume all the time left them between now and the next annual election of this state to correct those defects without going into long debates and protracted discussions, such as had arisen under this section of the report, and continued several days—and which, if he was not greatly mistaken, had arisen on proposed alterations (a part of the constitution of which there had been no complaint, nor against which had there been a voice raised, and about which they were not called upon or sent here to trouble themselves. Now it was said they could not restrict the people in the choice of a Governor. He had no desire to restrict them in the exercise of any of the rights of sovereignty. The people, however, had a right to restrict themselves. They had a right to enter into a social compact—a bargain, if you please—with each other, and they had sent us here to do that business for them—for the purpose of determining those rules of action and of government by which the people hereafter will regulate themselves. If we did not come here for that, we came for nothing. Perhaps he was not as ultra in his democracy as some other gentlemen, but he believed he was sufficiently so, and he was opposed to imposing any trammels or restrictions on the free exercise of the sovereignty of the state, except where it became necessary, in order to establish rules of action which must govern every power in the Universe, or it would run into confusion. Nature has her laws, and they are eternal as herself. The sovereign people too, must be governed by laws or rules, or he submitted, there was no necessity for a convention at all. Gentlemen said they must not restrict the people in their acts—the right of sovereignty must not be restrained; they must not say that a candidate for the office of Governor shall not be eligible unless he has attained 30 years of age. He would ask what right they had to say to the people that there shall be a Governor at all? What right had they to say that there shall not be two governors, or ten governors, if the sovereign people will it? What right had they to say that there shall not be two or ten secretaries of state—two or ten comptrollers of the treasury—or two or ten surveyors general? What right had they to say that they would restrict the exercise of the sovereign power, in electing a dozen if they pleased? Because the people have sent us here for that purpose—to prescribe rules of action for them and for ourselves, for we are the

sovereign people, representing them in the only way in which they can be represented. The doctrine of the gentlemen to whom he had alluded, who were against any restriction in respect to the age of the Governor, appeared to him to go this whole length. If their doctrine was correct, what right have we to say that the judges of the supreme court shall hold no other office, if the sovereign people please? What right have we to say that the officers of the general government shall hold no office in this state, if the sovereign people please? What right have we to make provision for the appointment of military officers, if the sovereign people choose to elect them at large? Why bind the people in that respect? What right have we to say that the common school fund shall not be diverted to any other purpose if the sovereign people say they will put their hands into the treasury and scatter it to the four winds of heaven? Where would this ultra democracy stop? What will become of the canal fund, and many other things, if the people are not to be restrained by the constitution? They are not to be deprived of sovereign power, but by their own consent they prescribe to themselves a law, for the purpose of avoiding anarchy and confusion—and they have delegated power to us to prescribe the rules for them. He was not there to be frightened by the idea many gentlemen entertained, that they were endeavoring to circumscribe and abridge the sovereign power of the people. We came here for the purpose simply, as the sovereign people, to prescribe a rule of conduct that we will all consent to be governed by, and one that in times of excitement, will not allow a bare majority of the people to trample upon the minority, and in fact trample upon the government itself. It would not, perhaps, sound well in the ears of some gentlemen, to say that there may be times when the people themselves may greatly err, and when the acts of legislation may be corrupted. But that there may, history, their own experience, and common sense told them; and since it was not very improper for them to adopt a rule of action in the form of a constitution, by which they would consent to be governed, it was not only not improper but it was worse for a people in their sober moments of deliberation, when they had no other matters to perplex their minds—when they had no other subjects of contention, to determine the rules by which they will themselves be governed. He was disposed on this occasion, as the first opportunity he had had to express a settled opinion on so important a matter of principle, to record his vote in favor of the amendment. He understood the resolution of the gentleman from St. Lawrence to go to strike out all qualification. He understood the amendment proposed to restore the old provision which required a 5 years residence, and he could see nothing in it to operate mischievously. He could see nothing but what will operate beneficially. He could see nothing in the idea which had been stated of stripping the people of sovereign power, to divert him from supporting the amendment. But he saw much to settle a principle of action and call out the Convention as to whether they were determined to lay a ruthless, wanton hand on

every portion of the constitution, and revise and alter it after the fashion of those Utopian gentlemen who imagined themselves so much wiser than their ancestors; or whether they would let well enough alone—whether they would pass on to the business of the Convention, and exercise the power delegated to them, and when they had done that separate and go home to their constituents. He hoped the sentiment of the Convention would be made known on that point. He would go with any gentleman any length warranted by experience either here or in any other state; or by any well digested or well considered theory, where there are defects in the constitution for which their experience furnished no remedy. In these respects he was willing to go any lengths. But he was unwilling to go into any project to alter this instrument under which we have so long and he might say, so happily and so prosperously lived, where no mischief arises, and where no voice was raised for its amendment.

Mr. W. TAYLOR was inclined to favor the suggestion of the honorable gentleman from Ontario, who said when this subject was last under consideration, that those parts of the constitution about which there was no complaint, in which there is no evil suggested by their experience, or inconvenience felt, as a general rule had better be left undisturbed. That doctrine had now been advocated by the gentleman from Columbia (Mr. JORDAN,) but he must add that when a question is brought up requiring his vote, if he found involved in it a principle which will be violated by the application of the rule, then the rule must give way for the security of the principle. So he would say, if it were a question of expediency. If it was more expedient to adopt an amendment than to violate a rule, he would adopt the amendment and put the rule aside. He believed the Convention had acted on that principle already. There had been no complaint, no evil experienced from the word "native," which is in the constitution, and it remained to be considered if there was any principle involved in that question, or whether it was expedient to adopt the amendment of the gentleman from St. Lawrence. That proposition did not go, as was suggested by the gentleman from Columbia, to the removal of all restrictions respecting residence. It proposed that persons, to be eligible for the office of Governor, shall be qualified voters in this state, and if they did not enter the present provision in that respect, he must reside here one year, and must be a citizen of the United States. Now he submitted, if a residence of one year, was not sufficient for any individual who had had opportunities of making his talents and qualifications known—who by the people of the state of New York might be supposed to understand its institutions and laws, and who had made himself so conspicuous as to obtain the favorable opinion of a majority of the people of the state—if it was not safe and wise to leave to the people the broadest latitude in the selection of their candidates. It was a cherished principle with the people that the broadest latitude should be allowed consistent with the public welfare—that in the selection of candidates for office they should have the broadest range, and

he apprehended no danger, nor any evil could grow out of the adoption of such a provision in the Constitution. The state of Rhode Island has framed a Constitution within the last three or four years—a state that has hitherto been regarded as not very democratic in her views; but she has been enlightened—she has received an impulse in the cause of democracy, and she has adopted a constitution containing the very provision which the gentleman from St. Lawrence has incorporated in his amendment. If a person is a qualified voter for the office for which he is a candidate, he is eligible to the office itself. With regard to the danger to grow out of any excitement, as the gentleman from New York supposes, from a person coming into the state possessing those rare powers of eloquence that would carry away the heads and hearts of the people, he must confess he had no fear of any such result. And as to the people taking up an utter stranger who might come amongst them, because he swayed their heads on some topic, if, in the dense population of New-York such a thing could happen because of the glowing eloquence of some man—the effect would be but a temporary impulse. A moment's cool reflection would make it all right with them. If however, it should not succeed, that impulse would never extend to the staid and scattered population of the country, the sober, industrious, thinking mechanics and farmers, who would not be thus swayed. If therefore New York got wrong the country would put them right. With regard to the question of age, they had seen instances where persons under 25, and he believed but 21 or 22, had been elected governors of states in which no provision was made in regard to age. In Michigan this had occurred. They had had some experience of the talent of a young man who was left in charge of the territorial government, and they desired to have his aid when they became a State, and perhaps that influenced them in having no restriction, and when he became Governor Mr. T. believed he might say he administered the government of that state to the satisfaction of the people. No evil had resulted from it. And if the people of the state of New-York had a man under 30 whose talents commanded the confidence of the people and they chose to raise him to the highest office in their gift, might they not do so with perfect safety? But it was not probable that such a case would occur here. It required ordinarily a man to struggle along even 10 years, or 15 or 20 years, against his competitors who were striving to attain the same point; it would require a long period to gain the confidence of the people of this state and induce them to put a man in the highest place in their gift. How were nominations got up by all parties, and how perhaps would they be got up for all time to come? Why the people assembled and elected delegates—men of character—men known to be intelligent and prudent and discreet—and they assembled in Convention and put in nomination before the people a man in whom they had confidence. How then could evil grow out of leaving it unrestricted? An individual could not rise up and nominate himself for Governor and carry away the affections of the people, if he were an im-

proper person. It was impossible. There was no danger then in leaving the clause in the constitution unrestricted respecting either age or residence further than as proposed by the gentleman from St. Lawrence. Entertaining these views he should sustain his amendment.

Mr. ANGEL had been unwilling to trespass on the attention of the Convention and therefore he had sat in silence from the commencement of the session, but as had been observed, as they were about to establish a principle, he felt some anxiety respecting the conclusion to which they might come, and was desirous that they should have a free expression of views one to another, and a full and fair understanding in regard to the principle which the Convention might soon be called upon to settle. It had been suggested and much to his surprise, that they ought not to make laws here to bind the people, for that when proper occasions arise the people will judge and determine for themselves. Now what was the design of a constitution? What was it but a rule of action to govern in the administration of a government? It was a law which was designed to bind the sovereign people. By our government we make a majority control—we vest sovereign power in a majority of the people. But the minority also has rights, as well as the majority. The minority has a right to say to the majority "we must bind and circumscribe your action; we are not willing to give you a power that is omnipotent." Such is the right of a minority; and what was a constitution good for unless it were to bind the action of a majority? There would be no security for our peace if we were left to the ever varying disposition of the majority? We have had experience enough for the last six years to admonish us that we should have something stable—something that cannot be broken down by every passing excitement, or blown to the four winds of Heaven by every breeze. As he understood their duty, it was to prescribe rules and regulations that will keep within bounds the action of the government and the people. This was not a new idea—it had been stated and repeated that minorities might complain often, and bitterly, and justly of the action of majorities; and we have a right to say that we will form a compact, that we will make a bargain that shall set due bounds to all, and say to the majority "thus far shall you go, and no farther." As regarded the amendment under consideration, 5 years was proposed by it to be the time during which a residence should be shown in this state. That was the provision of the existing constitution, but it went further and required that the Governor should be a "native" citizen of the U. S.—Since the adjournment on Saturday, he had taken the trouble to look into the debates and journals of the Convention of 1821. In examining the constitution of 1777, he found that there was no such qualification required—but in the Convention of 1821 the word "native" was introduced. He had enquired of several gentlemen why such an alteration had been made, but he could not get a satisfactory answer. He therefore took the trouble to look into the journal of the debates, and in the journal he found that the report of the committee on the Executive department recommended a residence of 14 years;

and that when the Convention went into committee of the whole on that report, a delegate from Saratoga made a motion to strike out the provision for 14 years' residence and to substitute a provision that the Executive should be a natural-born citizen of the U. S. That was adopted in committee of the whole unanimously. Afterwards however, in Convention, the words "natural born citizen" were stricken out, and the word "native" was substituted, as the original words might have left an uncertainty as to the meaning of the Convention, for "natural born citizen" might have had some reference to the manner of birth, while the word "native" would refer more particularly to the place of birth. Mr. A. was not very pertinacious about the retention of the word "native," for it would cut off a considerable class of citizens that ought to be included. There were many brought here by their parents in infancy who would, by a life spent here, be as well acquainted with our institutions, and as proper persons to fill the place of Governor, as those born here. But he did object to taking a foreigner who was born and had lived under a different form of government, a stranger to our institutions and their operations, who would necessarily bring with him more or less of the feelings imbibed in the country whence he came, which are inherent in human nature, and follow man wherever he goes. Man naturally clings in heart to the land of his nativity to some extent, and such feelings might possibly in an alien Governor, in some emergency bring him in collision with his duty to the state. While, therefore, he was not tenacious for the retention of the word "native," he was tenacious of some provision which shall require the person who shall administer our government, to be acquainted with our state, its history and its institutions. We have a large territory, we are a numerous people; we possess diversified interests, and a year's residence would not give any man a sufficient knowledge to enable him to administer the affairs of our government. Years are requisite to give a proper knowledge of our local interests and necessities. No gentleman could seriously maintain that a year's residence was all-sufficient. He had no unkind feeling towards foreigners who come to reside amongst us. He thought it proper that they should come, and that when they came they should have equal rights and privileges so far as their information in regard to our institutions enabled them to discharge the duties devolving upon them. He repented, he had no unkind feeling towards foreigners, nor had he any attachment for the party that was got up to persecute them; but he wanted a man as Governor, who by a long residence has acquired a knowledge of executive duties—a man of age and experience—a man who knows the wants and necessities of the people. He was somewhat surprised to hear it stated here that no qualification as to age was requisite. He had himself numbered a good many years, and he certainly looked back and saw the progress he had made. When he was thirty he found he had learned more in the last ten years, than in the preceding twenty. And when he was forty, he found the previous ten years had been more profitable in experience than any

part of his previous life. We do not want in the Executive chair a rash young man. It might be said we shall not get one. There could then be no objection to a restriction which would be harmless, while it would prevent an evil though of rare occurrence, if the anticipations of such objectors should be disappointed.—They saw many young men capable of managing business, before they arrived at their legal majority, 21 years; yet before that age they could not bind themselves by contracts. But because a few were as well qualified at an earlier period of life as others at forty, would they remove the restrictions from an entire class? Would they for such a reason, permit boys to vote? The age of twenty-one was fixed as the period when an adult should vote, and had they not as much right to restrict the governorship to thirty as the franchise to twenty-one? He contented them, that they had a perfect right to say to the people, "We will not, with your consent, allow you to elect a Governor, until he is thirty years of age, because you may elect one without experience." The constitution had been likened to a ship at sea, and he apprehended every prudent man, before he went a long voyage, would ascertain whether his vessel was seaworthy. He hoped the constitutional amendments to be adopted would be prudently weighed and wisely matured. He thought the amendment of the gentleman from Essex, dictated by sound wisdom, and he hoped it would be adopted.

Mr. BROWN remarked that there was no difference in principle between the two pending propositions—the one required a five years residence—the other, one. It was therefore a question of time entirely. If one of them was a limitation of the rights of the sovereign people, so was the other. He would require a longer residence than the one year; and if that were to be the term, he preferred not to put it in the form in which it was presented—for all knew that there were no more embarrassing questions at the polls than this qualification of residence—questions growing out of the fact of the voter having been abroad, in a distant part of the world, during the year. He would have no such question raised on the election of a Governor, nor the least shadow of doubt as to his qualifications under the constitution, to administer the government. As to the idea of limiting the sovereign power of the people in this matter, it had been well met by the gentleman from Allegany (Mr. ANGEL.) We required a person to be 21 before he could bind himself by contract. Here it was proposed not to permit him to do an act in the name or on behalf of the people, without some limitation as to age. Where was the distinction, or the reason for a distinction between the two cases? As to the limitation of age, he was not so clear. The capacity or ability to discharge the functions of Governor, did not belong to any period of life. It was by no means well settled at what period the human intellect was in its best vigor. He would not therefore prescribe 30 years—he would leave more latitude there, for some men possessed more vigor of intellect at 25 than at any future period. If Mr. Clay had not been misrepresented he took his seat in the Senate of the U. S. long before he

was 25—and very few would question the ability and skill and power with which he exercised delegated authority. Napoleon commanded the army of Italy at 26—and were Mr. B. to refer to the period where that great general exhibited the greatest capacity for war or government, he should point to that period of his life. The Convention of 1821 excluded judges from the bench at 60. But experience had shown that men thrown out by that rule, had exhibited more vigor of intellect after 60, than for the ten years before—and the rule was now almost universally condemned. Pitt, if he recollected aright, took his seat in the House of Commons at 22 or 23. He was prime minister of England at a period in the history of that nation, scarcely paralleled in the difficulties which beset it. Mr. B. insisted that the age of 25 years might be safely fixed upon as the period of life when a citizen might be called to the Executive chair—though in the matter of residence, he was for requiring more than one year.

Mr. SHEPARD did not approve of the amendment of the gentleman from St. Lawrence, though it was a step, and a considerable step nearer his mode of thinking on this question, than that of any other member. He was for striking out this second section entirely. He would impose no restriction whatever on the choice of the people. He did not go the length of his colleague (Mr. HUNT,) in supposing that the people had no right by concert and agreement, to impose on themselves such restrictions as they might see fit. We were not driven to take either that position or the opposite. Mr. S. saw a medium ground that could be safely taken—and that was the proper ground. It was unwise for the people to restrict themselves in their choice of their immediate representative, as the Governor was. In proposing that they should thus limit themselves, gentlemen seemed to fear that they might judge unwisely. But if they had not the capacity and intelligence to select their immediate representative, they certainly had not the capacity and intelligence to govern themselves through their representatives—and whatever the practice of other states may have been in this respect, the argument drawn from this practice proved too much. Every thing was not intrinsically right that had the sanction of uniform practice. The question ought not to be here, whether evil had arisen out of the present system. The enquiry should be, is it intrinsically right? The fallacy of the other reasoning had been shown in several notable instances. When the colonies were driven to take up arms against Great Britain, Dr. Johnson wrote a very able pamphlet, called "taxation, no tyranny"—in which he insisted that the colonies must be taxed in some form, and therefore there was no evil in the then system of taxation—overlooking altogether the principle involved. So in the case of the levy of ship-money on John Hampden—there was no practical evil resulting from it, for Hampden was a man of wealth—but the half of that tax paid, would have made his children slaves forever. The argument, he repeated, that no evil had arisen out of this, was intrinsically unsound. True, the U. S. constitution had this qualification of age and residence—but it was not less true that the President was not

chosen directly by the people, but through the electoral colleges. Senators of the United States, of whom the same qualification was required, were chosen by the state legislatures; but in the selection of representatives, chosen directly by the people, the principle did not apply. True, we wanted a Governor who knew the wants of the people; but who knew better their own wants and wishes than the people themselves, and who to choose to effect their objects? Mr. S. here spoke of Mr. SIMMONS' allusion to Daniel O'Connell, as being deprecatory of the election of such a man for Governor.

Mr. SIMMONS did not deprecate it. Were Mr. O'Connell here, he would vote for him. He considered him more conservative than a great many others he could name.

Mr. SHEPARD supposed Mr. O'Connell was out of the question, at any rate, being now in the sere and yellow leaf; and were it otherwise, there were too many candidates for Governor this side, to think of importing one from the other. As to the apprehension or doubt expressed by his other colleague (Mr. MORRIS) lest some stranger should come among us on the eve of an election, and during some important canvass, and carry away the hearts of the people by his winning eloquence, and actually become Governor, under the feeling of the moment—Mr. S. said, there were so many circumstances that must conspire to bring about such a result, that the idea struck him strangely. The operation must all take place in one day, if at all, or the effervescence might be over. The ballots must be printed and distributed. The regular candidates must withdraw, there must be some general concert of action, and a great many things must transpire which never did transpire in a day or two, to bring about such a result. Mr. S. insisted, that where the people acted directly in the choice of a representative, no safer rule could be adopted than to leave them free to choose whom they pleased. The people knowing their own wants and wishes, and the occasion that demanded it, could better select their representative, than we could possibly direct their choice, however wisely we might adjust these limitations.

Mr. TALLMADGE: I sir, have sat silent thus far in the progress of these discussions, and in a great measure during the progress of business here. My strength and energies have been severely taxed by the duties imposed on me by this body. I sir, have arrived at an age and under circumstances that leave me nothing to say to Bancroft. And I feel no interest in this controversy save what every citizen ought to feel in a matter which involves remotely certainly a principle. My lot is cast; my destiny is limited; and whether you let a young man of 20, be Governor, or admit the old man of 70, is a question in which personally I have no interest. I have sat still under the hope that some gentleman would say what I would like to hear said. But not hearing it, I venture to make a few remarks on this subject. Sir, the particular question under consideration is whether your Governor shall be 30 years of age and 5 years a resident of the state. That is the great question pending. I care very little which way it goes. But I rise to enter my protest and to ex-

press my alarm at the spirit evinced in the course of these discussions. It is of very little consequence to be arguing hypothetical questions—questions that have not arisen in the practical operations of our government for a quarter of a century. Here we are, entering on the fifth week of the session, spending day after day in debate, and doing nothing. Why sit here debating imaginary questions—questions that have not arisen that I know of, any where in the state? What is the spirit evinced by this motion and the tenor of this debate? It is a spirit to pull down and destroy. It is that against which I rise. Go to the constitution of the U. S., and you will find that our ancestors, many of them born in a foreign country, fixed 35 years of age, and 14 years' residence for the presidency. Was there not discretion there? Were there not fitness and propriety? Had they not lived under a monarchical government, and under royal officers? Did they not know and understand the whole question? Did they not appreciate the importance of guarding against undue influences, to provide against contingencies in a matter where the people could not review and reconsider? It is a great and important principle, this power of reconsideration. Why do you sir, (pointing to the Chairman) hold that seat as chairman of this committee? It is that we may have the advantage of a double consideration—that propositions may be submitted here, debated freely in committee of the whole, first impressions poured forth, no vote taken which is obligatory,—no yeas and nays, but a free interchange and comparison of opinions—so that when we come into the house, we may vote more understandingly and deliberately upon a calm view of the case. In the constitution you provide for a senate and assembly, and sometimes you provide that bills touching revenue shall originate only in the popular branch.—Why all these restrictions? And then, after the bills have passed, there was your council of revision, now your executive, to approve or disapprove of what has been done. Is this the invasion of Liberty?—of that Liberty which I hope we may all live long to enjoy? But how is it with individuals? Will you let me promise to pay the debt of a third person? No, says the law, you must reduce it to writing or it shall not be obligatory. What sir, deny my right to do this? Dare you so invade my liberty, that I cannot will my property to my child or friend? No, says the law. We compel you to put it in writing, under hand and seal, witnessed by three witnesses, signing in presence of the testator and of each other—or else your deed is void. Why this caution, but to secure due deliberation and care in important transactions of private life? And why not make provision to secure the same prudent caution when we come to choose a chief magistrate? Plant these checks in the constitution; or rather do not eradicate those which have been put there, and found to work well. He that goes to pull up these posts and landmarks, will never find me his companion. I came here by order of the people of a county that in my youth never failed me, when they thought it would gratify me to take part in the councils of the state or nation. They commanded me to come here because they

knew that at my advanced age they could rely on me to utter without fear what I thought, and to do what I thought right. To allude to a recent matter by way of illustration: I am not one of those who are willing to absent themselves regularly from the sittings of this body on Saturday, and perhaps on the following Monday, and yet fear to record my name, on a call of the yeas and noes affirmatively for an open and a common. Turn over all these things, and see if it is not better to come back to calm considerate reason. My constituents sent me here to amend the constitution. I brought with me—we all brought our tools along—our soldering and caulking tools among others—to see if the vessel of state may not need repairing—if a leak was found here, to patch it and mend it—our commission being to examine the bulk thoroughly, and repair where we find it necessary. I come here to help mend the constitution. But what have we been about? Have we been mending the constitution, or have we with reckless hands been pulling it down? I ask if the tenor of the resolutions offered here and referred to committees, proposing to amend the constitution, will not alarm a calm and considerate people, who want quiet, happiness, and a good and stable government? Sir, in my agricultural pursuit, if I send my wagon to the mechanic to mend, and he keeps it awhile, and at his caprice breaks it up and uses it or burns it—and sends me back in due time a new wagon—is there a bench in the state or Union that would say that I am bound to take it or to pay for it? I employed him not to destroy—I commissioned him to mend, to fortify and correct. Therefore I rise here to thank my friend, the chairman of committee number five, who has made this report, for adopting as far as he could, the old constitution. To that I declare my adhesion, subject only to such amendments here and there, as the people have suggested or urged. I came not to destroy, but to repair. And where are we at the beginning of the fifth week of the session? We have got through one short section, declaring in effect that we will have a Governor and Lieut. Governor.—We have partly passed—for we are in committee of the whole, where no final vote is taken—one single section with three lines in it, precisely as it stood in the old constitution. I am pained to see this. With my friend from Columbia (Mr. JORDEN) whom I am proud to endorse—and with my friend from Ontario (Mr. NICHOLAS), whom I am also proud to endorse—I came here to repair, not to destroy. I feel that it is out of our commission to pull to pieces this whole instrument. Far be it from me, sir, to pretend to any special devotion to that portion of the civilized world called the people of this Union. I have no humility to profess—no declarations of love and confidence to make here—except that I believe they are disposed to stand by what is right, and I have no apprehension but what they will ultimately decide right. Now, sir, looking back to the Convention which framed the constitution of the Union, we find that they proceeded with caution and prudence—and so far as the President was concerned, prescribed certain qualifications of age and residence. We see that our

constitution of 1821, prescribed 30 years of age and five years residence for a Governor. Shall we hastily pull away these landmarks, which experience has shown to be in no way inconvenient or embarrassing, and with which nobody has found fault? It is painful to me, sir, to argue this question, which I regard as one of jurisdiction. It is not in my commission. We were sent here to repair defects—to examine and search out the defective spots to which the people have directed our attention, as necessary to be made good, and more effectually to secure the welfare of all. Do this, and we shall find our work short. Let us go to work with unanimity and diligence upon the spots which have been pointed to as defective, and leave those which have not been a subject of general complaint as they are. In relation to religious freedom, for instance, will any man be disposed to disturb the article on that subject? Especially after the prayer that all of us listened to the other day, from that desk (pointing to the Speaker's chair)—thanking God for his manifold mercies, and especially for the privilege common to us all of worshipping the true God, or many gods, or no god at all! Our liberty is in itself great in this and other respects. Let us see that we do not abuse it. And yet, sir, the valuable article guarantying some of these rights is too restrictive for those who don't want to be asked as a witness, as to their accountability. I enter my solemn and open protest against this destructive effort at pulling down. A great misfortune, sir, it is, that the legislature which passed the law calling this Convention, did not point specifically to those parts of the constitution which they charged us to amend—but that not having been done, it is our duty to repair the error by confining ourselves to those parts of the instrument that the public attention has been called to as defective. The great principle of having some precaution against inconsiderate action, runs through all our institutions, and must not be lost sight of. It is not necessary to imagine cases, to show its importance. Yet as many have been imagined, let me suppose one having immediate reference to the present state of things. No man shall go beyond me in admiration. I had almost said adoration, of the gallantry of a Taylor, who has so recently immortalized the name of America on the banks of the Rio Grande. He has always been regarded, as he really is, as an able General. But was there a man that ever thought of him for the Presidency until a single battle, won I had almost said in a single hour's contest, brought him prominently before the public? My word for it, sir, bring that man here, and there are not ten men among us beginning with my venerable friend who leads off on the yeas and noes (Mr. ALLEN), that would not be ready at once to go for him for any office in the state or nation. Let him arrive here in October, and he would be your Governor in November. [Laughter.] It is wise to guard against these impulses. The character, welfare, and destinies of this state should not be placed at the mercy of these temporary excitements—Provision should be made in the fundamental law, to secure especially a mature and reiterated consideration of every matter connected

with the government. That is the leading principle that runs through all our institutions. The case of Michigan has been referred to, as illustrating the safety of having a Governor of 23 years of age. It is painful to me, sir, to speak of the dead. I knew the person alluded to. I now know his father, and respect him highly. But being compelled to speak of the career of Michigan—and I do it with reluctance—under the auspices of a young Governor—I must be permitted to point to the career of that state, from indebtedness to repudiation, as an admonition to us to see to it that we secure age and the discretion which years bring with them, at the helm. No blame I lay to him who is dead. I am dealing with facts, not men. And I point you to the history of that infant state, from her first loan of five millions, put forth under a Governor below 25, down to her repudiation of it—as replete with instruction and a lesson. I regret that the case has been alluded to. But being cited here, I cannot forbear to say that were I to have named a single case that should inculcate prudence and caution in this matter of qualification, it would have been that case. I would have drawn from it an impressive lesson on the propriety of securing the benefit of a mature consideration in advance, in a matter where we cannot recall and revoke the results of our own indiscretion. Look at this article now under consideration. Have you not a section there providing for the displacement of an elective officer that may prove unworthy? And why is this? It is because the people having once chosen a man, cannot recall the act, except by the process of impeachment, which takes two years. Let us plant a few landmarks here. Let us secure at least years of discretion in the Governor of this great state, and a residence long enough to enable a candidate to become acquainted with the theory and working in detail of our institutions. I urge therefore, that all these are provisions to secure caution and prudence. The idea of restricting the people—and that the people can be trusted—has nothing to do with the question. It is a fallacy to suppose that these are restrictions on the people. All words, sir—all words—that should have no weight. The people sent us here, because they could not meet themselves. We stand here for them—and I have no hesitation in saying or acting for them, that it is wise and prudent to plant landmarks and safeguards against precipitate and hasty action. My friend from Orange, (Mr. BROWN,) has called up the case of Napoleon, at the head of an army, when but a youth, and as even at that period at the height of his military glory. True sir, in all the qualities of a commanding general—Napoleon was indeed great—and perhaps his prominent qualities of impetuosity and daring, intrepidity and rashness were those which marked him as the very man for the crisis. But let me ask, if in the destiny of a wise Providence, it had been permitted to this mighty spirit, instead of being doomed to end his life at St. Helena, to have come among us at this moment—would he not have said, at the first glance at our condition, that we had gone rashly to work—that we had all set to with our various tools and implements, without direct on

or system, at cutting down the vessel of state? Would he not have said that it strongly reminded him of the scene of early life? Would he not have whispered caution? Beware—this free country! Remember, that liberty run wild, has ever found its end in despotism? I bring before you a military commander, than whom perhaps no hero before was ever inspired with a more ardent love of country and of liberty. I evoke his spirit, and imagine him talking with us. Would he not say, 'I have run this career before you. I began with the impetuosity of youth. Liberty, run wild, was the object of pursuit. I followed in that direction, until the world a'most was at my heels.' Would he not say, 'search my path through the torrid, the temperate, aye, the frigid zones—and you will find whining the battle fields I won, the bones of those who followed my wild footsteps. Learn from this the consequences that rash precipitation and leading impetuosity, in the pursuit of any object, however noble, always bring with it.' Would he not add—'If that is not enough, look at the blood that overflowed Europe under my career, and learn lessons of wisdom from the desolation that has marked its termination.' Taking then, my opponent's argument, I dwell on the case put as one on which we should ponder well—it admonishes us to be prudent—to see to it, not that popular liberty should be curtailed, but that that liberty should be secure from the consequences of precipitation. Let not empty words delude any body. Go forward with prudence—as we have gone on thus far, in a career of marked success—with a magnificent system of internal improvements nearly perfected—with our finances safe and secure—our state prosperous to a degree unparalleled any where. Sir, it has been my lot to know something of the history of the system, which commenced with the construction of what was called by a certain Senator, the "big ditch." Where is that ditch now? What its condition?—Need I speak of its value and importance to this great state off the wealth it has yielded, and is still yielding to our people and to the state? But sir, it has been my lot to stand in congress and to be taunted with the cry of the insolvency of New-York, and its apprehended bankruptcy, under the load of this great undertaking. To the glory of New-York be it said, she has never yet repudiated—and I, thank God! I trust she never will.—But sir, let us stop this infernal spirit of pulling down. Adhere to the principle of the rule, adopted the other day, on my motion—when you are asked to strike out, see that what is to be put in, is preferable, and not merely an equivalent—and particularly that changes be not made for the mere sake of change. We had only to forewarn his friends to take care how we undertook to make anew what the people had commissioned us to repair—for he had confidence in the country that they would reject the new wazon we should send to them, in place of the one they wanted repaired.

Mr. STOW here obtained the floor, and

The committee rose and reported progress.

Mr. ARCHER had leave of absence for four days; Mr. MUNRO for 6.

Adj. to 11 o'clock to-morrow morning.

TUESDAY, JUNE 30.

Prayer by the Rev. Dr. WYCKOFF.

The PRESIDENT presented a report from John M. Davidson, Register in Chancery, in answer to a resolution in relation to the sale of infants' estates; and a like report from the 7th circuit. Referred to the committee on the judiciary.

MILITARY ESCORT.

A communication was laid before the Convention from the Van Rensselaer Guards of Albany, tendering their services as a military escort for the Convention in the procession on the approaching National Anniversary. The tender was accepted.

THE RIGHTS AND PRIVILEGES OF CITIZENS, &c.

Mr. TALLMADGE from committee No. 11, on the rights and privileges of citizens, said he had been directed to make a report; and in presenting it he was further directed to say that the committee had spent much time and labor on the subjects contained in the report. In many instances they had adopted provisions now standing in the existing constitution, and to facilitate the consideration of this report, they had distinguished those provisions from the new ones into two classes. Again in relation to the resolutions which, from time to time, had been referred to the committee, he had been directed to state that they had all been under consideration; and if those who offered them were not satisfied with the report, he would state for their information that where the committee had not adopted the suggestions made to them, it was because they thought the subjects contained in the resolution were either mere matters appertaining to legislation or because the committee was against their adoption. The movers of the resolutions would however have an opportunity to suggest the amendments to the report when in committee of the whole, the Convention was acting upon it section by section. He would now only add that some member of the committee would explain the reasons which had actuated them in adopting the sections in the order, when they came under review here, and therefore the committee now forbore to make any report in detail.

The Secretary read the report as follows:—

The committee on "the rights and privileges of the citizens of this State," having had the same under consideration, together with the various propositions which have been referred to them by the Convention, respectfully report the following proposed Article.

ARTICLE.—

§ 1 Men are by nature free and independent, and in their social relations entitled to equal rights.

§ 2 All political power is inherent in the people.

§ 3 No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land.

§ 4 The right of trial by jury, in all cases in which it has been heretofore used, shall remain inviolate.

§ 5 Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

§ 6 The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

§ 7 All such inhabitants of this state of any religi-

ous denomination whatever, as from scruples of conscience may be averse to bearing arms, shall be exempted from military service; and the legislature shall provide by law for the execution of such exemption, to be estimated according to the expense in time and money of an ordinary able-bodied militiaman.

§ 8 The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion, or invasion, the public safety may require its suspension.

§ 9 No person shall be held to answer for a capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this state may keep with the consent of congress in time of peace, and in cases of public safety under the regulation of the legislature,) unless on presentment or indictment of a grand jury; and in every trial on impeachment or indictment, the party accused shall be allowed to appear and defend in person and with counsel as in civil action. No person shall be subject to be twice put in jeopardy for the same offence; nor shall he be compelled to be a witness against himself in any criminal case, nor in any case to subject himself to a penalty or forfeiture, or a loss or deprivation in the nature of a penalty or forfeiture, nor be deprived of life, liberty or property, without due process of law.

§ 10 Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments, and in civil actions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury, that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and he who shall have the right to determine the law and the fact.

§ 11 Private property shall not be taken for public use without just compensation being first made therefor. If the taking is for the use of the state, the legislature shall provide for determining the damage, and if for any other public use, the damage shall be assessed by a jury. The legislature may provide for the opening of private roads, in case a jury of freeholders shall determine the road necessary; the person benefited paying all expenses and damage, to be also determined by a jury.

§ 12 Witnesses in criminal cases shall not be imprisoned for the want of bail to secure their attendance at the trial of the cause; unless upon the special order of the magistrate or court having jurisdiction of the case. Laws shall be passed to secure if necessary by temporary detention of witnesses in criminal cases, and for their prompt examination *de bene esse*, which examination shall be evidence in all subsequent proceedings upon the subject matters; and shall have the same effect as the oral testimony of the witness would have were he present and examined in person.

§ 13 No person shall be imprisoned on any civil process in any suit or proceeding upon an contract, express or implied, or upon any judgment or decree founded upon such contract. But nothing herein contained shall extend to actions for the recovery of moneys collected by any public officer, or on promises to marry, nor to any case of fraud or breach of trust.

§ 14 All property, real or personal of the wife owned by her before marriage, and that acquired by her afterwards, by gift, devise or descent, or otherwise than from her husband, shall be her separate property. Laws shall be passed providing for the registry of the wife's separate property, and more clearly defining the rights of the wife thereto; as well as to property held by her with her husband.

§ 15 No divorce shall be granted by the legislature, or otherwise than by judicial proceedings provided for by law.

§ 16 No lottery shall hereafter be authorized in this state; nor shall the sale of lottery tickets within this state be allowed.

§ 17 No purchase or contract for the sale of land, in this state, made since the fourth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, of, or with the Indians in this

state, shall be valid, unless made under the authority and with the consent of the legislature.

§ 8. Such parts of the common law, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the state of New-York, in or on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be continued the law of this state, subject to such alterations the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

§ 9. All grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this constitution shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

By order of the committee,

JAMES T. L. MADGE, *Chairman*.

On motion of Mr. TALLMADGE, the report was referred to the committee of the whole, and ordered to be printed.

EARLY MEETING OF THE CONVENTION.

Mr. BAKER said he thought the Convention would be able soon to meet at an earlier hour, as there was now less necessity than heretofore to pass so much time in the committee rooms; he therefore submitted the following resolution which he would lay on the table for the present for consideration:—

Resolved, That on and after Tuesday next this Convention will meet daily at nine o'clock in the morning.

The resolution lies on the table.

EXECUTIVE DEPARTMENT.

The Convention resolved itself into committee of the whole on the Article reported by Mr. MORRIS, in relation to the powers, duties, &c. of the Executive, Mr. CHATFIELD in the chair.

Mr. STOW, who was entitled to the floor, said when the committee rose yesterday, he was proceeding to make one or two suggestions merely; and now, in order to save the valuable time of the Convention, and to save one more day if possible to the people to review the results of our deliberations, it would be entirely agreeable to his feelings to waive the floor, if it was the pleasure of the committee to take the question (Mr. SIMMONS: Go on). He proposed then to add some remarks to what had already been said, and he hoped the committee would bear in mind that if we protracted this debate, it would not be owing to any part that he took in it. Yesterday he wished to make a suggestion which he would now make, though he did not propose to go into the discussion of the subject at any length. He did not feel it necessary to do so after what had been already so ably and eloquently said. He wished however in the first place, to remind the committee that we had a subsisting constitution, and that the provision now under consideration was already in the constitution of the country. If however they were to alter it, those who claim to make alterations should show affirmatively how it should be altered. Merely to show that the present constitution may be wrong in some respects, is not

enough. They must go further, and show a substitute that will be preferable. It was important that we should keep distinctly in mind that those who propose amendments to the present constitution had the affirmative on this issue, and must show why it was to be done. As to the question before us, it struck him that in the ardent attention that had been attracted to the existing constitution, we had overlooked to some extent the effect of the proposed amendments. The gentleman from St. Lawrence proposed substantially that while striking out all other qualifications, the candidate for Governor should be an elector of the state. Now, he wished to suggest that instead of that being in effect an enlargement, it would be practically a limitation, because there were many men that might be thought of by the people as fit candidates for office, who are not strictly and technically electors at the time. To illustrate this position, suppose the present Governor had removed to an adjoining county five months before his election—by this amendment he would have been ineligible. That alone would amount to a greater practical restriction than the proposed residence of five years. One word as to the age of 30 years. He was not so far removed from the age of 30 himself as not to feel in his own heart, that no man, who had not passed at least that number of years, was a fit man to wield the destinies of this great state. His own heart and conscience told him that no young man should be entrusted with that responsible station. We should remember that the Governor was not only an executive officer, but that he exercised higher duties than those strictly executive. To him would be confided probably a power that was in its character judicial as well as executive—the pardoning power. We too, propose to give to the Governor high legislative power—a power that in effect might counteract the action of both the other branches of the government. The command of the army might be entrusted to him, and though such a power might perhaps be entrusted to a young man, the legislative power ought not to be confided to such an extent to a man without experience and that prudence which years alone can give. He asked if it would be really prudent to place a check upon both branches of the government in the hands of a man who had not had the experience of 30 years? It struck him it would be highly imprudent, and for this position he had the sanction of the most enlightened men in the country, and the sanction too of the people—for it was an important consideration, as the gentleman from Columbia (Mr. JONAN) yesterday observed, that not a murmur had been raised against it. But further—the Governor of a state had a power not derived from the constitution of the state at all—despite anything we could do, the Governor of this state would have at least one great power. He alluded to his power to fill vacancies in the Senate of the United States, and gentlemen would remember that that body must be filled by persons who had attained the age of 30 years; and that, in certain emergencies which sometimes occurred, the Governor of the state appointed both the senators. He asked if it was not inconsistent and absurd to say that a man under that age

should create both the senators? It seemed to him inconsistent, and in effect we were pronouncing the constitution of the United States an absurdity in requiring the qualification of 30 years for senators. These were substantially the remarks he desired yesterday to make, and he should confine himself to them now, and hereafter he should confine himself to suggestions, for he felt it to be his duty to himself and to this body, and to the people, if possible, to save time.

Mr. A. W. YOUNG was opposed to a protracted discussion on the question under consideration, but he thought a word or two might be said with propriety in regard to another subject. It was said, and very properly, yesterday, that it was important the Convention should determine the course it would pursue. Every member must have seen before this time, that unless they changed their course they would not accomplish within any reasonable time the object with which they had come there; and he trusted in all time to come, the unimportant propositions which had occupied them from day to day, would no longer receive the attention of the Convention, but that they would confine themselves to the more important subjects. If any committee should report on those lesser subjects, he hoped they would be passed over until the more important had been acted upon. He did not know that the Convention was prepared to take the question on the matter under consideration; he would therefore add a few considerations which had some weight in his mind. The first was that if they introduced into the constitution so many provisions—and many of those which had been offered were very objectionable—they would endanger the adoption of the constitution by the people. If they wished to secure its adoption, they must only make the more important amendments which have been contemplated, and not alter those parts with which no fault had been found by the people. Now with regard to the removal of these restrictions which were reported by the committee, it had been objected to them that the people should be left entirely free, as they were fully competent to choose their own Governor and to determine whether he should be 21 or 31 years of age. That certainly was so, but who he asked was it that brought forward their candidate? A few persons who were delegated for the purpose, and it was well known that considerations entered into conventions that would not govern the people if they were to select for themselves. Anti-slaves, candidates, although they might have been long in public life, were not always too well known by the people. It should be remembered that our state is a very large one, and this should have an effect on the Convention in determining the age of the Governor, for it was not here as in a small state where all the public men were known to the whole people. It had been said that it was wrong to impose restrictions on the people, but he wished to know what principle was violated here? The people were too wise to concur in such a sentiment; they have always imposed restrictions on themselves. He agreed fully with the views of the ancient sages, the founders of our government, who in framing the constitution of the U. S., gave evidence that they considered it as important to

guard against an abuse of liberty as against an abuse of power. He was in favor of some of the restrictions which had been suggested, but not for the continuance of the word "native." He would remove all distinctions between native and foreign citizens, but he would retain the restrictions respecting age and residence, and he thought it would be proper to add another, which was that the person should be for five years a citizen of the United States, which he believed was not now provided for.

The CHAIRMAN suggested that the debate had taken a wide range; and it was difficult to restrain gentlemen within due limits. It was a matter which must be left mainly to their own discretion—but he would suggest that the provision respecting the limit to 30 years had been stricken out.

Mr. NICOLL said it was true the debate had taken a wide range, but in the arguments which had been used, much had been urged that it was necessary should be fully understood. He thought the Convention would be brought to vote on the question whether the majority of the people are to have full power in every matter in this government. He thought there was a great prevailing error as to whether the sovereign power is with the whole people or with the majority. The sovereign power resided with the people; the exercise of it is given to the majority; and the question was whether the people had not the authority to say that the majority shall exercise it under certain restrictions. The people have proposed restrictions; they have never given to the majority the unlimited use of power. It was a dangerous principle to maintain that the majority have an unlimited exercise of power, for all depends on the consent of the governed, made up both of the majority and minority.—Had they any instance of the election of a Governor by the entire people? He was elected by a majority who are allowed by the people to elect. But it did not follow that the power was in the hands of a majority, and the question then was, if the majority shall exercise it without restrictions. If the question were put to the whole people to say whether it was proper that the candidate for Governor should have a residence of five years, would they not all answer in the affirmative? Then should it not be a rule to guide all future majorities that there should be such a provision? They had as much right to say that there should be such a restriction, as that the trial by jury shall remain inviolate for ever. If the people had the right to limit the exercise of one power, they had to limit another. It seemed to him the despotism of a majority might be as offensive as the despotism of a whole people; for, in the language of an eloquent writer, what difference did it make to the oppressed if they were bowed to the earth by one man or ten thousand. He hoped the subject would be considered coolly. He was for restraining the intemperate use of power, whether by the few or many, and securing as far as practicable the rights of the whole people. To promote that object, he should vote for the proposition to require a five years' residence of the candidate for Governor.

Mr. WARD did not rise to go into a discus-

sion of the merits of the question under consideration, but to say that it was proper that gentlemen should limit themselves to the real point at issue. The committee had already stricken out the word "native," and also the words in relation to the thirty years, and therefore, according to parliamentary law, it was not competent for gentlemen to discuss those questions unless a motion to reconsider had been made.—It would not, however, be necessary to move to reconsider, as gentlemen would have opportunities to move their amendments on the points when the subject was brought back into the Convention. It would therefore facilitate the business of the Convention, and inflict no wrong on any one, if gentlemen would confine themselves within the range of parliamentary law.—While he was up he would say, that he was opposed to the substitute of the gentleman from St. Lawrence. He was in favor of retaining the provision which was in the original article of the constitution as amended, and he would recommend as the true course, that the committee should get the vote on that matter, first voting down the proposition of the gentleman from St. Lawrence, and also the amendment of the gentleman from Essex. If they then passed the section as it stood, they could pass on to the next section, and afterwards test these controverted questions in Convention, where he should not shrink from the responsibility of recording his vote.

Mr. WORDEN united with the gentleman from Westchester in the expression of his hope that they would come back to the original proposition, and he hoped the gentlemen from Essex and St. Lawrence would withdraw their amendments.

Mr. SIMMONS assented and his amendment was withdrawn accordingly.

Mr. WORDEN again hoped the gentleman from St. Lawrence would also withdraw his amendment, and he suggested that some general provision would be made in the constitution hereafter specifying what the qualifications of all persons holding office should be.

Mr. RUSSELL desired that the section as it now stood might be read.

The Secretary read it accordingly.

Mr. O'CONOR said that notwithstanding the time that had been consumed, and the little importance which some attached to this section, he was so strongly impressed with the belief that it should be expunged, that he felt it to be his duty to present to the committee the reasons which had led him to this conclusion. True, very little of the section remained. The disqualification of foreign birth and of extreme youth had been struck out, and by very strong votes. All that remained was to determine whether the disqualification of happening not to have resided within the state, for some given time, should remain. He should not, in urging the rejection of that also, descend on the merits or demerits of those parts of the original section which had been already condemned by the committee—but he would observe generally on these disqualifications certain matters which would bear on each of these particulars, as well as on the whole principle of express disqualifications, as an entirety. Mr. O'C. thought but

little light had been thrown on this subject, by the references that had been made to the constitutions of other states. He had been led to look at these constitutions, and to that of our own state—in reference to this subject of supposed qualifications in a public office beyond those required of one of the constituent body—and to the different constitutions adopted at different periods, by states of this Union. And he found that in no constitution adopted by any state during the Revolutionary struggle, was any such disqualification as foreign birth introduced. He believed that in none of them was the disqualification of youth. At all events, the first was not introduced. And perhaps for reasons that were very satisfactory proofs of the wisdom and discretion of those who formed those early constitutions, and which did not reflect very creditably on the liberality or gratitude of their descendants, who long after that struggle had successfully terminated, introduced into the constitutions of new states, or into the amended constitutions of old states, these disqualifications. It would be remembered, in the history of our state, as most interesting and instructive in this respect, that the first constitution of New York was adopted in 1777, almost immediately after the Declaration of Independence, and during about the darkest period of our revolutionary struggle. At that time our army was receiving the benefit of the services of many distinguished foreigners. La Fayette had just arrived from France. De Kalb, who afterwards perished gloriously at Camden, receiving eleven wounds previous to his death—was with La Fayette in the service of the U.S. Steuben and Pulaski, both of whom afterward rendered service to our cause, were then in France preparing to embark for this country. One of them perished in defence of one of our colonies, and a monument was erected by the state of Georgia, in honor of his memory, bearing his name only—his proudest monument being in the hearts of the American people, on which is inscribed his eulogy. It certainly would have been most unwise, not to say incongruous, to have introduced into the constitutions of the new empire then springing into being, sustained by the joint exertions of these distinguished foreigners and our native citizens, and daily receiving succor from the patriots of other climes—disqualifications declaring to these men that if any of them survived the struggle, he would sustain an inferior position as a denizen of the country for which he hazarded his life. Such was in brief the history of our policy in framing constitutions during that great struggle. In our constitution of 1777, there was but one qualification, and that indicative, in no small degree, of the weakness and imbecility which usually marks an illiberal government. That qualification but yesterday the free people of this state pronounced unworthy to be in the constitution. It was that of freeholder. He repeated that this was evidence of the weakness and illiberality which usually dictated these qualifications or disqualifications. For what constituted a freeholder? The ownership of two square feet of land in John Brown's tract, where the possession of a thousand acres was but the evidence of a man's poverty, would make a man a freeholder

and qualify him to be Governor of New York. But the primary fact to which he wished to call attention, was, that these states during this period of struggle—while they were receiving these brilliant accessions to the talent, ability and bravery employed in accomplishing their liberties, introduced no disqualifications implying contempt towards foreigners. But when was it done in this state? It was introduced before half a century had elapsed, and during which period our state made as wise selections for Governor, as it had made since; during which there was no complaint that by the constitution citizens of foreign birth, or immature age might possibly be selected to fill that high office. Yet the Convention of 1821, not animated by the spirit which had been so warmly advocated here by the gentlemen from Dutchess and Ontario (Messrs. TALLMADGE and NICHOLAS) of leaving things as they stood, whereat no fault was found and from which no evil had resulted—but animated with a spirit that perhaps might as well not be characterized—and Mr. O'C. would not apply the proper term to the whole Convention, but to the individual members that brought forward these checks—a spirit of animosity and exclusion—introduced these disqualifications on the score of foreign birth which the Convention of 1777 would have blushed to have established, whilst the blood of one of the most distinguished of these foreigners the lamented Montgomery—was still red on the heights of Quebec—for he perished but a year before that constitution was adopted. It would have been well if the Convention of 1821 had let well enough alone—if they had not sought, after these states had secured their independence, and become strong and powerful—after the common school system had diffused its benefits, and the constituent body had become wise and capable of judging how to govern themselves; it would have been wise if they had been animated by the principle advocated here by the gentlemen from Dutchess and Ontario, and had not attempted to stamp on the fundamental law of the state, a spirit of exclusion and illiberality towards the natives of other climes, to whom the country was indebted so much, and who were among the most intelligent and valuable members of the constituent body. They were not animated by that spirit. We had lived half a century under a good constitution in that respect, as the result showed. They warred with the principle urged by the gentlemen alluded to, and therefore, in his judgment, we were called upon to pass upon their acts; and now, twenty-five years after they acted—half the period which elapsed before they were called on to revise the previous constitution—to apply to their work the principle of letting well enough alone—to strike out the unnecessary, idle, preposterous additions they made to the qualifications to be required of public officers. But to glance for a moment at the propriety of retaining any of these qualifications: In every democratic state, the true principle of government was that the constituent body was the supreme power, and that in it resided all the powers of government that one man could legitimately exercise over himself or over another. In such a state, it was the pro-

per province of the fundamental law to ascertain what persons constituted the constituent body, what persons formed the governing power; and then to limit and define with as much exactitude and as much regard to the rights of individuals as might be, the powers and duties of the agents of the people, or the several departments of the government. It was the proper province of such an instrument, he repeated, to ascertain the constituent body, in which resided the supreme power. In the nature of things, that body never could embrace all within the protection of the state, and who were to be governed by its laws. Some must be too young to participate in the governing power. Others, again too advanced in life to take part in it.—It was a question whether females should constitute part of the governing body. It was a proper subject of consideration whether persons convicted of crime shall be permitted to form part of the governing body. It was a proper subject of consideration whether particular classes of persons—he would mention negroes, Indians, aliens, and if you pleased naturalized citizens—should form part of the constituent body. And in laying down rules for determining who were the constituent body, we did not lay restraints on the people. We only ascertained who the people were. And having ascertained that, it was a principle not to be departed from, that in a democratic form of government, no restraint could be laid on them, in their sovereign capacity where the whole people acted for the purposes of government. This did not interfere with provisions declaring who the people of a particular precinct should elect as a member of the senate or assembly—for a portion were not the whole people. And where we delegated to the people of a district power to elect a member of assembly, we might make laws affecting such people, the rest of the community having no check on the election in the precinct or district—but we had no right to impose restraint, on the whole people of a state. What kind of restraints these might be, was another question. But when you came to the exercise of supreme and legitimate sovereignty, by the whole people in their sovereign capacity—every one of the governing body or electoral class, having a vote—he insisted that you had no right to impose any restraint whatever, unless it was this—that this body should not elect a stranger, but shall take one of their own class. You had a right to insist on that; but it was not usually inserted, but was taken for granted that they should always elect from among themselves. Starting with this principle, he respectfully insisted that this whole section should be struck out. It would be idle to retain the provision moved by the gentleman from St. Lawrence (Mr. RUSSELL). If gentlemen would look into the constitution of the U. S. and of our own state, it would be found that except where some qualification over and above the ordinary qualification of an elector, was introduced, no qualification was prescribed for any public officer.—By the U. S. constitution the President was required to have certain qualifications beyond those of an elector. So, as to senators, and so as to members of the H. of R. But the chief justice of the supreme court of the U. S. might

be taken from any class of our fellow citizens—and so as to all other officers of the general government. In our own state constitutions, from the beginning, there never had been any qualification as to any public officer except the Governor, save the qualifications of every elector, and which in the early constitutions were introduced generally as to electors. This principle, he took it, was too clear to be disputed. We had an illustration of it in the sitting of this very body. The convention of 1321, virtually provided that there never should be another convention—for they declared how all future amendments of the constitution should be made, confining them to the action of the legislature in a given way. Yet the electoral body—the constituent body of the state—the absolute ruling power of the state in whom reposed the right of sovereignty—had set that entirely aside, and we sat here deliberating as a special committee of that great body, to prepare for their examination such amendments as may be deemed necessary in the fundamental law. There was no mode in which this power could be controlled, and any attempt to control it in this way, would be unwise, against sound principles, and should not be contemplated. What benefit could result from it? What was the amount of the security to the good people of the state proposed to be retained? It was a provision that they should elect no man for Governor who had not been five years a resident—not five years next preceding the election; but any time in the course of his life. And for aught Mr. O'C. could see in our constitution, a lad born here, living five years in this state, and then carried off to India, might be elected Governor of New York, and come home and take the office after hearing of his election. But of what utility was it to provide that 200,000 electors of this state, who must concur to elect a Governor, shall not elect a man who has not resided here five years? Was it to be supposed that so large a number would unite to elect a man who was ignorant of the concerns of the state? Who had not acquired as much of that knowledge, as citizens ordinarily acquire in that time? It was an insult to them. It was writing in the fundamental law a reproach upon the wisdom and good sense of the people of this state, which it became us as their representatives, and the vindicators of their honor and dignity before the world, to place on record.—What would it avail us, if an unworthy individual should happen so far to win the esteem of the people of the state as to be elected Governor that he possessed the very common qualification of a five years' residence. It would be more reasonable to enact that he should have a certain height—though it would be hardly reasonable to say that he should be six feet. It would be more reasonable to say that he should be able to read and write. No possible benefit could result from retaining this clause; and all that it would exhibit would be the lingering groan of a dying spirit of illiberality. It was a poor, small—very small qualification, which could scarcely be wanted under any possible circumstances by any individual who could get 10,000 votes for Governor. It would remain to perform that office—to show that the spirit of

illiberality which by qualifications would exclude from office, and which distrusts the wisdom and sagacity of the constituent body, yet possessed influence enough in the councils of the state, to have its dying groan, impotent and unimportant, as it might be, in the fundamental law. Mr. O'C. would not leave it there. He would not leave any evidence that such a sentiment existed in the state; and he did hope that the clause would be wholly rejected. Throughout this constitution, no other qualification was required as to any other officer—none whatever. Now, he supposed there was a species of common law on that subject to this effect—that no man was eligible to any office in the state who did not possess the general qualifications of an elector. He meant the general, not the special qualifications. The qualification of 6 months' residence in a county was a special qualification. But a person without this might have the general qualifications—that is, be 21 years of age, and be an inhabitant of the state, and by common law, was eligible to any office. If that was so, there was no need of any such provision here as this. If struck out, the Governor would stand on a footing with other officers. But if he was mistaken in this rule of law, then it would be necessary to have some provision, somewhere, like that suggested by another member from Ontario, requiring a person, to be eligible, to have the ordinary qualifications of the constituent body. This would be necessary, because it might be that a person every way qualified otherwise, might not have the special qualification of being an elector at the particular place where he might reside. And the principle of such a provision would apply to all officers. Believing therefore, either that the common law was well enough understood, or if not, that there should be some general provision applicable to all officers, he should vote to strike out this section entirely. And as this question could not be divided—the motion to strike out and insert—he should vote against the motion of the gentleman from St. Lawrence (Mr. RUSSELL).

Mr. HARRIS regarded this matter as of very little importance. It was entirely immaterial whether this section were retained or not. He had no idea that it had ever been of any practical benefit to the people of this state—that it had ever saved them from an injudicious choice, or that it ever would. He had no idea that the people of this state for long centuries to come—if the labor of our hands should continue so long—would ever be disposed to elect a man as Governor who did not possess all these qualifications. He had no fears that the people of this state were so liable to delusion, or to be led away by passion, or by any improper influence, that a foreigner who might happen at a period of high political excitement, to take the stump, might be elected Governor. Nor had he any fear that the people, whether restrained or not by constitutional provisions, could be so far operated upon by improper considerations as to make an injudicious choice. The turn this debate had taken, seemed to require a word as to the idea which had been thrown out, that we should trench on the rights of the people were we to go beyond those defects in the constitution which had been the subject of complaint. The gentleman from Colum

bia, (Mr. JORDAN) indicated the opinion that we should limit ourselves to certain specific defects in the constitution, which had been the occasion of our being convened here. Mr. H. did not regard himself as confined to these narrow limits. He stood there bound to make or fail in making the best constitution which his humble abilities would enable him to devise, and where he found that the old constitution could be improved by an alteration, by inserting a new principle, or by striking out any thing in it, he felt it his duty to go for it, whether the people had complained of it or not—for we were here to reform the constitution, and to apply our best energies and thought to make it if possible equal to the wants and wishes of the people, for ages to come. The object of a constitution, as he understood it, was to provide the machinery by which the people could carry on effectively, the great work of self government. Our proper office was to define, prescribe and limit delegated power. We could not, without transcending our duty, undertake to prescribe and limit the sovereign power of the people, and to dictate to them what they should and what they should not do. Mr. H. concurred entirely in the sentiments uttered by the gentleman from New York who had just taken his seat. He had listened attentively to the arguments of those who advocated the retention of this principle in the constitution. These arguments had been urged with great force, and were he now sitting in a nominating convention, charged with the duty of presenting a candidate for Governor, they would have great weight with him. But we were in no such position. Our business was to prescribe a form—to construct a machine—by which the people could conveniently carry on their great work of self government. To attempt to limit them in regard to the qualifications of their candidates for office, would be to transcend the power committed to our hands. The gentleman from Dutchess, (Mr. TALMADGE) yesterday seemed to deplore that the people had not set limits to our action. Mr. H. said there were those, and they not a few—who when the subject of a convention was before the legislature, were desirous that this body should be restricted to certain specified defects in the constitution upon which they were to operate. But the people thought otherwise. They sent us here to reform the constitution—to make the best constitution in our power—and we were not to be limited in our action in the manner that some would have us limit ourselves. The illustration of the gentleman from Dutchess, was an apt one for his purpose. The wagon was not sent to us to be repaired merely—with no specific instructions to put in an axle there, or a new tire here, or a spoke in another place—but to make it as good as it was in our power to make it—if possible, to make it better than it was before. We were bound to repair it wherever we thought it needed repairing. If we found that the constitution could be made more nearly to conform to democratic principles, by striking out a provision here, and another there, we were bound to do it, though the particular provision might never have been the subject of complaint. As to the provision under consideration, Mr. H. said, complaint or no complaint, it was inconsistent with

the great foundation principle on which our government rested—and therefore he should go to strike out the entire section.

Mr. MARVIN too had listened with great attention to this debate. He should have been willing to have had the question taken this morning, when the gentleman from Erie (Mr. STOW) yielded the floor; but differing as he did with most of those who had spoken since, with power and effect, and being called on to vote, he felt that he should illy discharge his duty, if he did not briefly state the views he entertained. Elementary principles had been discussed here, in order to ascertain what our powers were and what the relations we bore to the people. As he understood it, we were here not merely as agents of the people, but as part and parcel of the people, to do what—to prepare a fundamental law for the government of the people themselves, in carrying on the machinery of government. He claimed to be there as one of the people, though acting in a representative capacity. But he was not there as an agent to bind his constituents to any thing. We were all here in council; for the purpose of looking over the fundamental law, and seeing if we could not make a better arrangement among ourselves for our own government—and the result of this consultation was to be submitted to the people for their judgment—we acting with them in making up that judgment, as a portion of the people. Nobody denied that all power resided in the sovereign people: but being here, as their representatives, had we not the right to make an arrangement and say how we would exercise power, and when and under what circumstances? The great question was, how should this power be exercised? And the very purpose of our meeting here in council, was to make an agreement, a compact, among ourselves—in a word, to form a constitution which shall prescribe the mode in which this power shall be exercised. That being so, and the people having a right to establish just such a government as they please, restricted only by the constitution of the Union, then we came down to the question in discussion here, what kind of a constitution will we have? Well, all agreed that we should have an executive department, and that the executive power shall be vested in a Governor. The question now was, should there be any qualifications required of a Governor in advance? Some said no—impose no trammels on the people. Let them select whom they please. Was there a gentleman here who was not struck with the good sense of a remark of one of the gentlemen from New-York this morning, (Mr. NICOLL,) in regard to the power of the majority? If it had indeed come to this, that in all cases a majority of the people of this great state was to exercise all the power which the whole people had, what kind of a government had we? Mr. M. insisted that it was our right and duty to provide all those safeguards which experience and history had shown to be proper. To illustrate his views: suppose (said Mr. M.) that we are all talking over these matters in an informal way, all friends, and all desirous of establishing a government which shall last forever. We say the majority shall rule, and the minority shall acquiesce.

Well, says the minority, we want some security that you will not oppress us—we want certain things understood. Very well, what are they? We want you to agree in advance that we shall not be deprived of life, limb or property, without due process of law. The majority say, we think that reasonable, and will grant that in the charter. Well, here was a restriction, to begin with, not on the people, but on the majority—and Mr. M. might multiply illustrations of this character—he might go through with the whole catalogue of principles, beginning with those wrong from king John by the sturdy barons of England, and analysing the constitutions of all the states—and show that these restrictions upon the power of majorities were found every where. Now, as to the qualifications of an Executive, for all agreed there should be one, the minority had a right to claim—as all of us, majority and minority, were embarked in the same boat, and must all sink or swim together—that the majority should give them the best Governor they could. The majority might say we will exercise this power prudently, and we want to elect any body we please. But the minority had a right to some safe-guard. All writers, and all experience concurred in the truth, that human judgment did not reach its maturity until a certain period of life. Twenty-one years was the period of maturity fixed by our law. But to make all safe, it was reasonable that for a Governor the period should be fixed late enough in life, to secure mature judgment and experience in that high office. Had not the whole people, in council, through their representatives, a right to fix on a certain age as a qualification—and was this compact or agreement any restriction on the power of the people, or even of the majority? What that precise period of life was might well be a matter of difference. We had examples in history of remarkable precocity.—Napoleon had been alluded to. Charles XII. might have been cited also—and Mr. M. glanced at the wayward and disastrous career of this young monarch, to himself and to the country which had the misfortune to own him as sovereign—as an illustration of the wisdom of requiring mature age in the executive officer—not as a restriction upon the power of the people, but as a matter of compact among the people themselves for their mutual welfare. He insisted that it was no evidence of illiberality on the part of the people to require their Governor to be 30 years of age, or that he should be born here, any more than it would be to leave the matter entirely open. It was purely a matter of arrangement among the people themselves for their mutual protection and welfare, and if they chose to limit themselves, by compact, in their selection of candidates, to men of a certain age, the right or the liberality of such an agreement could not be successfully questioned. Mr. M. here glanced at the propriety of the proposition to strike out all these qualifications, with reference to the future prospects of this great state and confederacy—to the aggrandizement of both in population—to the gradual increase of presidential power, which he said promised to become worthy the ambition of any king in Europe—to the combinations that might be

formed by corrupt men, through the influence and aid of this great state wielded by her executive organ, to secure the presidency in the hands of some instrument of their own, a combination which under no restrictions as to age, he argued might be successfully carried out, by corrupt politicians, acting in concert through the Union. He went on to urge that there was wisdom in these qualifications as prescribed by our forefathers—that nearly all the constitutions of the states contained similar qualifications—that it was on the motion of Gen. Root that the age of thirty was fixed in the present constitution—pointing to the example of Michigan, and her career under her first Governor—to her collisions with the Buckeyes, to her wild-cat banks, and finally to her repudiation of her debts, as a warning that we should do well to heed. He had no objection to striking out the word "native," if that was desired. But he hoped the rest of the section would be preserved. Or else that the committee would adopt the provision of the New-Jersey constitution, that the Governor should have been twenty years a citizen of the United States, and a resident of the state seven years. The people, he insisted, "the governed," in the language of the Declaration of Independence, in organizing their government, and prescribing qualifications for office, acted for themselves and for their mutual protection, and that it was an abuse of language to characterize these arrangements as restrictions upon the sovereign power.

Mr. WORDEN regretted this morning to hear gentleman say in their places that a question of this kind had better be taken without any great debate or discussion, because if they were to divide on any great question of principle or public policy, it was proper that the dividing line should be clear, distinct and well defined. Now he could not regard this question as involving merely the consideration whether a young man under the age of 30, shall be elected Governor of this state; or whether a residence of five years was requisite for a candidate for the governorship; he regarded it as involving a great and fundamental principle totally distinct from these two considerations. It was whether in reference to the formation of a constitution, and the organization of a democratic republican government, the people are capable of being entrusted with the right of judging whether a man under 30 years of age or one over 80 years of age is a fit and proper man to serve them in the office of Governor. That was the question and the only question that had been involved in this discussion. Gentlemen seemed to forget that when they put it on the ground which they did, they involved themselves—he would not say in an absurdity—but he would say that their proposition entirely failed when it came to be practically applied. Their arguments also failed, when they came to give them a practical application. It was said you must not elect a young man under 30 years, because in all human probability he will be incapable of exercising the duties of his office, and therefore the people should be guarded against doing what on their part might be deemed an act of indiscretion.—Now he would concede, if they pleased, that it was highly necessary to elect a man over 30

years of age, but he also held that it was equally indispensable that they should not elect a superannuated old dard of over 30. If they undertook to limit and control the public judgment in the one case, why not in the other? There was more danger to be apprehended in electing a man whose powers of mind have left him—whose judgment and capacity are destroyed by age—than in electing a young man who has not arrived at years of discretion. Was it to be supposed that any man from any quarter could receive the vote of the people of this state until he had exhibited himself in some public capacity, and shown to the people that he is capable of exercising the trust they proposed to confer upon him? It was an absurdity to suppose that such a thing could take place. It was an impeachment of the public intelligence to suppose that the people were ever to elect a man to the office of chief magistrate unless he had in various ways and by public employments shown his fitness. There was greater danger of having an old man, and yet they there proposed no safeguards. He would take a distinguished man, who had been high in office in this state,—a man who for many years held public trusts for which he was abundantly qualified, but who like all others must fall into the sere and yellow leaf, be stricken by age, and his faculties become impaired. But such a gentleman goes before the public with all the brilliancy of his former character, and the public mind would not perhaps be drawn to the fact that all his faculties for public usefulness had been destroyed. There was then more danger of a superannuated old man being elected than an “in sereet raw boy” to use the language of the gentleman from Essex (Mr. SIMMONS). If then they were to incorporate a provision to guard against supposed dangers he trusted they would be consistent, and prescribe a period beyond which they would not elect a Governor from an apprehension that he may be incompetent. He had seen some constitutions in which a provision to this effect was incorporated, providing that no man beyond a certain age shall be elected Governor. He hoped too they would be consistent, if they intended to apply their restriction to the candidates for Governor, and not let it simply be a mere theory without any practical application. Did any gentleman propose to apply it to the office of Lieutenant Governor? An yet what had they seen in this state? He did not mention the fact to complain of it by any means; but they had seen a gentleman of distinguished ability elected chief magistrate, and in less than three weeks resign and another come in. In such a case the successor might not have had the qualifications they proposed to require; and would it not be inconsistent to say that a Governor shall have certain qualifications, without imposing the same restrictions on the Lieutenant Governor, or who ever might succeed to that office? Some gentlemen without arguing on the propriety of such restrictions, had contented themselves with referring to the constitutions of other states; and because they found some such provisions in the constitutions of other states, they would incorporate them in that of this.—Now he had looked through the constitutions of other states also, and he found provisions in

them that he never desired to see incorporated in the constitution of this state. But yet, if gentlemen should be disposed to incorporate them, they would probably argue from the fact that they were incorporated in other states, and being prescribed by the wisdom of their ancestors and by those who had gone before them, they ought to be in the constitution of this state. Now look at the more modern constitutions, and they would find no such provision as that now proposed to be retained here. Some gentlemen had said they would leave as much as they could untouched in the constitution; and some gentlemen wished the Convention to determine in the outset how much of the old instrument is to be swept away. He was of opinion that the people had sent them here to sweep away many absurdities as there were in it, and to conform it to the spirit of the age, and the advancement of the public mind; and if there was any thing in it incompatible with the public intelligence, the people had sent them here to strike it out. Some gentlemen had said there boldly, that no complaint had been uttered against this clause, but until the question was discussed here he had never heard any gentleman speak of this second section without condemning it.—In less than four years it had been amended in one particular, and when it was under consideration in 1345 in the legislature of this state, every gentleman who spoke in reference to it, without distinction of party, only regretted that the amendment had not gone to the whole clause. Without a dissenting voice, every man who spoke on the subject condemned it unequivocally. In the old clause there was a property qualification, but that was stricken out by the amendment of 1344, which was ratified in 1345, and the legislature by which the second vote was given only regretted that it had not an opportunity to submit to the people whether the whole section should not go. His colleague had found the principle of this restriction in the democratic creed of 1793. He trusted his friend was not ready to rest himself on the democratic creed of 1793 and the theory which governed and controlled at that day. He really hoped his friend had come down to the democratic creed of 1846, and was not going to rest himself on the old doctrine of 1793. Why at that period it was sound democratic doctrine as then understood, that a property qualification was necessary to enable a man to vote for the office of Governor. But since 1793, we have made advances in the science of civil government; the public mind has progressed on that subject, and has become more intelligent, and the people are now better able than they were then to discharge the duties of administering and arresting and controlling their government. Now every argument that has been brought forward, or every thing which goes to show that there should be some restriction of this character in the constitution, goes equally to show that the people are incapable of electing a Governor when he has been nominated. It all rested in the assumption that the people will misjudge in the selection of a candidate—that if left unrestrained they will fall into the absurdity of making choice of some man under 30 years of age, unless incompetent to discharge the duties of the

chief executive, and that they should not have the opportunity to do so. Now if there was any thing in the argument that the people will not discriminate between men under or over 30 years of age, they certainly would not be capable of discriminating between those who might be nominated: if there was any thing in the argument—and he did not think there was—it applied also to the voting for candidates nominated, for if they could not select understandingly they could not vote understandingly when they had been selected. His friend from New-York (Mr. NICOLL) had in admirable language and temper drawn the attention of the Convention to the great principle of government, that it was not the majority that should dictate but the whole people; and that gentleman argued (and his argument made a deep impression on the committee,) that it was necessary to retain this clause because a majority might force on the state a young man under 30, contrary to the will of the minority. Now he asked the gentleman from New-York if a majority has not forced on the minority—himself amongst the number—a Governor not of, but contrary to his choice and selection? And could the gentleman discriminate between one case and another—between forcing on them a Governor under or over 30 years of age? But he would show the gentleman from New York how his proposition, if carried out, would work a more perfect tyranny than he supposed the majority might exercise. He would suppose that a man had rendered some distinguished service to the people of the state, a man who has evinced in the rendition of those services abundant capacity for any position and a knowledge of the principles of the government so much so as to gain the unqualified approbation of the people of the entire state; but unfortunately he belongs to the party to which he (Mr. WORDEN) belongs—a party that is always in a minority in this state, or a great portion of the time in that condition. He might propose to nominate that distinguished gentleman for the high office of Governor, knowing that there were many in the party of his friend from New-York who knew of his great fitness and would vote for him: but unfortunately the gentleman from New York belonged to an irresponsible majority, which under the cloak and cover of a constitutional provision exercises that despotic power which prevents him and his friends from putting his candidate in a position to obtain the votes of the people of the state. The gentleman would see then that his principle could not be carried out. Gentlemen had adverted to other facts and arguments to illustrate their positions in all of which they did not seem to distinguish between elementary sovereign power and delegated power. He apprehended when they came to form a constitution they came to make a compact, a conventional agreement under which we will live—and that agreement in its details constitutes the government machinery; the delegated power we will confer, in the various departments of the government. All these were arbitrary rules and conventional agreements entered into on the expediency of things and not on any ground of principle. But when they came to give application to it—to give the motive power to the machinery, they would find a different element in the popular will. Now it

was behind the intelligence of the age, it was certainly not up to the intelligence of the age, to undertake to say the popular will shall be restrained—that it shall have checks and curbs on it, as intimated by the gentleman from New-York (Mr. MORRIS). These checks and balances are proper in the machinery of government—where there is an exercise of delegated power—for a delegation of power is so designed that one department of government in its exercise shall check and control another department of government. It was therefore in this sense applicable as he understood the terms; but it was a novel doctrine brought forward here—he ventured to say, for the first time in the history of the government—that in the formation of a constitution, checks and guards should be placed on the popular will.—We have gone by that, and it is rather too late to return to it. There had been a time when checks and guards were placed on the popular power by requiring property and other artificial qualifications to distinguish those who should exercise the sovereign power. But it was too late he himself trusted to return to that artificial mode of regulating the sovereignty of the land. We have abandoned the principle of putting checks and guards on the popular will. Some gentlemen had said the people should be restrained in this respect because in times of popular excitement, they might misjudge. Now, he submitted to his learned friends who advanced this argument, that it was the very argument by which every despot on earth would restrain his subjects, or those whom he has the power to keep from the exercise of popular rights—it was that argument which had securely kept despots on their thrones for ages and prevented men from exercising those political rights which God intended them to possess. It was the very framework and structure that supported despotism in the old world—that the people must not be entrust ed with power, because at some time they might give way to popular excitement. Now, he wished to see the government framed here without any sort of reference one conservative power that was capable of control to a principle or idea like this. He regarded but trol ling and checking the power of the government—and that was the popular will; and when gentlemen will be wise enough—for it is wisdom and the highest attribute of wisdom—to acknowledge the principle, we shall have a conservative power in this government that will conduct it prosperously. But if they resorted to artificial expedients, or classes which were to be clothed with something like elementary power, as checks on the rest, so long would they deprive us of the benefit that would result from the enlightened action of the public will. Suppose they should, in forming this class, introduce the word “native” as a restriction in the constitution, and submit it to the people for consideration, did they apprehend they would be likely to get from the people their clear, unbiassed, intelligent judgment on such a provision of a constitution. No; they would not be likely to arrive at any such result. They would be placing in the hands of every demagogue in the land a power, a weapon, by which he could disturb the public sentiment and the judgment of the community. The public attention would be turned from the consideration of the more important affairs of this Convention by agitating this very unimportant, and in his judgment, useless provision. He therefore desired to see the constitution framed so as to leave the public mind and will to its free and unrestricted action—that nothing might intervene between that action and the calm inter-

action of the constitution we may submit to them—and the action of the government that may be formed under that constitution. When they should come to this and act upon this principle, they should act wisely, and they would frame a government whose administration would be more likely to be controlled by the sound sense of the popular mind. His friend from Chautauque (Mr. MARVIN) had reverted to the great fundamental provision contained in the Declaration of Independence—that all power is derived from the consent of the governed; but how does that principle apply to this provision, that no man under 30 years of age shall have any power in the administration of the government? Now is there not much of the efficient power of this government in the class under 30 years of age, and will they consent to the formation of this restriction which will exclude them from the administration of public affairs? Did they get a government “with the consent of the governed” which disfranchises one portion of the constituency or governed them contrary to their will? Certainly not. The very proposition the gentleman advocates violates the principle he brings to sustain it. He would have been content himself in regard to the second section, if the committee that brought it forward had simply stricken out the word “native” and the age which was prescribed—he would be content to let it stand as probably it will stand when the vote is taken on it and on the proposition of his friend from St. Lawrence. He had too great re-

gard for the public intelligence to suppose that any party would bring forward a candidate who had not resided here five years.

Mr. WARD now rose to a point of order. His friend from Ontario had had all the time he desired, and now he wished to say that the question before the Convention was a limited one, to which he hoped gentleman hereafter would restrict themselves.

The CHAIRMAN restated and explained what the pending question was.

Mr. MURPHY obtained the floor.

Mr. W. TAYLOR desired the gentleman from Kings to give way, to allow him to offer an amendment to obviate an objection which had been raised to the amendment of the gentleman from St. Lawrence.

Mr. MURPHY assented.

Mr. W. TAYLOR then proposed to amend by providing that

No person who does not possess the qualifications of an elector other than residence in the town or county, shall be eligible to the office of governor.

Mr. MURPHY then moved that the committee rise.

The committee accordingly rose and reported progress, and obtained leave to sit again.

On the motion of Mr. NICOLL, a change of reference of certain papers was made from the committee of which he was chairman to the judiciary committee.

The Convention then adjourned to 11 o'clock to-morrow morning.

WEDNESDAY, JULY 1.

Prayer by the Rev. Dr. WYCKOFF.

The PRESIDENT laid before the Convention a report from the clerk in chancery for the 8th circuit, of the number of bills filed and causes on the calendar. Referred to the committee on the judiciary.

Mr. ANGEL offered the following, and it was adopted:

Resolved, That when this Convention adjourns to-morrow, it will adjourn to meet again on Tuesday next at 10 o'clock, A. M., and will meet daily thereafter at 10 o'clock, A. M.

On motion of Mr. CHATFIELD, the 19th standing rule was so altered as to give the power to move a reconsideration in committee of the whole.

Leave of absence was granted for Mr. DANA from Friday to Wednesday next.

BOARDS OF SUPERVISORS.

Mr. CROOKER offered the following, which was adopted:

Resolved, That committee number seven be instructed to inquire into the expediency and propriety of abolishing the office of supervisor, and conferring the powers and duties of boards of supervisors on some less numerous and less expensive body.

Mr. WILLARD offered the following, which was adopted:

Resolved, That A. N. Beardsley be appointed an additional secretary to this convention, having in charge the library and stationery:—And that his term of service be deemed to have commenced on the 1st day of June instant.

EXECUTIVE DEPARTMENT.

The Convention now resolved itself again into committee of the whole on the proposed Article

in relation to the Executive department, Mr. CHATFIELD in the chair.

Mr. MURPHY resumed the discussion. Although this in his estimation was an important question, he was perfectly willing to waive any remarks he might have to offer, if the committee was anxious to take the question. (Cries of “go on.”) The committee determined the other day on his motion that this section should be amended, and the word “native” had been stricken out. At that time he had announced his intention to follow up this with further amendments, among other things to effect the change now under consideration, deeming all distinctions of qualification between the electors and the elected as improper and inconsistent with the spirit of our institutions. Now although he “set this ball in motion,” he had not been “solitary and alone,” he had been prevented from presenting this amendment, by others who, coming from other parts of the state, and from the different parties, had anticipated him in endeavoring to wipe those restrictions from the constitution. The charge on the part of those gentlemen had been gallant, and it had been met inch by inch by men of the first order of talent, experience, and learning, and the question had assumed an importance greater than any heretofore presented to the body. In the discussions on this subject they were met on the threshold with the objection that they had no power or authority from the people to consider amendments of this kind, and that they must confine themselves to the consideration of those questions which had been presented by popular or legis-

lative discussion. Now he asked gentlemen where they obtained their warrant for assuming such positions? In the Convention act there was nothing to restrict their power; on the contrary they were called upon to revise the constitution—the whole constitution—and do what they considered was right and proper for the good and prosperity of the commonwealth. Again, there was no restriction in the popular mind. No man could say what was in the minds of or what influenced the electors in calling the Convention; they doubtless acted from various motives,—and therefore he denied the right of any gentleman to question him for approving any amendment which his judgment might dictate was proper. It was sufficient that they were there to revise the constitution. They had possession of the subject matter and they might and must do with it what in their consciences they thought right. He would stand by the land marks of our fathers, but when necessary and expedient he was willing to depart from them. If they were not to do this, they would not have been here. Their office was to correct where corrections could be made, and where they found it imperfect in principle, or in practical operation. They were engaged in a revolution—a bloodless one, it was true, but still a revolution. They were subverting one government and establishing another; and in order that these revolutions might not be frequent, he wished this to be as perfect as it could in their judgments be made. If they anticipated a little, they would prevent a recurrence to Conventions of this kind, and these changes would be less frequent than if they pursued a contrary course. That the public opinion called for this Convention they had abundant evidence. Why were their tables every morning groaning beneath the weight of pamphlets and arguments from all parts of the state? Why were lecturers coming hundreds of miles to give their views on these topics? It was because it was expected that they would go into a thorough and radical reform of the constitution. The state of New York was one of the largest in the confederacy, and in her population, resources and wealth, commanded the admiration of the world. The Convention of this state was looked to with the expectation that they would grapple with existing evils, investigate in the enquiring and liberal spirit of the age, adapt themselves to its progression, and conform to its changes. There were however, objections to the merits of this question, which should be considered. They had been stated by the gentleman from New York (Mr. NICOLL) and the gentleman from Columbia (Mr. JORDAN), with a precision and a force of reasoning which startled many minds, and seemed to require at the hands of those who sustained the amendments, something in reply. He concurred in what had been said in regard to the tyranny of an unrestrained majority. If he thought this was trenching on any man's rights, he would stand shoulder to shoulder with its opponents. He did not believe the majority was always right, but he believed on public questions, the rule was right that majorities should govern. He believed the majority was more likely to be right than minorities; but in respect to private

and individual rights, he denied the right of the majority to govern and control. Here however there was no question of principle involved affecting private rights; they were merely selecting an agent to administer the law. Mr. M. proceeded to notice instances in his experience where such restrictions as were here proposed had been disregarded, and he enquired what remedy would be had here, if the people should elect a Governor 29 years and 11 months old?—He might he told that it could be reached by *quo warranto*, and if so, all their right to their seats might be tried, for they were here by no constitutional authority. Mr. M. went on to argue that the removal of this restriction was no innovation, for it was the principle recognized by the constitution of 1777. The limitation was, that the Governor should be a wise, discreet freeholder, but last year that had been stricken out by the people. He asked if under the constitution of 1777, they had had an incompetent Governor, when there was no such restriction? He reviewed the administrations for several years, and showed that the people had not sustained injury by running into the apprehended evil of electing a "raw boy." He agreed with other gentlemen, that there was more danger from the election of an imbecile old man—No young man could be elected, unless he had something sterling within him. In the virtue and intelligence of the people, they had the best guarantee that their Governors would be proper men. He pointed to the gentlemen composing this Convention, as affording evidence of the judgment and discretion of the people in their selections, and to the people this whole matter might be safely be confided.

Mr. WATERBURY recapitulated the positions assumed on this question by various gentlemen, and expressed his astonishment at the doctrines he had there heard broached. He concurred in the axiom, "old men for counsel, young men for war," but the advocacy of such a principle now, he supposed would expose him to the charge of being aristocratic. The Governor, whoever he might be, would, besides his other duties, be commander of the state forces, and if no restrictions were imposed, his three boys, born and bred on the soil, might be required to do military duty under a man who was a comparative stranger to us and to our institutions. Such a proposition, he was of opinion, would be an insult to young Americans.

Mr. A. W. YOUNG, having made a few remarks yesterday, rose with considerable reluctance; yet he felt impelled by the remarks made yesterday, and the doctrines which were asserted, to make a brief allusion to them, and to enter his solemn protest against them. He was astonished to hear gentlemen lay down such doctrines as that "the day had gone by when checks could be applied to the popular will"—that "we had abandoned the principle of putting checks and guards on the public will."—Were such the doctrines of a majority of this Convention? He considered them fundamental heresies, that were most alarming and tending to disorganization and revolution. On what principle was such a doctrine based? A few evenings since the President's desk was occupied by a gentleman, who was one of those who were

so anxious to reform the whole fundamental law of society, that they would go hundreds of miles to accomplish their purpose—and the doctrine was there urged that human nature was perfect. But he did not believe it. In the course of this debate it was assumed that the popular will was never wrong, and that the popular sentiment must always be right. He knew that a man risked his popularity who should deny that the people can never be mistaken—they had all to come on that ground if they were to be considered good democrats, and subscribe to the doctrine of the people's infallibility. Now was there a member of this Convention who had always acted on that principle? He would ascribe to the people all the virtue and intelligence to which they were entitled—he would admit that no nation could be pointed out where the public mind was as virtuous and intelligent as this; but the public mind might be misdirected even in this country. He believed the mass of the American people was incorruptible; but a large mass of them had sometimes their minds improperly influenced. This would be admitted by every man of both political parties. If then the people had erred heretofore they were liable to err again. It was assumed by some gentlemen that the people were competent to choose their own Governor and other officers, and being so, that any restrictions on them were unjust and anti-republican. He had too good an opinion of the American people to suppose that they would subscribe to the doctrine. Instead of these restrictions being restrictions on the people, they were but restrictions on the representatives of the people. Gentlemen lost sight of the form of our government; it was representative throughout, not only in its legislation but in those conventions which select the candidates of the people. There was no such thing as pure, unmixed democracy in this country. The machinery was that of representation. Our gubernatorial candidates were so nominated, and very often men were elected to the nominating conventions because they were in favor of some particular man. The people knew that their representatives were liable to be influenced; they wished therefore that there should be restrictions. They did not wish their representatives to have unlimited control, either in the enactment of laws or the choice of candidates. He alluded to the adoption of a principle on an important occasion which required a candidate to be nominated by a two-third vote, by which the wishes of the majority were thwarted; he also reminded the Convention of the fact that strife and discord were sometimes met with in the nominating conventions, in which majorities had sometimes to submit to minorities, to prevent a threatened rebellion. Thus, however, nominations were made, and it did not always happen that the best men were nominated.—The only question, it was said, was whether the people were capable of choosing their own Governor. Most certainly they were. He believed the people could make a good selection, but they were not all acquainted with the prominent men; and therefore they devolved the duty of selection on delegates, who should be restricted when they put men before the people for their suffrages. While

the people are virtuous and intelligent, they are also unsuspecting and confiding, and demagogues have sometimes taken advantage of this; but the people have afterwards condemned them and their acts. Demagogues, however, are not all dead yet. While the people are virtuous, there are those who will use arts and stratagems to practice upon the people. Look too, at the criminal calendar, and they would find that virtue was not so prevalent as to authorize them to abolish courts of justice. There are thousands who are disqualified by fraud and crime even to be electors; even while there are some who seem to think that human nature is perfect at the present day, look throughout the community and they would see how many petty crimes were committed day after day and week after week—how many frauds—how much of the spirit of revenge existed—how much of retaliation. He believed that those who were influenced by feelings of this kind would err if entrusted with power. He alluded to the great number who failed to possess themselves of intelligence of public affairs—to those who were devoted to the avaricious acquisition of property—and he asked, if under all these circumstances, they might not suppose it possible for the people to err? He pointed them to the corruptions at the ballot-box—to the abuses of the elective franchise—to the purchase of voters like cattle in the market—to the time when to succeed, it was only necessary to take money to the polls—and to the possibility there was again of improper influences being used, and of mischievous consequences being the result. The gentleman from Albany had told them yesterday that he would probably never take part in selecting a man in a nominating convention, under thirty; but all delegates for the time to come might not be so discreet; the people had no guaranty that they would always have such delegates as that gentleman was, and he believed that if this subject could now be submitted to the people, there would be but few opposed to the restriction, both as to age and residence.—They knew that too many men had risen in political life, who were the only creatures of circumstances. By some such manner as he had described, they had secured a nomination, and they had risen into a popular favor without any real qualifications to commend them to the people. It was said this restriction must be opposed, because a great principle was involved; but he denied that restrictions were contrary to republican institutions. This, however, was the "age of improvement," and of "progressive democracy," and of ultra radicalism, of which there was a large share in this Convention.—After entering into some explanations with Mr. MURPHY, as to the tenor of some of the remarks of the latter, Mr. Y. proceeded to urge caution in making changes in the fundamental law. He reprehended the doctrine that checks and guards were not necessary. History would teach us that there was such a thing as democracy running mad. He would beseech members to pause and ponder, and not be carried away by the sophistries of gentlemen here. He had not said, as was alleged, that the Convention had no authority to amend any other provision of the constitution than such as had been point-

ed out by the people; but that the more important amendments should be first made, and then these minor points might be considered. He was willing to go through the whole constitution and amend it wherever it should be found necessary. It was said by the gentleman from Kings, that the Governor had no control over private or personal rights, and that the sovereign power always resided in the legislature.—This doctrine had long been taught in other countries, and in this; and persons were apt to adhere to the doctrines in which they had been educated. But he denied this doctrine. He would go farther back, and say, that the sovereign power resides in the people themselves; and hence the necessity of some restriction upon all delegated power. He again protested against the doctrine that no checks were to be imposed upon the popular will, and believed the people would adopt such restrictions as the Convention should provide. He hoped the section would remain as reported, striking out the word "native," and adding five years' citizenship.

Mr. PATTERSON said this debate had taken a wide range. He had supposed with the gentleman from Westchester, that the question under debate was on the amendment of the gentleman from St. Lawrence; but he now found that the whole question was open, and that he should not be out of order in saying a few words in reference to it. It had been contended that they were not at liberty to make any amendment in this part of the constitution—that they had been sent here for certain specific purposes—and that they had no right to go beyond to amend any other portions of the constitution. From this doctrine he dissented. He would like to have gentlemen point out the specific portions of the constitution which the people had sent them here to modify. He was not aware of any restrictions on the power of this Convention. He was not aware that the people had sent them here to amend one section and not interfere with another. He had supposed their powers were entirely without limit—that the whole question was submitted to them by the people, and that a fair and liberal constitution was expected.—He must express his surprise to hear gentlemen talk of imposing restrictions on the people. He was willing to join in restricting delegated power, but he would not give any vote to restrict the people. The gentleman from Wyoming had admitted that the people could not be corrupted—he admitted their intelligence, but at the same time he declared that they were not capable of selecting their own Governor.

Mr. A. W. YOUNG denied that he had said any such thing. He had said that the mass of the people were virtuous and uncorruptible, but that they did not themselves choose their Governors.

Mr. PATTERSON: Yes; that they did not themselves choose their Governors—that they were incapable of doing it.

Mr. A. W. YOUNG again denied that the gentleman from Chautauque represented his views correctly; and he explained further, by reference to the manner in which nominations were made by conventions or caucuses.

Mr. PATTERSON continued: The gentleman supposed that demagogues might make the

selections for the people in caucus. It was true, the people delegated to certain individuals the nomination of candidates, but it was not true that the people were bound to vote for them when nominated.

Mr. A. W. YOUNG asked the gentleman to tell him of any instance of a Governor having been elected who had not received the party nomination in caucus.

Mr. PATTERSON said every year there were gentlemen defeated who had been nominated by a party. This, however, was the simple question in his estimation—will you allow the people of the state to select their own candidates, and to say whom they will have selected to vote for? Are the people capable of self-government or not? Gentlemen might disguise it as they pleased, but the question was, are the people capable of selecting and voting for their own officers? If they were not—if they were to be tied up on the one hand why not on the other? If they were not to vote for a man who had not attained thirty years of age, should they be allowed to vote for an old, superannuated man for Governor? He would not restrict the people either in the one case or the other, for if they made a mistake once, they would soon correct the error. The greater danger, however, was in the election of an old man, for he would grow older every day, and continue to get worse and worse, but a young man would be daily getting older and therefore be improving. He had no faith in these restrictions. When they had a provision requiring a Senator to be a freeholder, they knew well that it had been trampled in the dust. The gentleman from Wyoming had spoken of this as the age of "progressive democracy," but it could not be concealed that there was yet a little remnant of old Federalism left. He was desirous that gentlemen should show themselves on this question, and that those who distrusted the intelligence of the people should put themselves on record, and say so by their vote. He confessed that he was not one of them. He had not seen a day when he would not trust the people to select their Governor, and though he did not say that the people were always right, he believed in their integrity and their intention to do right, and therefore he was content with their decision. The gentleman from New York (Mr. NICOLL) yesterday insisted that the minority had rights which must be protected. Mr. P. asked that gentleman how the minority could express their opinion? Who adopted the constitution here? The minority or the majority? The constitution might be adopted by a majority of a single vote here, and when it was sent to the people it might be ratified by a bare majority. But still the minority must submit, and a majority only could govern in this country. Mr. P. went on to allude to the difference of opinion which existed between himself and his colleague (Mr. MARVIN) on this subject, concluding by reiterating his confidence in the intelligence of the people, and his repugnance to these restrictions upon their free action, in the selection of a chief executive officer.

Mr. RUGGLES did not intend to detain the committee five minutes; but he wished to express his dissent from some of the positions advanced by the gentlemen from New-York and AL-

dany (Messrs. O'CONOR and HARRIS) and which had been repeated by the gentleman who had just occupied the floor. One position advanced was that when the convention undertook to propose to the people for their action, that their candidate for Governor shall have certain qualifications, the convention was transcending its powers—that they by that were undertaking to trammel and control the action of the people. Mr. R. did not so understand it. It seemed to him such a conclusion was founded on two indefensible propositions. The first was that the people never can do wrong. Now it was easily said and it was frequently said by candidates for elective offices—by persons who were courting popular favor, that the people never do wrong; but go over the country—put that question to any farmer in the country, to any respectable citizen high or low, rich or poor and take his answer. Not one will admit the truth of the proposition. Collect them all together and put to them the question and they would get the same answer. It is untrue in point of fact. Every man knew it to be untrue. The people collectively were sometimes mistaken, as they were individually. They were sometimes moved by a sudden impulse, and they retraced their steps when they had an opportunity for sober thought. The other assumption was that the action of this convention was to bind the people. That was not true. They were assembled there for the purpose of making propositions for adoption by the people, and until the people had ratified what we proposed for their action, our action was in no way binding on them. It appeared to him that those who asserted the proposition that the convention was transcending its power when it proposed that the officers to be elected by them should have certain qualifications, asserted the proposition that the people were incapable of laying down any salutary rule by which their action was to be controlled and governed. We did not propose to lay down any rule, but to submit to the people to declare by their votes at the ballot box, if it was not wise and expedient that such a rule should be adopted by them, as by every other assembly or body of men, for the regulation of their action. This convention adopted rules for its own action, to regulate its proceedings, to preserve order, and to prevent the hasty adoption of measures here. Every body adopted rules of action to govern itself. It was necessary in all these cases that it should be so, and might it not be necessary for the people that some rules should be adopted by which the rights of minorities may be protected, and majorities prevented from going wrong? Might there not be some general rule to govern the people in giving their votes for candidates for office, which might operate wisely to make popular elections safe? It struck him at least, that the convention had power to present that question to the people and ascertain if they were not willing to agree among themselves, that some such rule shall be adopted to qualify their action and render it safe. It had been said by the gentleman last up, that no rule which might be adopted by the people themselves to restrain their action in regard to the vote they were to give at elections, would

be observed or regarded by them. It seemed to him this was any thing but flattering to the honesty and good sense of the public at large. It would seem that we were to suppose that the people would act on sudden passion, without regard to the obligations they owed to each other and to the fundamental law they might impose on themselves. He had greater regard for the intelligence and integrity of the people at large than to subscribe to that position. He believed the people were capable by common consent, of adopting any rule that might prevent sudden and improper action, and the question now to decide was whether the rules we here proposed as to the qualification of candidates for Governor, were such as would in general, in the average or long run, operate to elect safe and responsible men to that important office. As to the expediency of any one of these qualifications, he did not mean to say anything; but he hoped no member of the Convention in giving his vote would be regulated by any other rule than to ask himself whether the qualifications proposed were wise and salutary. If so, let us adopt them. If so, the people would adopt them. If it were the opinion of gentlemen when they gave their votes that the qualification was improper, inexpedient and unnecessary, let them vote against it. But he hoped no gentleman would vote against any portion of the section on the ground that we were imposing restrictions on the power of the people. That was not the case. We proposed to them to say whether they would impose restrictions on themselves.

Mr. SIMMONS said if the learned gentleman from Dutchess had extended his remarks a little further, he should have had no occasion to rise. He subscribed fully to all that gentleman's remarks; but there were some things that were suggested by the very distinguished member from New York (Mr. O'CONOR) to which alone he should deem it necessary now to reply. Two or three gentlemen, to be sure, had treated them with lectures on the power of the people, without making any distinction between arbitrary power, influenced by passion and impelled by sudden emergencies, and that power which was regulated by constitution or by law—by a rule prescribed by them beforehand. He thought an answer to such arguments must suggest itself to every person that read the speeches, and that they need not be reproduced in a formal way by any gentleman here. But the gentleman from New-York advanced some propositions here which really he could not assent to. He was not certain but he should, if he had not had time during this debate to examine the question, for he admitted that his feelings were rather inclined that way. If they had been favored with a written report, or if they had been permitted to be favored with a thorough examination of all these propositions, it probably would have saved a great deal of time and of breath. But in the absence of such a report, we must examine for ourselves. He had examined the question so ably pursued by the gentleman from New-York in regard to particular qualifications—of nativeism especially—and he was rather inclined to venture the exclusion of that word from the constitution under certain circumstances, yet he con-

fessed, on deliberate consideration, it was with great reluctance that he should vote so. The gentleman from New York informed them that the early constitutions, framed about the time of our Declaration of Independence, and a little after—between the Declaration of Independence and its achievement—and some that followed, contained no exclusion of aliens from the office of Governor, though he admitted that the constitution of the United States did; and the gentleman seemed to think—and at the first he was inclined to believe—that the reason for that exclusion lay no deeper than in a spirit of exclusiveness and jealousy of foreigners. But if they would look a little farther, they would have no reason to think so meanly of the men of the Revolution, or the greater, as some think, who followed. At all events, the convention of 1821, the gentleman seemed to think, adopted the principle of exclusiveness in some narrow jealousy, and from personal motives that did not immediately concern the safety and good government of the state. He had ventured that intimation, it must be supposed, on due consideration, knowing that this Convention contained two distinguished gentlemen who were members of the convention of 1821. Now, on an examination of that subject, Mr. S. found, at all events, a good reason for the action of the convention of 1777, and the action of the other convention too. It was an old settled rule of international law—(nothing is clearer than that it is the law of England, and he found it was the law of France, and he was inclined to think of every nation; Blackstone says it is the law of the world, and Peters tells us it is the law of America)—that a person coming from a foreign country—an alien born—though naturalized here, was not discharged from his allegiance to the country whence he came. Expatriation is not recognised by the international law of the world. Now, if that be so, if Thomas Adair Emmet, or other distinguished men that he should have liked to vote for, could have held the office of Governor of the state and commander of its military forces—the affirmer or negatifier of its laws—in case of a war with the nation of his nativity, he could not be Governor without owing allegiance to two countries at the same time. They could see then good reason for their forefathers', in 1777, making their constitution as they did, and their successors in 1821 making theirs as they did. Look at it for a moment. It is laid down by Chancellor Kent and the writers, that all persons who were resident in America at the time of the Declaration of Independence, no matter where born, if they continued to reside here till we achieved our independence, were by the law of all nations of the world discharged from their allegiance to the foreign government, and became incorporated with us as though they were natural born citizens, because they received here their birth with the birth of our liberties. There then was a reason why the first constitution of 1777 was made as it was. But those who came here subsequently and became citizens by naturalization, as they of course must have been down to 1821, did not stand in that position; they were naturalized and identified with us by municipal laws and regulations, but

we could not discharge them from their allegiance to their own country. He had always been surprised at this question of naturalization and citizenship, as at present in the international law of the world—he had been surprised that the national government had not been awakened to the fact, that it is essential to our people that some attempt should be made to sanction self-expatriation, by treaties between nations.

Mr. TALLMADGE begged to inform the gentleman that an attempt had often been made, but unsuccessfully, to make such a treaty with Great Britain. During the war of 1812, the question of expatriation was up, and our government took the ground that if any naturalized citizens were executed by the British government for treason, they would retaliate by executing British subjects taken in the war.

Mr. SIMMONS thanked the gentleman from Duchess for his explanation. However the general law was such that between those citizens that were naturalized at the time of the convention of 1821, and those who were here and part and parcel of ourselves when we achieved our liberties, there was the distinction he had pointed out, and this reason might relieve the convention of 1821 from the imputation of illiberality and jealousy. It was said by Blackstone and Mr. Chitty in regard to the law of England, that naturalization in a foreign country, without license, will not discharge from allegiance, and an instance was given of an individual who was born in England, and then removed to France, where he lived from infancy and became a captain in the French army. Having been taken prisoner he was tried by the civil courts and condemned, instead of by a court martial. Now so long as human nature was as we knew it to be—we had an instance in General Hull—that man is not always proof in point of physical courage in all circumstances, he should regret to have a Governor of this state in the time of war, (with a great power against us) in the control of our army, subject to the general government of course, and acting in his character of Governor, with the great influence he would possess as part of the legislature—he repeated, he should regret to have a person filling the place of Governor, who was not free from all hazard and temptation, so that we should have no doubt at all of his courage. Courage was said to be rather a matter of constitutional temperament: it is a thing that cannot be easily acquired if nature has not supplied the original elements. Now although we should hope that a naturalized citizen would do as well, and incur his responsibilities, yet it would be better not always to depend too much on human nature, for "the battle is not always to the strong, nor the race to the swift." He had no doubt that a motive of this sort influenced the convention of '21, for certainly there were gentlemen in that convention who knew as much about the broad doctrine of naturalization and expatriation as any gentleman here could claim to do. The Supreme Court of the U. S., 3 Peters p. 246, says the general doctrine is that no person can be cut off without the consent of the government, or put off his allegiance and become an alien. They could not expatriate themselves by naturalization in a foreign state, so that every

claim to allegiance remains. The principle is that no man can serve two masters. Here then is a confusion of duties, and it is easy to see in certain circumstances it would be highly dangerous to have such a person elected governor of a state. He granted this doctrine was highly obnoxious to all Americans; and if they could by any constitutional enactment here—which is after all only municipal legislation—change that law so as to establish a free and full doctrine of expatriation, he should like to do it. And inasmuch as he saw some new constitutions have let out that exclusion, he was rather inclined himself to try the experiment, though as he said before it was with some reluctance. His feeling was strong, and he should be tempted to go the whole length, provided we can substitute a general residence in the place of it. So much for the qualification or disqualification of birth. He thought in regard to that, with the enlightenment of the age, which is progressive—for knowledge is running to and fro in the earth—that the strong tendency of the age is to put down this illiberal doctrine of perpetual and eternal allegiance, and in favor of the establishment of the more rational doctrine of self-expatriation. The prevailing doctrine it seemed to him was repugnant to reason, proper feeling, and good sense, and although it was laid down by the elementary writers of Great Britain, and we had no treaties with that power to change it, it might almost be considered obsolete in practice, which would take away its sting. He should therefore be inclined to try the experiment suggested here, if we secure a good term of residence, and other qualifications, and he should not be inclined to expect much risk from it. And now as to the other qualifications of a governor. It was said here that it was sufficient to let the people select for themselves, for they were always right. He confessed without some little reflection he was puzzled to answer a great many arguments that had been poured out here, yet he felt something in him that assured him they were not correct. The gentleman from Dutchess had removed some of the difficulties, but he desired to suggest that a government that is not a government by the consent of the people, is of course a government by force. Agreement must either be by consent or by force. If by force, it is a usurpation, and is no government at all. It is to be resisted by every individual that can do it. All good government is founded on the consent of the governed. That all will agree to, and by recurring to a few first principles we should come out right. Then further than that, it is not only founded on the consent of the governed, but it is to be exercised by law. It can not be exercised by force, arbitrarily, any more than it can be founded on force. Law is only the consent of the governed the form in which the consent of the governed is given; and the form can no more be exercised arbitrarily than the government so formed. Here we have advanced two steps. The next thing was the principle that distinguished the modern Democratic Republic from the ancient. The ancient Republics owe their downfall to the want of a knowledge of the practical principle of representation; and the moderns have the prospect

of durability and great good to the people, from the principle of representation and its expansibility. Now, the people in our kind of government, modern democracy, govern through representatives, and never personally. The people, who are the fountain of power, select representatives and hold them responsible periodically. Then come up two very important questions—what shall be the proper qualification of a representative? and secondly, how are the constituency to know that he possesses them? If good provision were made for these two things, they might then say that the representative government stands on a broad and secure foundation.—Well, now, the qualification of the representative must depend on the duties to be performed. Certainly the qualification of a town constable might well be less than the qualification of a sheriff, and the qualification of a sheriff might well be less than that of a Governor. Would it be pretended that there was any royal or democratic mode of acquiring that necessary knowledge and fitness for the office of Governor, other than the usual time of study and experience, in God's world?—Is it come to this that it is to be said in this land of Sabbath schools, common schools and academies, that it is very important for the common people, to be diligent for the first twenty or thirty years of their lives, to make attainments in the rudiments of knowledge to enable them to manage their own affairs, but when a man comes to be appointed an agent to control the great affairs of state, requiring an understanding of its interests, and laws, and all such knowledge as comprehends the fundamental principles of political economy, any person is fit for it, of course? Is it the theory of a representative democracy, that a man is a "Jack of all trades?" There will doubtless be some men fit to do the great business of the state, and the good sense of the rest will lead them to put such men in office. The people will secure such aid in the government; and when they want a watch they will go to a watchmaker; when they want boots they will go to the bootmaker, and so forth. He took that to be the true doctrine. He granted that democracy supposed the people to be capable of self-government, but it did not begin by abolishing all the accessories of art. It availed itself of accessories, and very soon we are able to be free and to maintain self-government.—It might be that a young man of 21, if his parents and guardians had done their duty, might have become well trained to the ordinary business of life—but Mr. S. would recommend that he should consult his father occasionally even at that, until he got well along. But some amount of education was necessary to conduct public affairs; and as a general rule, every public, well informed man acquired his experience in public affairs, later in life than 21—usually between 21 and 30. There might be occasionally a William Pitt, but such cases were exceptions and only proved the general rule. Residence in the state was one means of acquiring the necessary education, if he might so speak, in a public man. Still, owing to the multiplied means of intercommunication now-a-days, and the spirit of cosmopolitanism which had resulted from

them, it might be safe to shorten the period of residence. Seven years was perhaps as good now as twenty-one years some twenty years ago. But he should be willing to vote to exclude this principle of exclusiveness on account of birth, which existed only in the looks and in the decisions of courts and cabinets.—If we could not by negotiation or treaty break it down, he would do something to break it up in some other way. But he would have the benefit of some general rule or principle in the selection of so important an agent as an Executive. He regarded a five years residence in the state as necessary to enable the great mass of the people to become acquainted with the man, by themselves or through others, and his fitness for the place. And necessary to prevent a person being set up for Governor, because of his being unknown, and therefore perhaps considered the more available. There was no fear of the public not judging rightly of the fitness of a candidate, with the means of becoming acquainted with him, by reputation or otherwise. The public sentiment, within its proper sphere, was a truer test of truth than the individual opinion of the wisest man on earth. The aim should be here to secure first competent qualifications, and next to secure to the people the means of knowing them—and both the objects were secured by requiring a reasonable period of residence and of age. This seemed to be peculiarly an age of distrust—for all ages had their peculiarities, in morals, politics, religion or something else. In 1836, we had extreme credulity in the commercial world. Now extreme distrust, and the impulse seemed to be to tie every thing up in that direction. This vacillation of individual sentiment called for some general rule of qualification for office, whether for the Executive or other general officers. And here he would remark as to the power of this body, upon which gentlemen seemed to differ—some contending that we were to go to work and pull down and remove the old building, then bring on the stuff and put up a new one, in a style of architecture unknown before. It was perfectly clear that this Convention was not limited by the law under which it assembled, and only by our own sense of expediency. And as wise men, we should go to work carefully, and never remove a column without being very sure before hand that the new one would not only look as well, but work as well as the old one. We were sitting here with the consent of the existing government. Were we here without that consent, and for the purpose of overturning the existing government, this would be a revolutionary and unlawful assemblage. The law gave no power to us. It was in the form of law, but in fact but a mere expression of the consent of the existing government. We having the assent of the existing government, our power to reform and remodel the constitution was unquestionable. But to assume to be so wise that all that had lived before us were small lights, and that all who were to come after us would not know as much, would argue a very small amount of modesty. He thought, however, it was expedient to look over the whole constitution; but he should be generally opposed to changing any part that the public attention had not been called

ed to as a grievance, unless it was a mere trifling matter, rather for ornament than use. He desired to see the fundamental law specify the qualifications of candidates. Not, however, on the ground taken by the gentleman from Albany (Mr. HARRIS)—who inferred that we should never go wrong and select too young a man, because we never had. We had heretofore lived under restrictions, and the argument assumed that what we had not done under these restrictions, we would not do if they were taken off.—The gentleman might about as well have said, that because heretofore we had had no voters under 21 years of age, there was no ground to fear they would vote, if we abolished the law and let them vote as they pleased. He confessed, he preferred to retain the rule of age, on the ground that public experience could not be acquired by a younger man than one of 30. And he would have some period of residence, that the constituent body might have the means of knowing something of the man, and his fitness. As to the word native, he would strike that out—having no fears that in the present enlightened state of public sentiment the doctrine of foreign allegiance would ever be attempted to be enforced or maintained.

Mr. BASCOM here obtained the floor, but gave way to

Mr. TALLMADGE, who desired to make a word of explanation. It was due to himself under the allusions made to him yesterday by one of the gentlemen from New-York, in connection with this word "native." The gentleman was mistaken in supposing, if that was his meaning, that he Mr. T. participated in the feeling in which the native American party originated.—He regarded it as one of the caprices and follies of the day; and since that party sprung up, he had made it a point never to use the distinctive appellation which they had applied to themselves. But the Convention of 1821 had been alluded to, and the motives which induced them to put this word among the qualifications for governor, had been called in question by the same gentleman from New-York (Mr. O'CONNOR).—This seemed to call on him for some explanation of the circumstances under which that word was inserted—and they would show that so far from having been dictated by a spirit of illiberality towards foreigners, the reverse was the case—the whole spirit of the age and the day being at war with that feeling. Mr. T. adverted to the period of the French Revolution—to the career of Tom Paine in this country—and to his flight to France—to his participation there in the orgies of the revolution—and to his being finally cast into prison there—to his calling upon Gen. Washington to claim him as an American citizen. Mr. T. said he need scarcely remind those who were in any way conversant with our history, what the answer of Washington was—or what the doctrine here was at that day. It was enough to say that it was the reverse of the British doctrine that no man could expatriate himself—that Gen. Washington then held that a man who left his country and gave his adhesion to another, took part in its concerns and entered into its revolutionary struggle, had ceased to be an American citizen—and that he refused to demand Tom Paine. Great Britain being at war with France

ould not demand him, and he remained there. Another circumstance, illustrative of the doctrine and feeling of that period, occurred during the war of 1812. Some twenty-three naturalized citizens of this country, volunteers in our army, were captured at Queenstown by the British—among them was John Wiley of Newburgh. The British Government, reviving its doctrine of expatriation, refused to treat these twenty-three men as prisoners of war, but they were sent to Quebec, to be tried for treason, as British subjects found in arms against the King, and to be hung as traitors. Fortunately, at the time, our Government held as prisoners of war more than that number of British subjects, and the opportunity was presented of testing the practical operation of the British doctrine that no man could expatriate himself. And our Government did maintain by one of the strongest arguments that could be addressed to the human mind, the naturalization principle of this country. Our government told the British government, if you proceed, under your doctrine of expatriation to hang John Wiley and his fellow prisoners, we will hang man for man—aye, two for one—of the British subjects now in our power, as prisoners of war. This stand on our part, saved the lives of these twenty-three naturalized citizens of this Union. The demand was that they should be treated in all respects as prisoners of war, and American citizens, and though the British Government still clung to its doctrine, it cared not carry it out. These men were not hung. These facts, he said, which all here who had reached the age of fifty-five would vouch for, showed that our government had not been tardy in asserting the rights of naturalized citizens, and the great American doctrine on which our naturalization laws were based. It was under the recollection of these circumstances—with the knowledge that the British government still clung to its doctrine—once a British subject always a British subject—that the convention of '21, in no spirit of persecution towards foreigners, nor in any odious or proscriptive sense, introduced the word native among the qualifications for Governor. And on this great question, as between this country and Great Britain, he stood, as then, firm as a rock. As to the question of the present day—narrowed down as it was to a distinction between classes of our own people—of the native and naturalized—he regarded it as comparatively trifling and immaterial. He had not even thought it worth while to have used the word in its modern application and meaning. He had not used it before.

Mr. BASCOM said that did he not apprehend that the decision of this question would be decisive of some other important questions that were to be discussed here, he would not have contributed to protract the debate. But perceiving from the course of the discussion and from the reasons given for retaining these restrictions, that those who came here to carry through substantial and required reforms in the constitution, would find themselves by and by, met by some

of the arguments that met us here, he had deemed it proper to draw the attention of the body for a few moments, to the question itself and to the positions taken in regard to it. As to this question of expatriation, if there was any thing that made him firm in his determination to strike out the word native, it was that very question. It was in defiance of this English doctrine of expatriation that we had grown up to what we are, and he trusted our action would be such as to show in the broadest manner possible, that we repudiate the common law doctrine.

Mr. SIMMONS hoped the gentleman did not understand him as saying that it was the doctrine of England alone. It was universal doctrine abroad, and we could not abolish it without their consent.

Mr. BASCOM went on to say that it was not law here. No supreme court here could make it law. And if there was any thing that would impel him to the battle field, it would be to defend adopted citizens who had voluntarily expatriated themselves. But to come to the argument of gentlemen in favor of these restrictions. On what were they founded? On what other idea, than that the men of the past were wiser than we—and hence the anxiety to guard the present and future against indiscretion. But the progress of humanity was in the other direction. We were not to believe that the future would be more careless of its interests than we or the past. And gentlemen were unfortunate in their references to the past. For in looking to the constitutions formed during the revolutionary period. They found no precedent for the native qualification. In our constitution of 1821, it was found, and the gentleman from Dutchess had explained why it was there. Mr. B. however was not satisfied with it. True, the constitution of the United States required that the President should be thirty years of age. But that precedent failed. That was a restriction on delegated power; not on the power of the people. But what a spectacle did we present here? A great deal of anxiety had been shown to provide against the indiscretions of the period of life which nearly all of us had passed—but none to guard against the indiscretions of the age to which we were rapidly hastening. In coming here to assist in framing a constitution, he came in the hope of framing one that should assert the popular intelligence and virtue. He had not yet been able to discover the importance and value of the securities gentlemen would insert here. Some wanted to prescribe thirty years of age—others a residence of five years. But so far as the value of these securities was concerned, he had rather have the influence of well conducted common schools for a quarter of a century, than all of them.

Mr. B., without concluding, here gave way to a motion to rise and report progress.

The committee rose and the Convention adjourned to 11 o'clock to-morrow morning.

THURSDAY, JULY 2.

Prayer by the Rev. H. HARRINGTON.

Mr. SWACKHAMER presented a memorial and a book from a citizen of Williamsburgh on the subject of negro suffrage, which on his motion was read. It was then referred to the committee on oaths and suffrage after a conversation respecting the appropriate reference which should be given to it, in which Messrs. SWACKHAMER, RUGGLES, CROOKER, CHATFIELD, BASCOM and PATTERSON took part.

Mr. JORDAN presented a memorial which was referred to committee No. one, without being read or its purport stated.

The PRESIDENT laid before the Convention a report from the clerk of the eighth equity circuit, respecting the sales of infants' estates. Referred to the committee on the judiciary.

The PRESIDENT also presented a communication from the Young Men's Association of the city of Albany, inviting the Convention to participate with them in the celebration of the anniversary of American Independence.

On the motion of Mr. WORDEN the invitation was accepted.

REPORT ON INCORPORATIONS.

Mr. LOOMIS, from the seventeenth standing committee, on incorporations other than banking or municipal, made a report.

The Secretary read it as follows:

The committee on incorporations, other than municipal and banking, respectfully submit the following, which they propose as an amendment to the constitution, and to substitute the same in lieu of the provisions of the existing constitution relating to the same subject:—

ARTICLE —.

§ 1. Special laws, creating incorporations or associations, or granting to them exclusive privileges, shall not be passed. But the legislature may pass general laws by which any person may become an incorporated company, the provisions to be contained in such laws. And all corporations shall be subject to all such general laws as the legislature may from time to time enact, not inconsistent with the provisions of this constitution.

§ 2. Every corporation for purposes of gain or benefit to the corporations or share-owners, shall cause the names of all its stockholders and officers, and the places of their residence, and an estimate of the value of its property, estimated and appraised as the legislature shall by law direct, and the aggregate amount of all its debts and liabilities, absolute and contingent—to be published at stated periods as often as once in each year, in a newspaper published in the vicinity of its place of business. And any such corporation shall not become indebted to an amount greater than its capital stock actually paid in, together with the undivided net profits thereon, vested and employed in the business of such corporation, or actually on hand in cash or good securities for such purposes. But this shall not be construed to limit the hazards of any insurance company.

§ 3. Every corporation or share-owner in any incorporation for gain or benefit to the corporations or share-owners, except insurance, and except for purposes specified in the next section, in case such corporation shall become insolvent, shall be liable for the unsatisfied debts and liabilities of such corporation contracted while he was such corporation or share-owner, to an amount in the same proportion to the whole net assets and liabilities that his stock or share shall bear to the whole stock of such corporation. His liability shall not extend to an indebtedness or liability the payment of which shall have been deferred more than one year by contract with the creditor, or which shall not have been demanded by suit within one year after it becomes due.

§ 4. Every corporation and share owner in any corporation for a public highway, canal, turnpike, bridge, plank-way or other franchise of public use, or for any telegraphic or other means of communicating intelligence for public use, shall be liable for the debts and liabilities of such corporation to the extent provided in the last preceding section, except as to debts for money borrowed, for land purchased, or taken by authority of law, or for iron for rail roads.

§ 5. Lands may be taken for public use for the purpose of granting or demising to any corporation the franchise of way over the same for public use, and for all necessary appendages to such right of way. Such grants and demises shall be made in such terms and on such terms and conditions as the legislature may deem for the public good; but no such grant or demise shall extend beyond fifty years in duration.

§ 6. All corporations and associations to be created or formed after the adoption of this constitution, shall be subject to the provisions herein respecting corporations. All which is respectfully submitted.

A. LOOMIS, Chairman.

Mr. LOOMIS rose and said he had been directed by the committee to ask leave to submit some remarks, to state the grounds briefly on which they had made this report. It would be conceded that among the subjects to which the public attention had been called, and which led to the calling of this Convention, that in relation to incorporated companies held a prominent place. The people had seen a system existing by which the government had granted to particular individuals special privileges which had been refused to others, contrary to the great principle of equality among men. They had seen not only that, but that when these special privileges, which were essential to the very nature of a corporation, were exercised, they had the further privilege of immunities from loss arising from business which other individuals had not from loss by their business. Persons exercising the powers of corporations in many cases, have all the benefit of the gain which they could make by means of the corporation, but in cases of loss, the losses have devolved on other than those who would be gainers in case of success. This struck so directly against all propriety and equality amongst men, that it was not surprising the public attention had been called to the subject, and especially when the business these incorporations have carried on, is a great portion of the business of the country—having at its disposal so large a proportion of its active capital, and affecting not only private relations but the political institutions of the country. The object of the committee had been to meet this prominent difficulty in the first place, by permitting all persons who may choose, to associate and become incorporated for every legitimate purpose, thus doing away with the first difficulty, that of a special grant of favor to a few individuals who may succeed in getting a charter. In the next place they endeavored so to organize the organic law that while they would not discourage this means of doing business or using capital, they would make the corporations thus using capital, possess as near as possible the same power, and as powerless as private citizens. An incorporation is a person—a legal person, and not a natural one. It is impelled on to action by the same motives of gain which impel private citizens, but it is not restrained by the same motive of

benevolence and of humanity, and of fellow feeling, which exists in the mind of every individual person, and which restrain his selfish propensities in the acquisition of gain. Nor were they restrained by those prudential considerations which prevent in individuals from embarking their capital rashly, in the desperate hope of gain, reckless of loss. The effect of the present state of things has been to urge them on in the hope of success, with the prospect of realizing whatever benefits might be derived by the incorporation, or of devolving any loss that might ensue on others. The principle which the committee have incorporated in their report as to the payment of debts or sustaining losses, is such as to make every corporator pay the same proportion of losses or debts in case of misfortune, that he would have realized benefits in case of success. If a partnership of five persons be instituted, each partner knows at the time he enters into it the partners he associates with. He selects his men, and he does not associate with them without knowing them. One partner could not go out and bring in another in his place. An individual therefore knowing his associates, is content to be bound with them for losses as well as gains. But in incorporations, an individual takes an undivided share of the business leaving other undivided shares to float where they may. He is willing to embark his capital, and his means to the given extent of one-fifth, if they pleased. Now, the proposition in the report was to make individual corporators of one-fifth of the capital stock answerable for one-fifth of the loss, thus establishing a principle of equity both in profit and loss. This is made to apply to all incorporations for the purposes of gain, except a certain class which are specified in the proposition, and which are intended to embrace those for the construction of public ways,—rail-roads, turnpikes, plank roads and bridges—and others which may relate to public ways that are under the necessity of taking property for public use. The committee were unable to devise any system by which this power of the government should be exercised for the purpose of assuming the right of eminent domain, except by a direct application to the government itself. To do otherwise would be to delegate a dangerous power. But while they would allow the establishment of incorporations with the privileges he had specified, for railways and turnpikes, with some others, yet the committee would not permit them to proceed and take private property without the sanction of the state itself, exercised by its highest power—its legislature. The committee in respect to that class of incorporations have made another class of privileges, considering the large amount of capital involved, and the manner it affects real estate, and other benefits of which they are productive, making the corporators responsible only for that class of small debts which exist independent of the items which such companies usually get into debt for. They have excepted them from personal liability, for the land purchased or taken, for the use of such companies, because the individuals conveying the same can retain it until they get their pay—and for money borrowed, because incorporations of that kind borrow large sums, and of a class of persons who are suppo-

sed to be men who examine minutely into the prospects of the companies to whom they lend their money—in short that they look out for themselves. They also excepted iron for rail-roads, embracing so large an expenditure of such companies. The committee had deemed it proper to except these items leaving these companies the same responsibilities as others in all other respects—in fact making the corporators personally liable for labor and other small debts. Also as a security to the corporator as well as to the public, the committee had seen fit to recommend the Convention to adopt the principle that all incorporations shall publish at stated periods—as often as once a year—in the paper published in the vicinity of such company, a statement showing the names of the corporators, an appraisal of its property, and the aggregate amount of its liabilities, so that as well the public as the corporator concerned, may know as often as once a year its state and condition. They had also provided that such incorporations shall be limited in the amount of debts they shall contract. And although the amount, to be limited, must necessarily be arbitrary, the committee had come to the conclusion that it should be equal to the whole capital stock and undivided profits. To be more explicit: if an incorporated company has invested \$100,000, or had capital to that amount paid in and invested, the company would be limited to that as the amount of debts it should contract. Debts to the amount of \$100,000 might probably be safely incurred by such a company, inasmuch as it had property and responsibility to that amount. These safeguards were thrown around it, not only the people, but the corporators themselves by this limiting of debts, for an incorporation properly conducted, could not in any event contract debts by which a corporator could become seriously injured in his property. The committee had also provided a limit in point of time, beyond which a claim for debt should not be deferred, without releasing the personal responsibility of the corporator. Every person failing to demand his debt within one year, the committee were of opinion should lose his lien on the corporation. And this seemed to be necessary to enable men to wind up their business, and to know when they were safe after they had sold out. These provisions, though to some they might seem to bear hard on corporators, would be found to be for the safety not less of them than of the public—and such would be the effect of limiting the debts and the periodical publication of the state of their affairs. There had existed for over thirty years a general act of incorporation, under which a large number of incorporations had been formed and successfully prosecuted for years; but under that a different rule prevailed as to the liability of corporators—one which in the judgment of the committee was less equitable—for the corporators were made liable to the amount of their share, be it more or less. They were made to be security for their co-corporators, and the committee were of opinion every one should be responsible for himself only, or for such portion or share as he owns, leaving the insolvency among the corporators to be provided for as other cases of insolvency were. They put it on

the principle of equity, that he who has the advantage of gain for such a share, shall be answerable for the loss of the same share and no more. The committee have not deemed these incorporations an injury to the public, but on the contrary, an essential benefit. They viewed them as very useful institutions for the employment of capital, the development of enterprise, and to carry on the business which requires greater capital than individuals or limited partnerships can conveniently furnish. They had therefore made provision so as to render them safe, and put restraints on their abuse, corresponding with the restraints which nature has imposed on natural persons. It made no difference, in the estimation of the committee, whether business was to be carried on by corporations or others, so long as the business was legitimate, and only legitimate business should be so conducted. But this system would allow men of small means to come in and unite in carrying on business. The principle was democratic; but when these privileges were limited to the few—when special privileges were granted to some and denied to others, it was opposed to every principle of democracy. He moved that the report be committed to the committee of the whole, and printed.

Mr. SANFORD moved the printing of twice the usual number, viz. 1600 copies.

Mr. CHATFIELD inquired the gentleman's object.

Mr. SANFORD said he designed them for the use of members.

Mr. CHATFIELD could see no necessity for the extra number, nor was it prudent to make a discrimination between the report of this and the other committees.

Mr. SHEPARD hoped the motion to print would prevail. There were reasons for printing an extra number of this report that were not applicable to others, with the exception, perhaps, of that made by the committee on banking. The provisions of the constitution regarding incorporations must affect vast interests in the business community, and he wished that community to be in possession of the proposed provisions, for which purpose a larger number than usual was requisite.

Mr. RICHMOND opposed the report of every committee would be important to the people, and there would in each case be an anxiety amongst members to disseminate them among the people. He apprehended, however, that the first intimation the people would have of these reports would be through the newspapers, and therefore the extra number of copies would be unnecessary.

Mr. MURPHY said, from the reading of the report, and on listening to the remarks of the gentleman from Herkimer (Mr. LOOMIS), he had failed to learn whether the personal liability principle was to extend to insurance companies.

Mr. LOOMIS said he had omitted, inadvertently, to speak of insurance companies. It was not intended that personal liability should reach insurance companies, and unless he had made a mistake in copying, it was so expressed.—[Mr. CROOKER: It is so expressed.]—And the reason was this: these insurance companies set forth

to the public a specific fund which they had pledged and applied to that object—and they proposed to persons insuring, that fund as their indemnity; and though these corporations may receive gain from their business, although they might derive emolument from it, yet inasmuch as they specifically set forth a fund for the purposes of insurance, and as all or nearly all their losses are not by fraud or mismanagement, but by accidents or casualties beyond the control of the companies, the committee had thought it not expedient to make them personally responsible.

Mr. PATTERSON thought there should be uniformity in the printing of their reports, and that 800 copies was sufficient; especially as these reports fell into the hands of the reporters for the Press, and were by them circulated through the state, before the copies could be obtained from the printers to the Convention.

Mr. KIRKLAND hoped the Convention would not depart from the salutary rule it had adopted to print 800 copies of all the reports, otherwise discussion might arise on every report, and much time be thus consumed. By to-morrow night he had no doubt the business community of New York would have this report in their newspapers, and hence the official copies would be valueless.

Mr. SIMMONS opposed the printing of the extra number. He wished their practice to conform to their theory. If general legislation, as contradistinguished from special, was to prevail, they ought to conform to it in their own practice.

Mr. RUSSELL differed from gentlemen, who had opposed this motion, believing that these extra copies were very desirable.

Mr. CHATFIELD spoke in opposition to the motion.

Mr. RUSSELL advocated the printing at much length; amongst other reasons assigned, he said if these extra copies were printed, they would have an opportunity of sending them to those of their constituents who had thought much on the subject, by whom they could be returned with marginal notes or suggested amendments.

Mr. STRONG and Mr. WATERBURY addressed a few words to the Convention.

The question was then taken on printing the extra number, and it was negative.

The report was then referred to the committee of the whole, and the usual number ordered to be printed.

THE BUSINESS OF COURTS, &c.

Mr. J. J. TAYLOR, from the committee of five, charged with the duty of making abstracts of the returns from the clerks of courts, &c., submitted a report accompanied with abstracts, from 47 counties in the state, and from all the supreme court clerks.

Mr. CHATFIELD moved the printing of the usual number of the report, and 150 copies of the abstracts—which was agreed to.

THE RESOLUTIONS.

Mr. TAYLOR moved a reconsideration of the vote of yesterday providing for an adjournment to-day until Tuesday. Mr. T. said the object of adjourning to Tuesday, as he understood, was to give members an opportunity to return home

and attend to their business—not merely to adjourn over the 4th. If that were so, the time was too short. It would not enable half the members to go home, and I would therefore operate unfairly. If the resolution was reconsidered, he should move to amend so as to adjourn over from to-day to Monday, the 13th inst.

Mr. PATTERSON had no idea of reconsidering to lengthen the time—he should prefer to shorten it, and merely to adjourn over the 4th. Better do up our business before going home. As it was, according to present appearances, we should not conclude our labors until November.

Mr. W. TAYLOR thought we had better shorten the time than leave it as it was. But some had already left on the faith of the vote yesterday, and it would hardly be fair to entrap them by shortening it. And as it accommodated but a bare majority of the body as it stood, it was but just to extend the time 5 days more, and accommodate all who found it necessary to return home.

Mr. CHATFIELD said he was caught napping when this resolution for a recess passed—the latter part of it only, changing the hour of meeting, attracting his attention. As it was, he should be glad to shorten the time—believing that we should adjourn over one day only. But fearing, if we should reconsider, the time would be lengthened, he preferred to make sure of what was left of next week, and should vote against reconsidering. Indeed, he was not sure but the highest mark of respect we could pay to the 4th, would be to sit on that day, and attend to our business.

Mr. RUSSELL insisted that having agreed to a short recess, expressly to allow members to go home, and that recess only accommodating about half the body—it was unjust to the other half not to extend it, and allow them to return home also. He also urged that this respite was necessary to enable members in this warm season, to endure the fatigue of the long sessions that we must have by and by.

Mr. WILLARD opposed the reconsideration. He urged that the precedent of an adjournment of a fortnight or ten days, would be pernicious—as it would no doubt be followed by legislatures, sitting under the constitution we might frame. He thought we could not be too cautious in setting such a precedent.

Mr. HOFFMAN did not believe that we were in danger of forfeiting the constitutional character of the Convention, or that it would be wasting time or disable us from the discharge of our entire duty to the public, by this adjournment whether for five days or ten days. If, therefore gentlemen residing at a distance would say, as two of them had said, that it would be a convenience to them to extend the recess, he would agree to it most cheerfully. He believed it could be done with perfect safety.

Messrs. BURR and SIMMONS opposed reconsidering, and Messrs. RICHMOND, FLANDERS, DANFORTH and MORRIS advocated it.

The question was here taken, and the Convention reconsidered—ayes 50, noes 45, as follows:

AYES—Messrs. Allen, Ayrault, H. Backus, Bruce, Bull, D. D. Campbell, Chamberlain, Conely, Cook, Crocker, Danforth, Dodd, Flanders, Forsyth, Greene,

Harris, Hoffman, Hunt, A. Huntington, Hutchinson, Klugler, McNeil, Miller, Morris, Murphy, Nelson, N. O'Neil, O'Connor, Pennington, Richmond, Russell, Sanford, Shaw, Sheldon, Shepard, Smith, W. H. Spencer, Stephens, St. W. Strong, Swackhamer, Taggart, J. J. Taylor, W. Taylor, Townsend, Warren, Waterbury, W. Beck, A. Wright, Yawger, the President &c.

NAYS—Messrs. Bascom, Bergen, Bouck, Bowditch, Brantton, Brundage, Burr, R. Campbell, Jr., Chatfield, Clyde, Conely, Dorris, Dubois, Gehard, G. Ham, Hart, Hotchkiss, Jordan, Kemble, Kernan, Kirkland, Mann, Nelson, Nicholas, Parish, Patterson, Perkins, Porter, Powers, Ruggles, St. John, Salisbury, Sears, Haver, Simmons, E. Spencer, Stanton, Tallmadge, Tichill, Van Schoonhoven, Willard, Wood, W. B. Wright, A. W. Young, J. Youngs—45

Mr. W. TAYLOR now moved to amend, so as to provide for an adjournment from to-day until Monday, the 13th inst.

Mr. CHATFIELD moved to amend so as to provide that to-morrow the Convention should adjourn over to Monday.

Mr. RUSSELL suggested that to adopt his amendment would be to take an unfair advantage of those who had left town on the faith of the resolution passed yesterday.

Mr. CHATFIELD replied that those who had gone home without leave, had taken an unfair advantage of the Convention and of their constituents.

Mr. STOW regarded the matter of a recess no longer an open question. It had been determined upon, and the only question now was as to its duration. An equity seemed to require that it should be extended to afford all an opportunity to go home—particularly those living west.

Mr. CHATFIELD replied briefly—when the question was taken on his amendment, and it was lost, ayes 37, noes 55.

The question recurred on Mr. W. TAYLOR'S amendment.

Mr. BURR moved to strike out Monday the 13th, and insert Wednesday the 15th—so that members in returning would not be obliged to travel on Sunday.

This resolution was lost; also a motion by Mr. BASCOM to adjourn to Thursday the 9th inst.

Mr. TAYLOR'S proposition to adjourn to the 13th, was then put and lost, ayes 46, noes 49, as follows:—

AYE—Messrs. Ayrault, H. Backus, Bull, D. D. Campbell, Chamberlain, Conely, Cook, Crocker, Danforth, Dodd, Flanders, Forsyth, Greene, Harris, Hoffman, Hunt, Hutchinson, Kemble, Kueser, McNeil, Miller, Morris, Nelson, N. O'Neil, O'Connor, Pennington, Porter, Russell, Sanford, Shaw, Sheldon, Shepard, Smith, W. H. Spencer, Stephens, St. W. Strong, Taggart, J. J. Taylor, W. Taylor, Townsend, Tullard, Warren, Waterbury, A. Wright, Yawger—46.

NAYS—Messrs. Allen, Bascom, Bergen, Bouck, Bowditch, Brantton, Bruce, Brundage, Burr, R. Campbell, Jr., Chatfield, Clyde, Conely, Dorris, Dubois, Gehard, G. Ham, Hart, Hotchkiss, A. Huntington, Jordan, Kernan, Kirkland, Mann, Murphy, Nelson, Nicholas, Parish, Patterson, Perkins, Porter, Richmond, Ruggles, St. John, Salisbury, Sears, Haver, Simmons, E. Spencer, Stanton, Swackhamer, Tallmadge, Van Schoonhoven, Willard, Wood, W. B. Wright, A. W. Young, J. Youngs, The President—49.

Mr. PERKINS, who asked leave of absence until the 21st inst. Granted.

The original resolution, providing for a recess until Tuesday, was then re-adopted.

The Convention then adjourned to meet again at 10 o'clock on Tuesday morning next.

TUESDAY, JULY 7.

The PRESIDENT, at ten minutes past 10 o'clock, directed the secretary to call the roll. The roll was accordingly called, and a bare quorum answered.

Mr. RUSSELL inquired if the names of the absentees would be entered on the journal?

The PRESIDENT replied in the negative, unless a motion was made for that purpose.

Mr. RUSSELL moved the names of the absentees be entered on the journal. [Cries of "O, no," "I hope not."]

The PRESIDENT requested the gentleman from St. Lawrence to suspend his motion until the Convention arrived at that order of business—motions, &c.

Mr. RUSSELL assented.

The journal of Thursday's proceedings were then read and approved.

The PRESIDENT presented a report from the clerk of the second Chancery Circuit, in answer to a resolution calling for statements respecting infants' estates, and which was referred to the committee on the judiciary.

The PRESIDENT laid before the Convention a communication from Jas. Conner, esq., clerk of the city and county of New York, accompanying a map of the several districts of the 7th ward, thereby perfecting the map of the county. Referred to the first standing committee.

The PRESIDENT also presented a communication from the Comptroller, in relation to the debts and revenues of the State, which was appropriately referred.

PERSONAL LIABILITY.

Mr. COOKE offered the following resolution:

Resolved, That the standing committee on currency and banking be instructed to enquire and report concerning the expediency of a constitutional provision, requiring the legislature to pass a law for the equitable liquidation of the personal liability of banks to their creditors to prevent unnecessary litigation, and delay in the enforcement of such liabilities.

Mr. TOWNSEND inquired what the gentleman intended by the words personal liability of bankers? He supposed there were no cases where they were liable, except those covered by the report of the committee on that subject.

Mr. COOK replied that to make bankers issuing currency responsible personally was one thing—but to provide the means by which this liability should be adjusted, and liquidated within a reasonable time, was another. He would vote to make them personally liable so far as currency was concerned, provided some speedy mode of settlement was provided by law—but he would not vote for it to go into effect under existing laws.

Mr. RUSSELL was happy that the gentleman had called attention to this important subject. The great objection to the principle of personal liability of stockholders, was the impracticability under our laws of effecting a speedy, certain and just settlement of these liabilities. In England, Scotland and other countries, provision had been made for such settlements, which had been found to work well in cases of insolvency. Here the effort to settle such matters had only resulted in a ridiculous bantering of the matter about from court to court, without effecting the desired ob-

ject, and making unpopular a great and just principle. Mr. R. would compel the legislature to provide for the equitable adjustment of these liabilities—and this, in his judgment, would be perfectly easy—by some such mode as was in vogue in England, requiring a registration and sale of the effects of an insolvent corporation—the ascertainment of the deficiency, if any, to meet liabilities—and the share pro rata which each stockholder was bound to make good.

Mr. SIMMONS of course had no objection to the enquiry. The existing law might need amendment. But he could not assent to all the reasons that had been urged for it. We had precisely the law now which the gentleman from St. Lawrence seemed to wish and which the resolution contemplated. When a corporation failed, where the stockholders were personally liable, a bill was filed in Chancery, to compel a *pro rata* contribution, after selling all the effects and applying them *pro tanto*, to make good the deficiency. And thus the matter was all settled up. Mr. S. knew this to be so, for he had done it himself.

Mr. RUSSELL asked if proceedings were stayed against individual stockholders, until after the deficiency had been ascertained and assessed among the stockholders?

Mr. SIMMONS replied that the Chancellor controlled that matter. He knew of a case where two men went on and got judgments against stockholders, before the sale and application of the effects and the Chancellor refused costs. Otherwise too, immense sacrifices must ensue from the litigation that would grow out of allowing an individual stockholder to be sued for the entire amount of a debt; he to turn round and sue others for their contribution. The gentleman from St. Lawrence would find that our predecessors knew something, after all, and had got all this thing beautifully arranged so that such matters could be all easily settled up. In the case he alluded to, the contribution was less than half each one's stock.

Mr. RUSSELL replied that the legal and learned gentleman might be correct; but Mr. R. knew one instance of a gross perversion of law and litigation growing out of such a case.—The Rossie mining company, upon its failure had liabilities to the amount of \$45,000. An immense amount of costs had accumulated, and though the case happened six years ago, the litigation had not been finally settled to this day. Mr. R. knew that a bill was filed by one stockholder before a vice chancellor to compel two or three others to make contribution, and it was thrown out by the vice chancellor. The courts of law decide that a bill be filed in chancery against all the corporators—and that bill was thrown out on the ground that he had no jurisdiction. Now, Mr. R. would save the expense of chancery proceedings. A commission should be appointed, as in cases of bankruptcy—through which stockholders might be compelled to pay in their rateable proportion of the assets to be used in paying debts. Such a law would be vastly beneficial in his opinion—at all events, the enquiry could do no harm.

Mr. CAMBRELENG merely rose to express his concurrence in the propriety of the resolution—as the committee of which he was one, were acting on the subject of general liability. It struck him, from the tenor of this debate, that the difficulty now arose from our judiciary system. It seemed to be a contest between chancery and law. Between the judiciary and bank committees, some remedy for existing evils would no doubt be suggested—for if the legislature had not or would not do its duty, the Convention should instruct them.

Mr. RUGGLES hoped the resolution would pass. The remedy now in these cases was intricate, tedious and difficult to be understood by the most careful attention. There were various liabilities of corporations—sometimes against the directors and in other cases against stockholders—and it was difficult in some instances—the profession had found it so, to draw a bill in chancery to meet the particular case precisely. The plan proposed by the gentleman from St. Lawrence was the correct one. A commission might be appointed with full power to investigate all the facts and decide on every matter in relation to an insolvent corporation—and the facts being ascertained on which the bill was based, it could then be safely drawn. Mr. R. thought a system might be framed which would be safe, convenient and speedy, by which stockholders might find out the situation of companies in which they were interested, and creditors could have their claims settled without expensive litigation.

The resolution was adopted.

Mr. WHITE offered the following resolution:

LEGISLATIVE SESSIONS.

Resolved—That the Comptroller be requested to report to the Convention the duration of each session of the legislature for the years 1841, '2, '3, '4 and '5.

Mr. WORDEN doubted if the Comptroller knew any thing about it.

Mr. CAMBRELENG suggested that the Secretary of State should be substituted for the Comptroller.

Mr. WHITE assented to the suggested amendment.

Mr. TOWNSEND suggested an amendment, to call for the amount of compensation that was paid to those legislatures respectively.

Mr. WHITE assented, and the resolution as amended was agreed to.

ABSENT MEMBERS.

Leave of absence was granted to Mr. SHAW for 4 days, Mr. St. JOHN for 5 days, Mr. ANGEL until Monday next, Mr. HYDE for 10 days and Mr. FORSYTH for 10 days.

Mr. WORDEN, while these motions were being made, had no objection to them, but the proceeding was, to say the least, unusual, and an unnecessary consumption of the time of the Convention. Why ask leave of absence, unless the Convention has power to punish its members for being absent? Now he knew of no such power being possessed by the Convention. If gentlemen were disposed to absent themselves with or without leave, the Convention could not interpose, and it was therefore an unnecessary waste of time to offer and act upon these resolutions and to record them on the jour-

nal. He doubted if they could even call the House, in the parliamentary mode of proceeding.

The PRESIDENT announced the unfinished business to be next in order.

Mr. WORDEN said it seemed to him in this very thin state of the house it was hardly discreet to go into committee of the whole, and pass any resolution or take any vote to-day, for there are enough away probably, with the aid of gentlemen who are here, to move a reconsideration at any time, and thus consume much time unnecessarily. It struck him they should not promote the business but the rather retard it by giving occasion for motions of reconsideration; they had therefore better adjourn until to-morrow.

Mr. CROOKER remarked that there were about 70 members present, and he apprehended they would not have more for a week.

Mr. WORDEN replied that he would adjourn for a week then. He found that many of those gentlemen who made eloquent speeches against any adjournment the other day, were now absent.

Mr. STRONG desired the gentleman from Ontario to withdraw his motion, to enable him to ask for leave of absence for a gentleman.

Mr. WORDEN assented.

Mr. STRONG then asked for leave of absence for Mr. CHATFIELD for two days. [Laughter.] He was sure the gentleman from Otsego must be sick, or he would be present. [Renewed laughter.]

Leave was granted unanimously.

Mr. WORDEN had no desire to press his motion, if gentlemen were of opinion they could safely proceed with business. He then renewed his motion.

Mr. KENNEDY called for the yeas and nays. He desired to have the yeas and nays to-day on some question, and he thought this was as favorable an occasion as any other.

The yeas and nays were ordered, and resulted thus, yeas 7, nays 72, as follows:

AYES—Messrs. Hoffman, Kingsley, Rhoades, Shaver, Simmoas, Townsend, Worden—7.

NOES—Messrs. Allen, Archer, Ayrault, F. F. Backus, Baker, Bascom, Bergen, Bowdish, Brayton, Brown, Bruce, Brundage, Bull, Burr, Cambreleng, R. Campbell, jr., Clyde, Cook, Crooker, Cuddeback, Danforth, Dodd, Dorlon, Dubois, Flanders, Gebhard, Greene, Hutchkiss, Hunt, E. Huntington, Kennedy, Kernan, Loomis, Mann, McNeil, Maxwell, Morris, Nellis, Nicholas, Nicholl, O'Connor, Parish, Patterson, Penniman, Porter, Riker, Ruggles, Russell, Salisbury, Sanford, E. Spencer, W. H. Spencer, Stanton, Strong, W. Taylor, Tuthill, White, Willard, Witbeck, Wood, W. B. Wright, A. W. Young, the President—72.

So the Convention refused to adjourn.

Mr. WORDEN said his object was the same as that of the gentleman from New-York, (Mr. KENNEDY.) It was now accomplished, and they had now an opportunity to compare the list with the list of those very scrupulous gentlemen who spoke here so eloquently the other day in opposition to the adjournment. He now moved that the Convention go into committee of the whole on the article which had been previously under consideration.

EXECUTIVE DEPARTMENT.

The Convention resolved itself into committee of the whole on the report of Mr. MORRIS on the powers and duties of the Executive, Mr

PATTERSON in the chair, in the absence of Mr. CHATFIELD.

The CHAIRMAN stated the question to be on the motion of Mr. RUSSELL to strike out the second section and insert a substitute making every qualified elector eligible to the office of Governor.

Mr. HUNT wished to correct a serious misapprehension which existed in many quarters, of the bearing of his argument at an early stage of this discussion. I contended (said he) that we had no right to restrict the free choice of the people when acting in their sovereign capacity, and that they cannot do so themselves without derogating from their sovereignty. Many, I find, think we cannot recognize this principle without destroying all authority over the citizen, and placing him above the law. This misapprehension comes from confounding the rights and powers of the people as an organized whole, with the rights and powers of the persons constituting this whole, when regarded in their individual capacity. This distinction should be always kept in sight. The people, as a whole, are the sovereign—the persons constituting the sovereignty are, considered individually, the subjects. The whole, being superior to the parts, can give laws to the parts, and give laws to its servants and deputies also—but it cannot give laws to itself without committing an absurdity; for law is the voice of a superior to an inferior, not of an equal to an equal. Equals bind themselves by treaties, not by laws—and no power can make a treaty with itself. So whether you regard the restrictions upon the sovereign power of the State contained in section 2. in the light of a contract or a law, they are invalid and absurd in either case. Whenever the people might choose to disregard them they could do so, and no satisfaction could be obtained from any quarter.

I should be guilty of disrespect were I not to notice at least some of the able arguments that have been offered by gentlemen who dissent from the views I expressed. Perhaps the most effective of these arguments was that of my esteemed colleague, [Mr. NICHOL.] I understood him to say, in substance, that the principal design of a constitution was, to restrain the people from exercising undue powers, and especially from plundering or oppressing the minority;—in fact, that the restriction of the power of the people (not their delegates) within due bounds, was one of the great objects we were chosen to accomplish. But I must have misunderstood him. Mr. Jefferson, to whose general opinions upon government my colleague will subscribe quite as fully as I do, declares that "governments are republican only in proportion as they embody the will of the people and execute it." Ch. Justice Taney says (I quote from memory) "that the sovereignty of the people can never be limited or stopped; for if this could be done in a single instance, or for a single day, it might be done in every instance, and for ever." My colleague's remarks would have much force if applied to the federal constitution, which is in most respects a permanent treaty between sovereign States, but none when applied to the constitution of an independent State.

The gentleman from Chautauque [Mr. MARVIN] made a very skillful use of the doctrine that

governments derive their just powers from the consent of the governed. Suppose the governed of this State should at some future time not only consent but desire to be governed by a man under thirty years of age, would he carry out this doctrine by forcing an older man upon them against their wishes?

The gentleman from Allegany [Mr. ANGEL] considered that it would be no more derogatory to the people to prohibit them from electing a Governor under thirty, than it is to say no person shall have power to bind himself by any contract while under twenty-one. If he will show me that the people as a whole are not sovereign, or that individuals are sovereign, I will admit him to be correct. Until he does so, I must deny that there is any analogy between the two cases. Any man of full age may delegate almost any power he has to a deputy or agent of 15 if he chooses. Would he deny to the sovereign a discretion which every subject of mature age may fully exercise?

But I do not feel called on to review or to answer all the arguments advanced against the doctrine I advocate. I leave that to abler men. My chief motive in trespassing upon the committee at this time is, as already intimated, to show that the doctrine of the sovereignty of the people, and of the inviolability of that sovereignty, by no means implies that individual citizens are above the law, or that the sovereign is absolute and lawless. My notions concerning the rights and powers of government are briefly these:—The only perfect government known among men, is *self-government*. God has written certain laws upon the heart of each individual, and requires him to *govern himself* by them. But some are too foolish to clearly understand these laws, and thousands are too wicked to obey them. Thousands will not govern themselves; and they must therefore submit to a greatly inferior government from others. The establishment of such less perfect government is fully justified, and can only be justified, by the plea of necessity. The right to institute artificial governments is incidental to the right of self-preservation. They can therefore claim no powers that are not strictly subordinate and subservient to this right. They cannot lawfully meddle with the man who will and wisely governs himself, unless it be to claim his aid and place him in a post of honor. If they impose unnecessary restraints—if they trample upon private rights—if they are false to the public interests—then they become transformed into tyrannies. They are no longer governments, but subjects requiring government for themselves; and it is the duty of all honest men to unite for their correction, or if need be, for their overthrow. But while they exist and confine themselves to their legitimate duties, they should be respected, and all their attributes, especially the vital attribute of sovereignty, should be held sacred. The grand objection to the section under consideration is, that it seeks to restrict the sovereignty in its *legitimate* sphere of action—a course not only wrong but absurd; for if the power restricting be not greater than the power restricted, the restriction amounts to nothing—and if it be greater, then the power restricted is no longer sovereign.

Mr. BASCOM said he did not ask the committee to delay action on his own account, tho' he had but just reached town after riding all night. He intended to reply to the positions taken by two or three gentlemen, neither of whom were now in their seats—and if he went on, it might perhaps appear discourteous to them to reply in their absence. But if such was the pleasure of the committee, he would continue his remarks which were suspended by the adjournment on Thursday—presuming that no other member desired to speak to so thin a house. (No objection being made,) Mr. B. went on to speak of the restrictions in the section under consideration. They were originally that the Governor should be a native, 30 years of age, and a resident in the state for five years. These were substantial restrictions, and perhaps required particular consideration. These were the points on which gentlemen commented who took ground for these restrictions. As to this limitation of age, how, he asked, did gentlemen hope to enforce obedience to it?

Mr. MORRIS suggested that the restrictions as to age and nativity had been struck out.

Mr. BASCOM:—True—but the Chair decided that the whole subject was open, and the gentlemen he proposed to answer took that latitude.

The CHAIR replied that the present occupant of the chair dissented from that decision—and thought the whole subject was not under discussion. The question was on striking out all that remained of the section, and inserting a clause, making every qualified elector eligible.

Mr. BASCOM said he should say very little about that, but a good deal about something else.

Mr. CAMBRELING suggested that the subject of a restriction of any description involved every other limitation—and that the whole subject was open.

Mr. BASCOM expressed his obligations to the gentleman for the suggestion.

Mr. RUSSELL remarked that five or six gentlemen had discussed the whole subject on this motion.

The CHAIR would not interrupt the gentleman, unless others did.

Mr. BASCOM went on to insist that you could not enforce this qualification of age, if it was left in the constitution. Suppose a majority of the people should inadvertently elect a governor who was under 30. Would the majority relinquish their favorite man merely because he should be found to be in fact a little under 30? If we should come to this, we should find it necessary to submit to an infraction of the constitution, or anarchy must ensue. As to the qualification of residence, in the form in which it stood here, it was objectionable because such residence was not required to be next preceding the election. It might occur, as it did sometimes, that a man entirely qualified, might have resided out of the state for some time. Such a man must under this provision, perform six months' quarantine, to get foreign influences out of him, before he could be a candidate for governor. We to be sure had abundant material for Executives at home—but the man that the people might most desire, as best qualified, might not be eligible. As to the word native,

he regarded it as settled that that must come out. And but for the suggestions thrown out by the gentlemen from Dutchess and Essex (Messrs. TALLMADGE and SIMMONS) in regard to the reasons why it was left out of the constitution of 1777, and inserted in that of 1821, he should not have thought it necessary to have said a word on the subject. If there were any one thing that should induce us to be firm in excluding this word, it was the doctrine to which allusion had been so often made of expatriation—the doctrine that a natural born British subject could not throw off his allegiance.—A large portion of our foreign population were from that government, and the doctrine should be met and repelled on every proper occasion.—The way that question was met by the Convention of 1821, seemed to him just about as extraordinary, and as ill calculated to effect the object, as the mode of carrying on hostilities attributed to the Dutch by the veritable historian Diedrick Knickerbocker. That was to collect together every thing they had purchased and paid for, of the nation with whom they were at war, and burn them in one huge pile. This was about as singular a mode of carrying on hostilities against the doctrine of expatriation as that of our illustrious ancestors. But Mr. B. rose mainly to enter his dissent to some other positions taken by the advocates of these restrictions. The gentleman from Columbia (Mr. JORDAN) had it that we came here with restricted duties. This doctrine of restrictions was to be begun on ourselves. We were to begin it on ourselves.—The position was that we were to do what the people sent us here to do. That would be found to be a rule of difficult application. We should find, when we came to compare views on this question of what we were sent here to do, that we had little to do. One might be sent here to effect one reform—another, another. Mr. B. doubted whether we should find that the masses of the people had decided in favor of any single proposition we might debate here. Mr. B. knew there were complaints about the judiciary. Yet he knew that the people were far from being anxious as to the propriety of abolishing the present system and substituting another. There had been complaints also about State debt, and the action of the legislature on that subject—but he doubted whether a majority of the people had so settled down on the matter as to require at our hands restrictions on the legislature in that respect. He knew there were a great many subjects of local complaint, that it could not be insisted that a majority of the people had sent us here to reform. Take, for instance the question that had agitated the counties in this neighborhood—the very question which the gentleman from Columbia would urge here as calling for a reform—and would the gentleman say that a majority of the people had sent us here to consider that question? We came here to listen to and consider the various subjects that were matters of complaint in the various localities in the State, though urged by a small portion of the people of the State, and to decide whether they were well founded, and whether the propositions designed to meet these complaints were intrinsically just and right. Mr. B. had supposed all would concede that our duties

were general—that they required of us a general examination of every section of the constitution. If not, why did we direct the appointment of 18 or 20 committees, giving them in charge every branch of the government and every section of the constitution? Were we to be told that we were confined to such a view of the subject as the people had decided we should go to work upon? But the gentleman from Columbia would restrict us still further. We were to make nothing new, according to his view of the subject. He represented us as being here with brushes and paint and putty and tinkering tools, to stop up cracks and brush over deformities, leaving things essentially as they are now.—Mr. B. came here with no such instructions or limitations. He had been directed to stop at no certain point, in the way of reform, but to go forward in that work in the direction and to the extent which should appear to be necessary; and he should do this with the more fearlessness under the evident anxiety of certain gentlemen to arrest his course. The old constitution had caused dissatisfaction. And whilst some were finding fault with one section and another with another—that instrument was held up for our veneration! One gentleman wanted to sanctify one section and another another—until we should find the whole instrument too sacred for our touch! And the idea that such is written in the constitution of 1821, seemed to be quite conclusive against any change! They seemed to work with the constitution of 1821 as the Mahomedan did with a hog, when they had an inclination for bacon. It was forbidden food with them, for the curse of the Prophet rested on the whole animal. And yet one of the faithful would sanctify one portion of the animal and another another, as not coming within the intention of the Prophet. ‘Surely,’ said one, ‘the good Prophet did not mean to proscribe the head,’ and ‘surely not the tail,’ and so on, until by piecemeal they absolved the whole from the interdict, from one end to the other. We might as well adjourn and go home, and tell the people that the constitution is all right and that their complaints are ill founded. Mr. B. wanted gentlemen to go in detail into the beauties of this old constitution, when they insisted that we should not touch it. He wanted them to tell him whether it was the judiciary system that claimed their admiration—whether the substitute which it provided for the old council of appointment, was one of those beauties—for which they claimed our adoration—or whether the restriction on the elective franchise was one of these beauties? Would these gentlemen tell him whether the appointing power was lodged when it should be? He invited them to look at the unjust imposition of taxes provided for in that instrument. One of them was the tax on the consumer of an article of necessity. His constituents when they went to a salt manufacturer and paid a shilling a bushel for the article, must turn round and pay the state another shilling for carrying it away. The truth was, very few of the innovations made by the Convention of 1821, were satisfactory to the people. Mr. B. pointed to the restrictions placed by the Convention of 1821 upon the right of suffrage—the qualification especially of having done military duty

during the year preceding the election—and he alluded to the fact that this qualification drove from the polls some of the revolutionary veterans who were then too infirm for military trainings or labor on the highways. This, he said, was not the liberal extension of the franchise which the people expected—and through the action of the legislature, they left nothing of these qualifications save the beautiful provision of that Convention which based political rights on shades of complexion. Again, acting on the idea that the further certain power was removed from the people the better, the Convention of ’21 made provision that every justice of the peace in the state should be of the same political caste with the Governor himself. That provision also the people abrogated. As to the judiciary, a very good system administered by able and talented officers, had to give place, under the edict of the convention of 1821, to a system not as good, and to incumbents no better. These restrictions on the elective franchise, and others of which the instrument was full, had rested under popular condemnation almost from the time of its adoption. And Mr. B. was not one of those who with paint brush and putty knives were ready to stop up cracks and gloss over deformities.—He came here with a disposition to unite with others in an honest attempt to make a constitution founded on correct and just principles. He would have restrictions in it—but they must be restrictions on the delegate powers rather than on the people themselves. One great object with us should be to secure a good judiciary system, by which the controversies which were constantly arising might be settled with convenience, dispatch, and satisfaction to parties. Another should be to put salutary restrictions on the power of the legislature—not however that we could make a bed or pillow on which the people could rest in ease and security, without watching their agents, but we were bound to secure the public, with ordinary vigilance on their part, against the excesses of legislation. We were bound also to perfect a system of common school education, which should challenge a parallel in the world, and which should put at rest the imputation that Monarchies had better schools than Republics. We were bound also to adopt some principle by which our internal improvements might be safely and properly extended, until their blessing should reach every corner of the state—the whole so managed that political parasites should not pocket half the benefit of the system. If we went forward and provided such securities as experience had shown to be necessary to sustain popular institutions in their vigor and efficiency, we should find no need of these restrictions on the popular action. Apply them to the Governor, and we must go through the list—making them applicable to all other officers who we may make elective. Better leave the qualifications of their agents to the direct judgment and discrimination of the people—and proceed upon the assumption that they will be as capable of judging ten years or more hence, of the proper age and qualifications of their officers, as we can be. Mr. B. closed with some remarks in support of his former declaration that the doctrine of expatriation was par of the common law of England, and quoted

proclamation of the Prince Regent in 1844, in which it was asserted to be such—calling attention to the inconsistency and impropriety of adopting in our constitution, without reservation, as was done in our former constitutions, the common law of England.

Mr. SIMMONS desired permission to explain, to prevent any misunderstanding. He intended to affirm that the subject of perpetual allegiance was the doctrine of the whole world so far as we know—though it was growing weaker and weaker, and becoming obsolete in practice, it would seem, in every nation. That it was the now existing law of every nation of Europe, there could be no doubt. He found in the code Napoleon it was laid down in very strong terms, and we know it has always been the doctrine of England, and of the ancient world—the Romans and the Greeks. Every gentleman acquainted with the classics would agree with him as to the existence of the doctrine, that no man can put off his country. Now, however, there seemed to be some difficulty in settling the question. The doctrine might be permitted to stand, and yet they might consent to take the risk of electing their Governor, even if he should happen to be placed in that condition in which he would owe an actual allegiance to his adopted country, and an obsolete and antiquated one to another. There were two sides to every question, and he would put it to gentlemen if, in a country like ours, where we always govern by party spirit, we should get into a war with Great Britain, and there should be a strong party against the war, and many should remove into Canada, and there get naturalized and be taken in arms, would there not be many that would like to treat them as traitors to our own country? Many men would be unwilling to give up the right in their own behalf. And yet he thought it ought to be put down, and that the tendency of modern civilization was to put it down. He was therefore willing to elect a naturalized person, without regard to that double allegiance.—But one word more as he was up in addition to what he had said before. Let it be remembered that the question of natural born and naturalized citizen is disposed of—that we have not now any question about that. The question is now then just as if there was no other nation in existence but one, and no citizen who was not natural born in it. The question then is, what age is proper at which a person shall be made Governor, or hold any other important state office? He would simply suggest, as he did the other day, that we do find it important in many things to fix a period regulating the age at which a person has competent discretion to act. Even the amendment of the gentleman from St. Lawrence (Mr. RUSSELL) establishes an age by implication—the age of 21; and the question is whether for the purpose of the great public interests here involved, it should be 21, 25, or 30. No gentleman would abolish 21 as the age for legal competency. The principle then was given up, that there should be no limit of age at all, and the question simply was what in this case that age should be. Gentlemen were aware that ages have been fixed upon by law for different purposes. For the purposes of committing crime the law says that a person under seven years of

age is incompetent. Between the age of seven and fourteen, the law presumes the person to be incompetent, but allows competency to be proved. Between the ages of fourteen and twenty-one, the law presumes competency, but allows the incompetency to be shown. And from the age of sixteen, the laws allow a person to make the most important contract which can be made—the contract of marriage. So they found that ages were fixed by law for different purposes, according to the difference and importance of the office to be performed.—He believed in some of the New-England states a female was competent to pass property at the age of eighteen. He knew it was so in Vermont. But in this state we put it at twenty-one. A very few years ago a majority of the European nations required twenty-five to be the period, which we limit at twenty-one, of competency to do certain acts. That was the old law of France in Bonaparte's time; and now the question is whether, inasmuch as some period must be fixed upon for the performance of political duties, we will take the limits fixed in other matters—for voters for instance,—or raise the ages so as to comport with the elevated duties, more enlarged views, and sober thought, that ought to be the qualifications of state officers. It appeared to him it would be discreet to have a little more age attached to persons holding state offices, and it seemed to be conceded on this floor that the people would not elect anybody under 30 years. If, then, as a general rule, it had been seen to be fit and proper, it would be no less if the rule were declared in the constitution. The doctrine of want of power was hardly to be endured. And here he would take occasion to suggest to those gentlemen who were opposed to the limit of age, if they were not after all on the aristocratic side of the question. At what period do our young men in the country become capable of taking the field as competitors for state offices? It must be remembered that most of our distinguished men were self-made—men who had had to go to work like Roger Sherman and Col. Young, who with lamp and book had made themselves learned and fit for any station. And what age was it at which such men were capable of taking the field? Was it till about 30? But if they opened the door—if they threw it open wide—were they not opening it to the rich, and giving a monopoly to those who have been able to pass through college, get Dr. Nott's diploma, travel through Europe, and come back a De Witt Clinton, or Governor Tompkins No. 3? Now, he wished it left to our middle classes, as well as to the high. He wished gentlemen would think on this subject, for it would bear reflection.

Mr. WORDEN asked what the gentleman from Essex meant by middle classes under our institutions?

Mr. SIMMONS replied the great mass, that work and sweat, and get their living in that way—who plow and toil and live on pork and beans as distinguished both from those above and below them.

Mr. WORDEN enquired if the gentleman from Essex put any legally instituted class above them?

Mr. SIMMONS said not a legal, but self insti-

tuted class. He added that this was a subject on which he would not legislate. When a Theatre takes fire all cannot rush out at once; and the elevation of the human family must be according to God's nature: instead of all scrambling for the door, it must be left free to voluntary effort; he desired the door left open to the sons of our farmers, instead of limiting it to the rich men's sons who became travelled and learned at an earlier period than the poor and self-taught could possibly be. But as to the power of the people to regulate themselves, he wished to throw out one remark and then he should have done. He held that the people had no right to act but by law; any other action was a usurpation and a tyranny. But that was not all. Let gentlemen who had reflected deeply on this subject take his suggestion, and he would then ask them whether they ever read of a people from the commencement of the world to this time, where the majority were not interested in upholding the laws? It had been gravely argued on this floor that the majority ought to go by law to secure the rights of the minori-

ty; but he asserted that it was to secure the rights of the majority. Go where law does not prevail, and a minority rules. Minorities rule in proportion to where the law fails. Go back to the darkest ages that ever prevailed, and there it would be found that one man governed. Gentlemen would find that where law and justice were recognized, majorities governed. It was for majorities he wanted law.

The CHAIRMAN being about to put the question on the amendment,

Mr. STRONG rose and said there were many members absent, who perhaps would like to say a word upon this subject, and to record their votes also. To give them an opportunity to do so, he would move that the committee now rise and report progress and ask leave to sit again.

The motion was carried on a division, by a vote of 46 to 22, and leave granted accordingly.

Mr. RUSSELL then moved that the Convention adjourn, which was carried by a vote of 52 to 14.

And the Convention then adjourned till tomorrow morning at 10 o'clock

WEDNESDAY, JULY 8.

Prayer by the Rev. Dr. I. N. CAMPBELL.

LEGISLATIVE PER DIEM AND MILEAGE.

Mr. WHITE offered the following, which was adopted:—

Resolved, That the Comptroller report to the Convention the amount of the per diem pay and the amount of the travelling fees drawn from the treasury by the members of the legislature during the respective sessions of the years 1841-2-3-4-5.

EXECUTIVE DEPARTMENT.

On the motion of Mr. WARD, the Convention resolved itself into committee of the whole on the report of Mr. MORRIS, from committee No. five, on the powers, duties, &c., of the Governor and Lieut. Governor, Mr. CHATFIELD in the chair.

The CHAIRMAN stated the pending question to be on the substitute of the gentleman from St. Lawrence for the second section.

Mr. STRONG said it had become very fashionable to make excuses for taking up the time of the Convention on the subject which has been discussed here for a number of days. He noticed that gentlemen who, having made two or three speeches, on rising again, made excuses for taking up time, and then straightway proceeded to make long speeches. Now he had no excuses to make. He claimed it as a right to state his views without making any excuses whatever. When this debate commenced, he was at a loss to know what course it was to take. He was at loss to discover what object was to be accomplished. Here gentlemen speak of it as a matter of minor consideration, and yet continue the debate day after day, and urge it as though this was to be a test question as to what restrictions should be in the constitution. The gentleman from Chautauque (Mr. PATTERSON,) said he did not understand how he could differ so widely from his colleague (Mr. MARVIN), representing the same people. And yet there

might be a reason why those gentlemen should differ. One might have a view or a squinting towards Governor-making, which the other had not—and he apprehended that a greater part—a very important part of this debate—was aimed at Governor-making, rather than the benefit of the dear people. When he heard gentlemen talk so often and so strenuously of the "dear people," he always suspected that there was something behind it partaking of the characteristics of stump oratory during an exciting election, when orators talked long and loud and eloquently of the "dear people"—the object being to secure their votes, on obtaining which they have done with the "dear people" for the time being. The gentleman from Ontario (Mr. WARDEN,) seemed similarly situated. He differed from his colleague; and the same reason might exist for the difference in that county. Mr. S. believed that county had never had a governor, though it had once or twice a candidate, and perhaps gentlemen might think it about time to give that important office some attention for the next election. Perhaps the gentleman from Chautauque too (Mr. PATTERSON,) thought it was time it went farther west, and that it was necessary he should put in his claim in season. All this might account for the wide difference, which the gentleman from Chautauque spoke of, between gentlemen representing the same sober thinking people.

He had a few words to say in relation to what had fallen from the gentleman from Seneca, (Mr. BASCOM) yesterday. That gentleman started, after making a number of excuses as to his having travelled all night, with the position that the present age is wiser than the former age. He should have added, perhaps, in the language of the old saying, "every generation grows wiser." Mr. S. was satisfied they grew weaker.—He could not agree with the gentleman from Se-

neca that all wisdom, or a greater amount of it, was congregated in this Convention that ever in any body before. He believed that heretofore they had had wise, patriotic and experienced men, who could compare with the present age. He did not believe that men were so very wise at this time, that none before them had been so wise. Nor could he assent to the position taken by the gentleman, that if the restrictions in the report were retained they could not be enforced. Now, what did the gentleman mean? Did he mean to say that the people were not a law abiding people? Did he mean to say that whatever restrictions the people might now see fit to place around themselves, they would turn round and violate those restrictions? Why, restrictions had remained for 25 years, and have the people ever violated them, or shown a disposition to violate them? Was it not saying to the people, "you are not capable to carry out the agreement you have subscribed, and the regulations you have established for yourselves." He had a better opinion of the people. He was satisfied they were too virtuous, knowingly to violate any agreement they might make by a constitution, for after all it was nothing more than an agreement. But the gentleman attacked the Convention of 1821, as unwise and too restrictive. Now, he supposed that every law should be adopted by public opinion. What was a good law 25 years ago and would satisfy the people then, might not be a proper law and satisfy the people, now.— And when the constitution, which the gentleman now considered as unwise and restrictive, was adopted, was it not considered by the people?— The Convention by which it was formed was constituted as this was, and the people afterwards passed their solemn judgment on that article.— Now, if the people had deemed it unwise and too restrictive, would they have adopted it? No; but not thinking it unwise or restrictive, they were willing to be bound by its provisions; they entered into the agreement with their fellow-citizens to abide its consequences. The gentleman proceeded further, and said another object was "to put salutary restrictions on the power of the legislature—not however, that we could make a bed or pillow on which the people could rest in ease and security without watching their agents, but we were bound to secure the public, with ordinary vigilance on their part, against the excesses of legislation." Now, how does this agree with what he gentleman had said before? He says that we are not to make a constitution as a bed on which the people could rest in ease and security, without watching the agents, while in the same breath he advocated, and he had done it in two speeches, the throwing open the door without any restrictions, for the Governor, who must be understood to be the representative of the whole state. He could not reconcile these positions; he could not make them come together and be reconciled with plain common sense, for no one would deny that the Governor was the representative of the people and acted for the whole state, and therefore there should be proper restrictions thrown around the office to secure such a man for it as would be a proper representative of the Empire State.— But the gentleman gave utterance to another sentiment on which he desired to make a re-

mark. The gentleman had said that to insist upon the petty qualifications for the office of governor, as to whether he should be a little over or a little under 30 years of age, was not what the people required; and that by grasping after these minor qualifications we should endanger others that might be offered. The gentleman called the restrictions on the governor minor considerations, and yet on these "minor considerations" they had been debating a week. If it was a minor consideration, why did gentlemen day after day contend for that provision as though it were a test question on which hung all that was to come after it? The gentleman, too, strongly urged that the people were dissatisfied with that provision of the constitution of 1821, and that they sought through the proper channel, the legislature, to obtain an amendment, and they succeeded in obtaining an amendment of those portions which were odious to them.— This was all true. As time passed on, the people called for an extension of the elective franchise and they obtained it; there was a property qualification which they had taken out; and to this the gentleman adverted as a settlement of the point that the people were dissatisfied with that constitution, and all the restrictions it contained. But the gentleman had avoided one very important fact—that the people, with the whole subject before them, while they struck out the property qualification, manifested no dissatisfaction with that as to the age, otherwise they would have stricken out that too. But nothing had been heard of that from one end of the state to the other. It was not the subject of complaint, nor had the people asked for any alteration in that respect. But there were those who went further than the gentleman from Seneca—who went to strike out the whole section and leave it open entirely. And what might the case be under such circumstances? Why a lad of eighteen would be eligible for governor: there would be nothing in the constitution to prevent it. Throw open the door as was indicated, and a person would be eligible to be governor who had not even a right to vote for governor, for it was not to be supposed that the qualification of electors was to be changed.— And he would ask if this was true republican doctrine? If they were to throw open the office of Governor because it was democratic, why not strike out all limit as to the age of voters? Why not carry the principle further, and allow the people to say for themselves how many representatives they should have in the legislature? If it were true that the people could do no wrong, or if they did wrong that they would soon correct the error, why not leave them to determine the number of their representatives, and if they sent too many or not enough, they would of course correct the error the next time? Leave to the people the selection of the proper number of judges, and sheriffs, and other officers, and place no restrictions around them, for gentlemen said the people would take good care of all these matters. It was however said by others that the people, provided this restriction be not retained, will never elect a man under 30 years of age. What good reason was there then to strike it out? He could see none. To say that such a thing will never happen, was no proof

that it would not. It had not happened, because we had a restriction for 25 years, which the people have never violated, nor complained of. Such a thing had happened in a sister state. The state of Michigan elected a young man, and she has to rue the day that she did it. She had thrown the black veil of dishonor over her broad extent, the beginning of which was the election of a young man to be her representative, and to take care of her welfare. If she had had some restriction, she might have been saved from dishonor and disgrace.

Mr. DANFORTH desired to enquire what the pending question was. He put the question because he wished to ascertain if to discuss and sustain that, it was necessary to disturb the repose of the dead. He had felt deeply on this subject, during the frequent allusions which had been made to one who in life stood high and elevated. He regretted exceedingly that it was necessary on this floor to make any reference to those who had been long since numbered with the dead.

The CHAIRMAN supposed that it was a matter of taste which a speaker must settle for himself.

Mr. STRONG said perhaps he ought to be obliged to the gentleman for his moral lecture.—He had made the allusion referred to, not because he desired to disturb the repose of the dead, but because it afforded an apt illustration of the subject under discussion. It exhibited the fact that such a thing had happened in a sister state and might happen in this. That was the reason why he had referred to it. But to proceed. The doctrine, which had its advocates there, that placing this restriction in the constitution was restrictive of the people, in his humble judgment was not tenable. The duty of the Convention was to form an outline of a constitution which shall govern the people, but not to restrict the people. While on this point he would say a few words as to the power of the Convention. He saw that gentlemen on the other side were constantly harping on the assumed position that gentlemen who acted with him advocated the doctrine that the Convention had no power to amend those sections of the constitution which were held to be right in themselves. Now he had heard no one advocate such a doctrine. He had said before that he believed the Convention had full power to make an entirely new constitution if it should please them to do so; and therefore he did not wish to be understood as advocating the doctrine that they had not power to amend the old one or to make an entirely new one at their pleasure. But as to the restriction of the people, of which so much had been said, he would ask how it was done? The constitution which the Convention may adopt, must be submitted to the people, who were to pass upon it. If the people disliked it, they would reject it; and if they liked it they would accept it. It was after all then an act of the people, and not of the Convention; and if the people accepted these restrictions, they bound themselves by their own act. So then he must conclude that when gentlemen talked about the Convention restricting the people, they must have the idea that all power was vested in the Convention,

and that the people have nothing to do with it. But it is not so. The people themselves have to accept or reject the constitution. It will be their act, their will, and their restriction, whenever it shall be made. But if there shall be no restriction, to prevent a young man who is unfit for the office for want of experience, and an acquaintance with men and things, being elected, it would be impossible to say what might be the consequence. If there had been no restriction when Gen. Jackson—and here he spoke with reverence, for he was again speaking of the dead—was defeated by Messrs. Clay and Adams, and he had come here and lived long enough to be an elector, did they believe that he could not have been elected governor of this state? [A voice, He would have made a good governor, "first-rate."] That he did not dispute, for that had never been tried. But he asked if in such a state of things there would not be something to apprehend? He would ask gentlemen if they would like to have a person elected governor here who had been raised in the southern states, and grown up with an attachment to southern institutions? He asked if men could get rid of all the attachments of their early days in a year and of the impressions of their childhood, which were more abiding than any formed at a later period of life? He apprehended not, however honest a man might be; and besides it would require more than a one year's residence to become acquainted with our institutions and local interests. Again, suppose Gen. Taylor should come into our state, and reside long enough to become an elector, with the present excitement which he had seemed to create, if one of the parties should see fit to nominate him, he asked could his election be defeated? Would he not go into the executive chair with a rush? And yet the same objection would exist against him as against others, that he wanted an acquaintance with the interests of our state and its institutions. Mr. S. did not mean by this that he was President-making, [laughter,] but he was not sure that Gen. Taylor would not be our next President. [Renewed laughter.] But to return; how was it with the Roman empire and other ancient republics? Had they any restrictions? Most certainly they had. A man had to be of a certain age to be a General, or a Tribune, or to hold other high offices. Mature age and experience were, however, qualifications. And how did those ancient republics lose their liberties? Was it by adhering to those guards and restrictions? No; on the contrary one of the great causes of the downfall of the Roman republic was the election of a young man to a high office,—a young man who trampled under foot the checks and safeguards which had been placed around them.—And if that had happened in other republics, might it not happen here, if they should open the government to an ambitious young man who might see fit to bid for office? At what age were men most ambitious? Was it after 30 years of age, or before that time of life? To him it seemed, judging from what little experience he had had, it was while they were under 30 years of age, that they were the most ambitious and sought for office. But after living to be 30, after obtaining experience in the world of men and

things, they were not so very ambitious. This was the fact so far as his constituents were concerned. He could not speak of the constituents of the gentlemen from Chautauque, and Ontario, and New York, but it was so in Monroe, where the young men were too modest and diffident to aspire to the governorship until they were thirty. He had no idea of his constituents being dissatisfied with the restriction provided by the convention of 1821. They had amongst them many talented young men, but they were too modest to seek for the governorship until their talents they had added sufficient experience to qualify them for that high office. Perhaps he had taken up more of the time of the Convention than he ought. He had not thought of saying any thing on the question, for he supposed when the debate commenced, that it was only a kind of flare up for some individual aggrandisement; he had no idea of it being made a great test question, but being made so, it became necessary that every one should place himself in the position in which he desired to stand. He recollected in one of the speeches of the gentleman from Chautauque, (Mr. PATTERSON) that gentleman said he wished to place members on record. Now he would tell that gentleman that he should place himself on record, side by side with the gentleman from Chautauque. He had no fear; nor did he believe it was more democratic for the gentleman from Chautauque to make his tender, than it was for him (Mr. S.) to accept it. He however supposed the threat was intended to frighten lay members like himself; but he apprehended no one would be frightened. He should give his vote according to his best judgment, and then he should submit to the will of the majority, for in our government majorities must rule, and to that rule he subscribed. But before doing so he asked gentlemen to consider that inasmuch as the other side did not pretend that this was a very important question, it would do no hurt to retain the provision as it stands. He asked them if it was not better to let well enough alone? Or were they, because they had power to form a new constitution, to tear the old one all in pieces? His doctrine was that when they found things right—when there were things of which the people had not complained—with which no inconvenience was experienced—they had better leave them as they are. If there had been any objection to this section, they should have heard of it long ago, but no complaint had been made. He had seen several of his constituents, and he had also seen several prominent gentlemen in Saratoga county, and they were astonished to hear that these safeguards and restrictions were to be swept away. These things influenced him to give his vote against the amendment. One word more as to the word "native." He had no wish to retain that word. He did not think it was of much consequence in any respect; but he was desirous that the naturalized and the native citizen should be put side by side. With these views he should give his vote to retain the restrictions which he thought were both right and proper.

Mr. KIRKLAND did not intend to have occupied the attention of the committee again on this question. But positions had been taken

here which he regarded not only as radically erroneous, but as dangerous in their tendency and as subversive instead of preservative of the great democratic principle that the people were the source of all power in this government. Under these circumstances, he could not give a silent vote on this question. The doctrines to which he had alluded, had not been casually or lightly advanced, nor confined to gentlemen on either side of the line that was supposed to divide us when we came here—but which had now become so faint that the most discriminating eye could scarcely define its course after the most careful scrutiny. They had been put forth also under professions of regard for the great principle on which our government is founded—a principle to which Mr. K. bowed with cheerfulness, without reservation, and with gratitude to the great Giver of all Good, that we were permitted to live under a government founded on such a principle—and with the ardent hope that it might be as enduring as its results had been benign to the people of this and other countries. That principle was the principle proclaimed by the framers of the constitution of '77, and by our revolutionary fathers, that the people were the source of power, that they had no power above them, save that which was derived from and given by themselves. It was because he believed the doctrines put forth here as subversive of that fundamental principle of democratic government, that he rose to enter his earnest, but humble protest against them—and especially as this was the pioneer debate, and the principles here established might guide our action when we came to more important questions. Mr. K. went on to quote from the reported debates to show what the doctrines were that had been advocated by several gentlemen, and against which he protested—adding that it was all a fallacy to say that we were sent here as dictators to prescribe a rule of action to the people. We were acting in no such capacity; but in the same capacity as if this body were the whole people and we component parts of it—and proposing one to another that we should all agree to bind ourselves, by our own voluntary act, to a certain rule of action—the decision of the body, if in favor of these restrictions, being not a submission to restraints imposed by a higher power, but an act of self restriction, which might be well regarded as the sublimest exercise of the supreme power residing in us all. Mr. K. had yet to learn that it was anti-democratic or anti-republican to believe that the people could and ought to restrain themselves. Indeed he regarded as entirely heterodox and unsound the position that a people, free sovereign and innocent, deposed could not exercise the power of self-restraint—for that was essential to the very idea of sovereignty. What was the proposition here—the word native having been struck out, and very properly? It was simply a proposition of his own, if you please, as one of the constituent elements of the sovereign power, to his fellows and equals of that constituency, to agree with him that we would not do certain things, and to bind ourselves not to do them, by a fundamental law. And this was entirely consistent with our position here, and proceeded upon the sound and just principle that it belonged

to sovereignty every where to say how far it would or would not restrain itself—and was in no sense an attempt to restrain the people by any act of ours. But certain gentlemen not only misunderstood our position here, but they made misapplications of the true principles of this government. Their doctrines, carried out, went the length of disclaiming that the people could make a constitution for their own government—for a compact like a constitution necessarily implied that there must be restraints, from the very nature of the instrument itself. It was a contract of mutual association—defining the terms on which we were willing to live together—each individual parting with a portion of his sovereignty, in consideration that all will agree with him to do or not to do so and so. To apply the remark to the case in hand—all entered into this compact of government with the understanding among themselves that no man should be made governor who had not resided five years in the state. All this was a matter of mutual compact, in which there must be necessarily more or less of restriction. Now most of those who contended against these restrictions, as they were called, in the course of their arguments had admitted away their own position—some going for a five years' residence, and some for the proposition of the gentleman from St. Lawrence, which required one year's residence. And yet these gentlemen, or some of them, were for drawing a line here between the true friends of democratic government and its opponents—placing on one side those who were for these qualifications, and on the other those who were against them. These gentlemen would find this distinction a troublesome one by a by—for very many cases would come up here, that would involve the admission that there must be restrictions even on the elemental power of the people. The latter might require less of restriction than delegated power, but the difference was only in degree. We should no doubt propose more or less of restriction on the elemental power of this government—and the very fact of the submission of such restrictions to the judgment of the people, was a confession of the power of the people to restrict themselves. But the question here involved no fundamental principle of democratic government. It was a mere matter of expediency—to be submitted to the people—is it expedient that you and I and all of us should be restricted by a certain provision? That was a question which the people had the full and the only power to settle. We prescribed no rule to them; but they were free to act upon the proposition, and to restrain themselves or not, as they pleased. As to this residence of five years—Mr. K. did not deem it important practically, except as a matter of expediency in view of the doctrines put forth here. He would retain it, if it were only to give a practical repudiation of these doctrines. As to the restriction of age, Mr. K. thought it inexpedient to propose that qualification. For he did not believe that the people of this state would ever elect a governor who was not qualified from immature years. Nor did he believe that the necessary qualifications might not be found in persons under 30. Besides this restriction, it would be found by the last

census, would exclude some 170,000, between the ages of 21 and 30. He was not prepared to say that there might not be in this large number—a number that must increase largely—persons well qualified for the post of Governor; nor would he place so many qualified electors out of the reach of this office—being fully persuaded that the people never would select a Governor, old or young, that would disgrace the station or themselves. The fact that the people had themselves placed there several men of high intelligence and ability, who did not number 30 years, and with the knowledge that upon the exercise of their functions here might depend the weal or woe of the present and future generations, should operate as a caution to us not to retain this qualification of age. The city of New-York, the counties of Ulster, Chenango, Saratoga and Oneida, had sent men here of that stamp of character, who were below 30.

Mr. RICHMOND: If the boys behave well can they not be Governor by and by?

Mr. KIRKLAND replied that that was not the question. A man under thirty might be as well qualified as a man over that age—except in experience, and that was not always wanting in men of 25 or 27. History was full of examples of maturity and wisdom in young men of 21, 25, and 27. But the question whether we would propose any or all of these restrictions to the people, for their ratification or rejection, was, he repeated, a mere matter of expediency, involving in no degree whatever the principle of republican government. And he trusted gentlemen would vote on these questions, not under the idea that they were to lose political caste, or commit any political sin—but solely in reference to the question whether they were fit and proper to be proposed to the people, to our fellow members of the constituent body, for their approval or rejection.

Mr. PERKINS apprehended that if these restrictions were retained they would have little or no practical effect. That being so, it was questionable whether it was worth while to retain them. He did not suppose there was any probability, if they were left out, that any man would ever be elected Governor who was not a native, 30 years of age, and a resident 5 years in the state. If there was danger that the people might exercise their power unwisely in these respects, there was equal danger that they might elect a man who could neither read nor write—an idiot or insane person. But it would be an imputation on their integrity and judgment to say that such persons should not be eligible. Nor did Mr. P. suppose that there was the remotest probability that the people would ever select a Governor whose qualifications were below anything we might prescribe here. He did not agree with some that it was anti-democratic to place restrictions on the people, where they were necessary, or where we apprehended there was danger. The people had sent us here to form a compact, by which, if adopted, they would be governed and the rights of the minority protected. The very object of a constitution was to lay down fundamental rules of government both for the people and their delegates, and all others to whom they might delegate power. The object of restrictions on them, was that in times

of excitement they might have a rule to govern them, formed when no excitement existed, and by which the minority might be protected from the majority. And to all such restrictions the people had given their assent by voting for a convention and sending us here. And when any restriction on the people was proposed here which he believed to be practically useful, he would have no objection to voting for it. But he did not believe there was any practical utility in the restrictions proposed here. If any person was ever made Governor, without all these qualifications, it would be from his having first been Lieut. Governor. There were cases where the Governor had not served out his term. Tompkins, Clinton and Van Buren did not. And it might well be, under such provisions as those in in this Article, that a Lieutenant Governor, not having one of these qualifications, might become Governor. But that was the only way in which there was the remotest probability that we should ever have a Governor under 30, or not a resident for 5 years. The qualifications for Lieutenant-Governor were not generally looked to with that caution that those of the Governor were. And this Article required no such qualifications for the former officer as for the latter. Now, in high party times, in the event of the removal of a Governor from the state, or some other cause of vacancy in his office, a Lieutenant-Governor succeeding him, without the qualifications of a Governor, might create disturbance and high feeling, and result in bad consequences. But by the direct vote of the people, he did not apprehend the slightest probability that any man would ever be elected Governor who had not all these qualifications. But, to be consistent we must, if we required these qualifications in a Governor, require them also of a Lieutenant-governor. We must also go further and require the same of all other officers—of judges of the supreme court, for instance. And to incorporate so extensive a code of restrictions in the constitution might subject us to the charge of placing greater restrictions on the direct action of the people than there were before, and excite a just prejudice against the whole instrument. For these reasons and these only, Mr. P. should vote to strike out these restrictions—and not because he had the slightest objection to restrictions on the action of the people when he deemed them proper and practicably useful and desirable in the organization of government.

Mr. PENNIMAN was sorry to be compelled to obtrude himself on the notice of the convention a second time, but the debate had taken a wide range—much wider than he anticipated. It had called out men of great talent. Positions that had been repeatedly overturned, had been re-taken and re-enforced—and Mr. P. did not know that he should be justified in the course he thought proper to take. But in the absence of any commander of the convention, supposing that we all stood on equal ground here—he should adopt the conclusion of Admiral Nelson on a memorable occasion, that it would not be wrong if he should lay himself along side of any one of his opponents. Though he had been somewhat anticipated by the gentleman from Oneida, Mr. P. said he should proceed to no-

tice some of the positions of the gentleman from Ontario, over the way (Mr. WORDEN). That gentleman in his speech the other day said that the more modern constitutions contained no such restrictions as this in regard to residence—that the day had gone by when checks were to be placed on the popular will—and that we had abandoned the principle of putting checks and guards upon the popular will. Now Mr. P. proposed to show from a slight examination and comparison of some few state constitutions, new and old, that the reverse of all this was the fact—that these more modern constitutions contained more stringent qualifications than were to be found in the old—and that as circumstances changed, many of the States, as if they had been taught wisdom from experience, had superadded qualifications for office to former requisitions. If the gentleman's colleague (Mr. NICHOLAS) did not come up to the gentleman's standard, because not a democrat of 46 as well as 98, Mr. P. ventured to say that he was the gentleman's man—coming fully up to the democracy of both periods in this particular—as he would show. This he proposed to do by comparing the qualifications proposed here with those of other States, old and new. He would begin with New Jersey. The old constitution required no qualifications for Governor—but the new one of '44 required thirty years of age, twenty years citizenship and seven years residence. Louisiana formerly required 35 years of age, citizenship and 6 years residence. The new constitution of '45, required 35 years of age, 15 years citizenship and 15 years residence. Here was a remarkable instance of the more stringent qualifications required by the new above the old constitution. True, as had been said, our constitution of 77 contained none of these; and the reasons were to be found in the fact that we had just emerged from Colonial vassalage and were then but recently British subjects. Similar reasons influenced some of the new states at the west, upon their first organization, but where they had formed new constitutions or amended old ones, they had incorporated in them those restrictions. Florida in 1839 required thirty years of age, citizenship and 5 years residence. Texas the same, except three years residence.—Missouri formerly required thirty years of age, four years citizenship and four years residence. Now, thirty years of age, ten years citizenship and five years residence. Iowa required thirty years of age, and two years citizenship and residence. It had been asked why not carry this out and require the same qualifications of the judiciary and other officers. Mr. P. would go with gentlemen to extend these restrictions to the Lieut. Governor, the judiciary, and the legislature, if they liked. And there was precedent for this too. Vermont required a Senator to be thirty years old, to be a citizen and a resident. Texas thirty years for a senator, citizenship, and three years residence—for the house twenty-one years of age, citizenship and 2 years residence. Florida required for the Senate twenty-five and for the house twenty-one years of age, citizenship and two years residence for both. Louisiana twenty-seven years of age, ten years citizenship and four years residence for senator—for judges thirty years of age, six

years residence, and five years practice of law. The old constitution required no such qualifications. Missouri required thirty years of age and five years residence for the Senate and the judiciary—ten years citizenship for the Senate—and citizenship for a judge. Such was the result of an examination and comparison of the modern and recent constitutions—showing that uniformly almost, the restrictions were increased in the latter, instead of being dispensed with. But we had been told by the gentlemen from New-York, Seneca, Ontario, and Chautauque that the sovereign people had no right to restrict themselves. And yet every one of these gentlemen had in the end given it up.

Mr. WORDEN: What has been given up?

Mr. PENNIMAN: The right of the people to restrict themselves. They have all yielded it in fact.

Mr. PATTERSON: In what particular have I yielded it?

Mr. PENNIMAN: I will show the gentleman if he will have a little patience.

Mr. PATTERSON: All the patience in the world.

Mr. PENNIMAN: I hope so. I have not entirely passed you yet. [Laughter.] Mr. P. continued: They yielded the point the moment they fixed the age of electors. That was a restriction. And Mr. P. contended that there could be no human government without restrictions on the people. Men could not enter into society, without surrendering a portion of their natural rights. Those that were not essential to government and which government could not defend were retained, and those which were essential to government and which government could defend, we yielded. And when gentlemen assumed that the people could not restrict themselves, they aimed a fatal stab at all human governments. And yet the gentleman from Ontario, who held that the people had no right to restrict themselves, was willing to require a five years' residence—leaving out all the other qualifications! It did appear to him, that if it were pencilled in letters of living light athwart the arch of heaven, that gentlemen would not believe that the people had a right to restrict themselves. When men had determined that they would not be convinced, you could not convince them. Mr. P. would tell these gentlemen one thing—that this eternal cry of "you distrust the people"—"we have confidence in the people"—"we are the only friends of the people"—and this challenging of them to put their names on record, had not been a legal tender for years with the electors of Orleans. The day had gone by when it was current coin with the farmers and mechanics of that county. It would not be received there even to pay old debts of broken down politicians. But in other counties it seemed to be not only a legal tender but the only capital and stock in trade with certain gentlemen. The gentleman from Seneca (Mr. BASCOM) was a lawyer, and could better decide than Mr. P. what a legal tender was. But that gentleman, though a lawyer, seemed to operate as a farmer would, in assailing provisions of the old constitution which he could not successfully attack. Farmers when falling their timber if the tree was so straight that he could not tell which way it would fall, and to make it

fall in the right direction, he resorted to a driver. The gentleman could find no other resource than a whole phalanx of revolutionary soldiers and these he put in requisition to prostrate the qualification of a five years' residence! How far he succeeded remained to be seen. Now in regard to this native question, Mr. P. had a word to say—not with any expectation of carrying a question which had been already decided—but because it had been revived and enlarged upon by others. He believed that attachment to one's place of nativity and residence and friends, was one of the strongest passions and best feelings of the human heart. True, this feeling had not had the effect to render foreigners lukewarm in defence of an adopted county; and the history of our revolutionary struggle was full of signal instances of warm devotion on the part of foreigners to the cause of liberty and free government. Nor had he any prejudices against them—as those who knew him would testify.—Nor in this case had he any idea of reviving what was considered by some an odious qualification, that had been struck out; but he did desire, by the other qualifications of age and residence, to secure all that would be accomplished perhaps by retaining that qualification. Not that he distrusted the people, or believed that they were incapable of self government. He was the last man to entertain that distrust. He believed that in 999 cases out of 1000, the people never went wrong on a subject which they well understood, and had time to look into. But he was satisfied that in moments of excitement they were liable to act wrong. This had been seen in the not unfrequent resorts to Lynch law, and other instances of disregard of law. Our large cities also were often the prey to excitements and excesses, and the indications were that large cities and villages would at no distant day, bear sway in the state. Under these excitements the people were liable to err. They were sensible of this tendency themselves—and had, under this conviction, regarded it as right and proper to place restrictions on themselves. The excitement which pervaded the western part of the state, upon the burning of the Caroline—the pervading inclination to rush at once into a war with England, and the sober second thought which the reflection of a year brought with it—Mr. P. cited as an illustration of the importance of restrictions and guards against excesses in such moments of excitement. Perhaps he might be unnecessarily alarmed. He might be the only one who anticipated any danger from the absence of restrictions in the constitution. But let the doctrines of those on the other side prevail, that there shall be no restrictions on the popular will any where in the constitution, and let our course be to sing hosannas to the people and the dear people—that they and they alone are to be trusted—and his word for it, the child was born whose head would not blossom for the grave until our liberties were shrowded in one eternal night of anarchy and despotism. Mr. P. here adverted to the wish expressed by the gentleman from Chautauque (Mr. PATTERSON) that gentlemen who distrusted the intelligence of the people would put themselves on record on this question. He could tell that gentleman that whilst

hedemurred to language being put into his mouth which he never used, this idea of being put on record had no terrors for him. If he had any standing in his county, it was because, under all circumstances, before and during and after the election, he honestly and frankly told the people exactly what he believed. And he would tell that gentleman that the people of his county esteemed any man their friend who advised them of their errors—and they were equally frank to tell each other of theirs. Mr. P. was not only anxious that his vote on this question should go on record, but he would to God that every motive of his heart could go with it to his constituents. They knew him as making no pretensions to high attainments or to speaking talent—but as a plain, unlettered farmer—and, without meaning any unkindness to the gentleman from Chautauque, he would add, that they knew him as possessing some firmness of character, and the moral courage to do his whole duty to them, to himself and to the state. And under a deep and awful sense of his responsibilities here, he would thank any gentleman here, at all times to have the ayes and noes recorded—that his name might go down to the latest posterity with the rest, on the adamant of history.

Mr. BRUNDAGE was reluctant to break the silence which he had imposed on himself when he came here. When he was elected to this body he formed the determination to be passive, and for the reason that he was taken from the plow-handle, without education or experience, and was placed among gentlemen most eminent for their talent, and learning, and ability. In such an assemblage he had thought it impossible to make a conspicuous figure, for the reasons he had given; but in addition he had an infirmity of ear, the extent of which he had never experienced so much before, which confirmed the wisdom of his determination. But it struck him they were taking an imprudent course. They had exhausted seven days, if his memory served him, on a subject which should have occupied less than that number of hours, for it would result in no serious consequences which ever way it was decided. Their constituents had placed them there to discharge one of the most sacred duties ever confided to any body of men; they were placed there as had been expressed by somebody, he thought the chairman of the committee himself (Mr. CHATFIELD,) on the elements of society; and the duty assigned to them was to organize those elements and reduce them to a system—to define and clearly designate the rights of the people, amongst whom they were included individually—and to set prescribed bounds to delegated power hereafter, that the servant might not become greater than the master. If he mistook not they were wasting the time which might be devoted to a better purpose. There had been a great desire expressed by some gentlemen to restrict the people lest in some unguarded moment, and under the influence of some excitement, they might make an injudicious selection of an officer to preside over the destinies of the Empire State. One gentleman, he believed it was the gentleman from Essex had feared that they might be led to elect an inexperienced youth or "a raw boy" as he expressed it. Fears were also entertained that a

"raw import" might be taken without an acquaintance with our institutions or our language—that under such influences, with the wide range that was proposed to be given to them, they might cross the broad waters of the Atlantic and select Queen Victoria, Louis Phillipe, or Daniel O'Connell. He could not but think all such fears were visionary, and baseless as a vision. He had more confidence in the common sense of the people than to anticipate danger from such sources. It struck him these fears pointed to a contingency that could occur only by a bare possibility, of which there was not the least rational ground of probability,—and which could only arise when degeneracy and corruption have rendered us incapable of self-government. And when anarchy shall have usurped the place of reason and common sense, and so subverted all order, and destroyed our institutions, as to render us fit subjects for despotism, it will be immaterial whether the Executive chair shall be filled by native-born or foreigner, by the British Queen, the French King, or an Irish repealer. For him, if he should be unfortunate enough to live at such a period, it would be immaterial whether the iron were placed on his neck by the jewelled hand of a Queen or the stern command of a despot. But such a state of things was not to be expected, and hence they might dispense with this subject. Their constituents were looking at them, and they saw that this Convention had spent five weeks in session and have hardly got across the threshold. He hoped they would now take the question, for it would be much better to spend their time in devising some liberal system of free schools for the education of every child in the state; for when they should have enlightened the people there would be no danger of the evils to which gentlemen had alluded.

Mr. VAN SCHOONHOVEN was as much disposed as any gentleman to have the question taken, but remarks had been made to which he desired to make some reply before he could consent to give his vote, inasmuch as his character might be involved by them. One accusation was that there was a disposition there to pull down and destroy—to tear up the constitution and scatter it to the winds. It had been suggested too that the people were disposed on some occasions to be governed by a mobocracy—and that demagogues and some men that were ultras, were disposed to lend a helping hand; and it had been more than intimated that gentlemen who occupied the position which he did, were catering to such a state of popular feeling, and were trying to please the "dear people." Now under such imputations he was not willing to give his vote without stating the ground on which he should record it. The first reason then why he should record his vote on this question was, because he held the doctrine that the people of this state were competent in all these matters to judge and act for themselves. He had confidence in the integrity and judgment and wisdom of the people of the state of New York, that when they sent a delegation to Syracuse or any other place of meeting of the convention for the nomination of state officers, they would send proper men—proper as to qualifications and proper as to age. He was willing

to trust them; and he paid them no empty compliment—he spoke what he thought. His second reason was that there may be occasions within a very short period when the people of the state may feel called upon in certain emergencies to make choice of a gentleman who may not have arrived at precisely the age of 30 years. It had already happened that the people of this state had elected a gentleman but a little over 30 years of age—

Mr. WORDEN: Governor Tompkins was under 30.

Mr. V. S.: Yes; but he alluded to a later period, when the people in their sovereign judgment thought fit to make a young man their Governor, and if they desired to do so again, who would dare to say the people should not have their wishes carried out? Would any gentleman say that during the last ten years there had been such a state of popular feeling that they would not be willing to trust the people?—No man would take that ground. Then as they were preparing an article to endure for a long space of time, they should make it as perfect as possible, and send it down to the people for them to sanction or reject. On the subject of the restrictions of which gentlemen had spoken, he said, there had been imposed the restriction that no one should vote until he was 21. Why?—Simply because they could not submit the question to the people of individual qualification, as they could the election of a Governor. If they could every year decide if a certain man was fit to vote or not, he asked if there was a man there that would not submit it to the decision of the people. If they could get the same test to decide the matter as they could in the instance under consideration, he had no objection, but they could not. Some gentlemen asked, why not leave this matter too without restriction? Why should they not take their candidate even if he were not an elector; to which he replied that it would be putting the elected over the elector. He then proceeded to reply to some remarks made a few days since by the gentleman from Essex. He said it did not follow because they asked to be permitted to take a candidate under thirty years of age that they were going to throw away all tests of fitness; nor did it follow that in all men over thirty they secured all necessary qualifications. Another gentleman had spoken of the rule of demagogues, but he asked, if demagogues existed, how they were to be got rid of by fixing the Governor's age at thirty. On the subject of the doctrine of expatriation as spoken of by the gentleman from Essex he should like to say something if the time would permit. He, however, was convinced that that matter had little to do with the question under consideration. He would undertake to say that whatever the doctrine might be in England or in France, or in Rome, or in any other aristocratic and monarchical government on earth, it never has been the judgment of this country. But he was told that some judge of the U. S. court had said it was the doctrine of this country; but the people never have recognized any such principle. They would laugh at any one who should go amongst them and tell them they never could lose their allegiance by coming to this side of

the Atlantic. The gentleman from Essex had himself told them that this doctrine is weakening in this country. If it was, he hoped they would give it the death blow; let not that Convention do any act to recognize, or seem to recognize, that principle. But who was to fear anything from this principle if it did exist? If England held to the doctrine let her do so. If we were to be called upon to hold to that doctrine because England did, we might also be called upon to embrace the doctrine of the "Divine right of Kings." On the subject of the majority rule he next spoke. He said there were certain fixed principles that a majority never can touch. It would be an assumption, and a violation he might say of divine right to touch them. There were certain principles recognized over the civilized world among men of intelligence, which secured those rights which we call unalienable—the right to life, liberty and property. No majority can assail those rights; but in relation to all questions and principles of expediency and of policy which are entirely arbitrary, which are to be judged of by their effects on the interests of the community, who would stand up and say that the majority should not rule? He expressed the hope that no provision would be made in the constitution to bind them where it would be safe to leave the matter to the good sense of the people when they were called upon to act through the legislative department. He then glanced at the alarm which some gentlemen felt when any one proposed to touch the old landmarks, and went on to show that the convention was called by the voice of the people, and by quoting from the convention act showed the purpose for which it was called together. He contended that they had the right either to repair the old constitution or make a new one as they might find necessary for the interests of the community. He alluded to some radical changes which the public mind had undergone within a few years—especially as shown by the legislation on the subject of the remedy by distress for rent. Two years ago, a man could scarcely obtain a hearing on that subject; now a law had been passed by the legislature, by an almost unanimous vote, and thus they were admonished not to put restrictions on the people, for twenty-five years, or a longer period, when in less time the public sentiment might call for essential changes. He hoped they would not send forth a constitution to mislead other states, and to say in effect to the European governments, that the people of the Empire State cannot be trusted in regard to the election of the executive officers. He repeated, that there had never been a nomination in the state, made under undue excitement. The candidates were talked about for a year, or at least six months, before the nomination was made. Why, at this moment they could nearly tell who their candidates would be next fall for that office. He apprehended on that subject, gentlemen would find no difficulty. [Cries of 'name!'] He declined mentioning names, but said the name could always be taken as one of two or three. The gentleman from Essex was desirous to know how the people were to be made acquainted with the merits of the candidates, particularly if they were young. He replied by the press and orally. There was no danger of a man

not being known, for his friends would proclaim his virtues and his enemies his defects. Mr. V. S. went on to argue that if these qualifications were all struck out no young man would be selected for governor unless on account of some sterling qualities and merit, which an older man did not possess. And the history of the state proved, that the government had been as well administered by men under 30, as above it. The idea of the gentleman from Essex, that the poorer or working portion of our population did not become educated for public business before 30, and therefore could not compete for office with the sons of the rich, unless there was this limitation of age—Mr. V. S. said was based on the mistake that the poorer classes were not as early and well educated as the sons of the rich. As a general rule, those who were self-educated were the best and earliest educated, and if it were otherwise, there could be no danger that with the door wide open to young men of all conditions in life, they would not early and thoroughly prepare themselves for official duty. As to this whole question of restrictions, he had no hesitation in placing himself on record in support of the great doctrine that the sovereign power was in the people—that we could not take it away—that it was not for our interest to take it away—and that it was safe to trust the supreme power to them, within the limits of their own fundamental law. [Loud cries of "question," "question,"]

Mr. RUSSELL felt called upon, having consented, under solicitation, though against his judgment, to waive his amendment so far as to allow the question to be taken on striking out by itself—to make a few remarks. For he still insisted that eligibility to the office of Governor should be co-extensive with the right of voting—that the Executive power could be safely entrusted to any elector whom the people might elect—and that if it could not be thus entrusted, the people themselves were incapable of exercising the power of checking the improper conduct of their representatives. He found this provision in the constitution of Rhode Island, and whatever might be thought of the source, the provision itself was worthy of the immortal founder of that state—Roger Williams himself. Mr. R. urged that no possible evil could result from removing these restrictions, and a probable good might be prevented by retaining them. For the difficulty sought to be reached by retaining them, was fast receding under the prevailing disposition of the people to be no longer led by politicians in their search after availability rather than sterling qualities in a candidate. The matter of qualification could no where be more

safely left than with the people themselves. But Mr. R. knew the impatience of the committee to come to a question—and he only wished to say that this whole subject of eligibility belonged to committee number 4, and should have been omitted entirely in this article. But being here, and being called upon to act, he proposed this substitute making all electors eligible, and leaving the selection to the people themselves. Mr. R. withdrew his proposition to insert.

Mr. W. TAYLOR then renewed his proposition to strike out and insert a provision that "no person who does not possess the qualifications of an elector, other than those of residence in the town or county, shall be eligible to the office of Governor." Mr. T. did not rise to discuss the question, but to reiterate and sustain a remark he made at the opening of this discussion in relation to the late Governor of Michigan, which had been the subject of comment and dissent by several gentlemen, all of whom attributed the embarrassments of the state, and her wild-cat system of banking to the fact that she had a young Governor. All these reflections upon the character and capacity of Gov. Mason, were as unjust, as they were calculated to inflict lasting injury on his memory, and good name. Mr. T. went on to show that Gov. Mason was compelled by a constitutional provision to call the attention of the legislature to the subject of internal improvement—for by the constitution, it was made the duty of the legislature to project a plan of improvement. He also recommended a loan, the negotiation of which the legislature threw upon him, contrary to his wishes. The state suffered loss by that loan—and became embarrassed—and so did many other states, who had no young men for governor, but which were infected with the rage then prevalent for internal improvement. Gov. M., Mr. T. insisted, was as guiltless of blame in this matter as in regard to the system of banking—and were there time he would read from the messages of that very able and accomplished young governor, to show that he was opposed to the system, and constantly urged upon the legislature, that proper safeguards should be provided against loss to the people.

Mr. CLYDE here obtained the floor, and moved that the committee rise.

The motion was at first lost, but several gentlemen expressing a desire to be heard on the question,

The committee rose and reported progress.

Mr. CHAMBERLAIN had leave of absence for three days; Mr. JONES for five.

Adj'd to 10 o'clock to-morrow morning.

THURSDAY, JULY 9.

Prayer by the Rev. Mr. HARRINGTON.

Mr. GARDNER presented a memorial from citizens of Niagara county, on the subject of the canal policy of the state. It was referred to committee number three, and ordered to be printed.

The PRESIDENT laid before the Convention a communication from the Secretary of State in compliance with a resolution of the Convention in relation to the duration of the legislative sessions, which was referred to committee number one, and ordered to be printed.

Leave of absence was granted to Mr. SMITH of Chenango, for 10 days.

VIVA VOCE APPOINTMENTS.

Mr. KENNEDY offered the following resolutions which were agreed to:—

Resolved, That it be referred to the committee on the powers and duties of the Legislature, &c., to enquire into the propriety of providing for the *viva voce* selection of all officers that may devolve on either branch of the legislature.

Resolved, That it be referred to the committee on the appointment or election of all officers whose functions are local, &c., to enquire into the propriety of providing that all legislative bodies or special boards for the state, or for any county, town, city, or ward, of two or more persons, on whom appointments to office or employment may devolve, shall make such appointment *viva voce*, requiring record to be kept, shewing the vote of each member of such body or board on making appointments.

Mr. SWACKHAMMER offered the following, which at his instance was laid on the table.

Resolved, That on and after Monday the 13th inst., this Convention will meet at 9 o'clock A. M.

The PRESIDENT laid before the Convention a report from the Comptroller shewing the amount paid for breaches of contract on the canals, which was referred to the committee on finance and ordered to be printed.

EXECUTIVE DEPARTMENT.

The Convention resolved itself into committee of the whole on the report of committee No. five, on the powers and duties of the Executive, Mr. CHATFIELD in the chair.

The CHAIRMAN stated the pending question to be on the amendment of the gentleman from Onondaga (Mr. W. TAYLOR.)

Mr. PORTER desired to submit a few observations on the subject under discussion. The principle involved was an important one, and it derived a greater importance from the character of the discussion it had undergone. It was proper therefore that he, a member of the committee from which this report was made, should make some remarks on the course pursued in this debate, and offer a few suggestions, in relation to the restrictions imposed by the section of the existing constitution. It would have been a bold stretch of power on the part of that committee to have interfered with that matter, when that very subject of eligibility to office had been referred to the fourth standing committee, and when by a recent vote of the electors of New-York the freehold qualification was abolished, but the restrictions under discussion left standing and untouched. He would add that as a member of this Convention he most cordially acquiesced, and the chairman and a majority of

that committee also acquiesced, in the removal of the restriction of American nativity as to the office of governor. He had no fear of any danger to arise from throwing open to naturalized citizens the halls of legislation or the executive station. We have guarantees for these citizens and of their patriotic regard for the country of their adoption. If any of us were American citizens, it was attributable to the accident of birth: it was a matter to reflect no merit on any one of us that we are the descendants of those who shared the perils of Bunker Hill and Lexington. But there were there some who could claim some merit. There was the gentleman from Orange (Mr. BROWN,) a native of the land of Bruce and of Burns; there was the gentleman from Steuben (Mr. KERNAN,) a native of the land of the harp and the sham-rock; these and other gentlemen were of the class that had left their paternal homes, and the scenes of their early attachments, the land of their nativity; and attracted by the spirit of liberty, they have selected this out of all the lands on earth as that in which to pass the vigor of their days and the evening of their lives. We knew these men to be patriotic, and how well they deserve of their adopted country. We see them here, sent with the confidence of their constituents—at the will of a free people—to lay the foundations of the commonwealth anew. Now he would entrust to such men the Executive power—he would remove from them every invidious distinction. But this was not a proposition that should originate with a committee of this house—it would not be becoming in the members of its committees to dictate their individual opinions. There were however other qualifications which he deemed of vital importance, and he could not vote to strike them from the constitution. It was somewhat singular that the members of this Convention, who were in favor of removing the restriction of age, were the grey-headed men—the men who were cotemporaries of the First Consul of France, and who had seen the desolating strides of military conquest—and that it should devolve on the younger members to warn their seniors of the seductions of power and the blandishments of ambition. He submitted it to the Convention if it was the true policy of this government to remove those restrictions? It was the true principle of a representative democracy that its young men should be permitted to mingle with the elder in the representative councils of the country; but if they wished to see their rights secured and their liberties perpetuated, they should entrust no young man with Executive power—they should clothe no young man with power to throw open their prison doors—to declare their counties in a state of insurrection—to pour in among the insurgents a military force—and to arrest the mandates of the popular will by forbidding the laws which the people have ordained. Was the gentleman from Ontario (Mr. WORDEN) when a few days since he advanced the argument on the subject of these resolutions, mindful of the history of the past, when that distinguished gentleman deemed the

committee censurable because it had not extended its restrictions to the drivelling dotard of 80, was he right? Was there more to be apprehended from drivelling age than the impetuosity of youth? Such is not the lesson which history teaches. There was much in the instruction of the fable—"fear nothing from king log; fear much from king serpent." There was apparently much misconception on this subject. Now the right to hold office was not a natural right. The right to be free was a natural right. It was the right of every citizen to exercise his voice in the selection of his rulers; it was not his right to be selected as one of the rulers. That is a right derived from the people, and the people who grant may restrict the grant. They may propose what restrictions they please. But there were other considerations which perhaps should not be passed over. He might allude to the remark of one gentleman that there were 170,000 men between the ages of 20 and 30, who by this provision were excluded from the office of Chief Magistrate; but were there none of the 250,000 who were beyond that age that were capable to take charge of the Executive duties of the commonwealth? Did the honorable gentleman mean to say it was his natural right because he was above 30, to be Governor? Certainly not. His interest and the interest of his country required that he should not hold that office until he acquired the necessary qualification. He would now proceed to the consideration of the other question of restriction proposed in relation to residence; and it appeared to him that this restriction had been entirely misunderstood by gentlemen on the other side of the House. The eminent gentleman from New-York, (Mr. O'CONNOR,) had discussed this question as if the restriction of age had been directed to naturalized and not to citizens of our own country. But under our present constitution, none but a native citizen is permitted to occupy the place of Governor. The naturalized citizen was not allowed to hold that office, whatever might be the period of his residence, and the purpose of this restriction so applied to citizens of other states, was simply designed for the security of our own state. But this restriction of nativity having been removed, it remained for the Convention to put some qualification in its place that shall equally affect the naturalized and the native born citizen. It was, therefore, his intention, whenever it should be in order, to introduce a proposition which he would read. It was in accordance with the views he had taken of popular rights. "Every elector shall be eligible to be Governor or Lieut. Governor, who shall have attained the age of 30 years, and who shall have been 5 years a citizen of the state of New-York." He desired to call the attention of the committee to the difference between this proposition and that under consideration. That imposed restrictions on the people, and said that certain men should not hold that office, and he held that that was not good doctrine in this commonwealth. He held that the right to hold office was derived by grant from the people; and he said by his proposition that every elector may hold the office, provided he has certain qualifications. The first is, that he shall be 30 years of age, and the second is that he shall have been

5 years a citizen of the state of New-York. Not of Massachusetts, or of Ireland, or of Virginia, but of New-York—of the state over which he was to preside. He would make no distinction between naturalized and native born citizens—between citizens of Connecticut, of France or of Virginia; but the man who is to wield the Executive power over five millions of freemen should have some acquaintance with their local institutions, and he should be known to the electors of the State who were to confide to his charge these interests. The propriety of this was too apparent to need argument. The only question then was whether we, the people, have the power to make such restrictions. The denial of power overrode all qualifications. But where did the denial originate? Was it with the people? No. Who had heard any expression of alarm from them? Had the young men risen and demanded that they shall rule? Have the old men complained that they are not at liberty to elect boys? Has the electoral body complained that the resident of Massachusetts or of Rhode Island is excluded? No; it was new doctrine—not of the people—but of those who expect to be candidates for the people's votes. He did not believe in the doctrine. When was it ever before heard in the history of Republics that the people had not power to restrict themselves? Why, we are the people. Our action is only provisional, and until it is ratified by the people it is nugatory and void. We have come here to form a compact for our mutual government. We represent the people. We allow a plurality and not a majority the right to select a chief magistrate who is to preside over the whole. But while we allow that plurality such a power, we require constitutional guarantees that the right shall not be abused. Did gentlemen mean to insist that a plurality shall not be restricted in the exercise of popular sovereignty? This plurality has no power except by grant of the people; and shall the people who grant, not be allowed to restrict the grant? This question was argued in a masterly manner the other day by the gentleman from New York, (Mr. O'CONNOR,) but he appealed to that distinguished man if he had not adopted a fallacy that was subversive of the whole. Says the gentleman it is our right in Convention to determine who the people are, by fixing their qualifications; and having determined who they are, you have no power to restrict them. But the electors are not the people; they are only part of the great whole. True, we were all of us elected to this body only by the qualified voters, but we are the representatives of all. Every man who voted for us was in his turn a representative of the people. The honorable gentleman from Albany (Mr. HARRIS) and the gentleman from Ontario (Mr. WORDEN) had told them that the people in Convention assembled have no right to restrict any but delegated power. Why the power of the electors is a delegated power by necessity of the social compact. This Convention was elected by 450,000 men from amongst millions. Of these 450,000 exercising their right, 200,000 may be a plurality, and 200,000 then should possess unlimited power without restriction, and exercise absolute dominion over two and a hal

millions of citizens. They had a bill of rights, and did that apply to the electors? No; every man, woman and child in your dominions is under the protection of that bill of rights. They are the people and we are their representatives. Each voter who voted for each of us represented himself and five unqualified citizens. Is this no delegated power? Why we have a female population of 1,293,000 in the state of N. Y.—three times the whole electoral body; and their interest in this government is nearer and dearer than ours, for we are clothed with a mighty power through the ballot box—we have strong arms to resist unto blood. But if the laws prove dangerous to liberty, the female population is useless, powerless, defenceless. Again, there are more under than over the age of 21, and they too have deeper interest than we have in the constitution we are about to frame. They are to answer us and the electors who send us here; if we sow the wind they are to reap the whirlwind. Now, we are constitutionally legislating for advancing millions—we are legislating for generations yet to come. It was not a mere party that nominated us. The voters elected us, but we represent the whole people of the state of New-York—each sex, age, and condition, age and the succeeding millions whose constitutional rights we are now asserting, and around whom in advance we throw constitutional barriers for the security of their liberties.—The *magna charta* that was extorted at Runnymede, by Norman Barons, was not for themselves alone, but for every citizen since born, and for every colony planted in the wilderness by their descendants, where it has burst in its growth through all colonial vassalage. Even our Declaration of Independence contains those doctrines of human rights which were first conceded, in the spirit of liberty, by *magna charta*. When therefore we enter into an elementary discussion, let us lay aside the spirit of the demagogue, and invoke a better spirit of patriotism, manly independence, and devotion to the great and permanent interests of the people. It devolves on us to perpetuate the privileges of every citizen. It devolves on us to guard against every danger the institutions of our state, whether menaced by legislative corruption, partizan violence, popular excitement, or the encroachments of power. He trusted this question would be met by gentlemen as one of principle. Let gentlemen prove by their votes that love for the people which they profess in their speeches. Rely on it, the electors will prefer the substance to the shadow. Why, more than half the time of this Convention during the whole period of the session has been occupied by some half dozen individuals in professions of their patriotism, their love of economy, their devotion to the people. Well, he believed it all—every word of it. The report of committee No. 5 had been assailed undoubtedly from motives of the purest and most ardent patriotism. By some gentlemen that committee had been denounced for every provision of the old constitution which they had retained. Some prominent members of the convention had charged them with making innovations, when the provisions they had introduced had been in the constitution for a quarter of a century. Other gentlemen

were bewildered. They neither knew what to approve or what to disapprove, until the committee itself italicised parts of the report to enable them to discriminate between the parts that were new and old. The gentlemen were then relieved from their patriotic embarrassment, and then they denounced the committee for every new provision they had inserted. Now this was doubtless all from pure love of the people. There were gentlemen he admitted who had treated their report with fairness and liberality, and none with more fairness than the distinguished gentleman from Orange (Mr. BROWN), the eminent gentleman from Albany (Mr. HARRIS), the able gentleman from New-York (Mr. O'CONOR), and his distinguished friend from Ontario (Mr. WORDEN); and if some gentlemen have gone into this discussion in another spirit, he could only attribute it to an exuberance of patriotic feeling. Oh, it is from nothing but a high sense of duty! The love of the people led on his able and respected friend from Oneida (Mr. KIRKLAND) in his original onslaught on committee number five—a war that would be as memorable as the war on the windmills by the Knight of La Mancha [laughter], whose epitaph has been written by the gentleman from Orleans (Mr. PENNYMAN)—“Knight of Oneida—*Requiescat in pace!*” [Renewed laughter.] Next came the gentleman from Chautauque, the faithful squire of Sanco Panza, ready to wage battle on committee number five.—[Laughter.] It was strongly suspected of his prototype of old that he loved the cheese and curds better than the shepherds on the hill-side of Arragon. [Laughter.] But his friend from Chautauque, he knew, loved the people. At least he loved half of them—that dear portion of them who are not qualified electors; and of whom his friend from Schoharie told them they had from day to day many representatives in the ladies' gallery. If his friend from Chautauque was unwilling to give them a door-keeper to guard them from the intrusion of the voters, he could assure the Convention in all sincerity that it was not because he loved the ladies less but because he loved the voters more. [Laughter.] Now, Mr. P. had no professions of love to make.—He trusted if it should ever again be his fortune to be a member of a deliberative body, he should never have occasion to proclaim his devotion to the people. It was sufficient for him to be one of the people. The interests of the people were his interests—their prosperity was his prosperity. The gentleman from Chautauque loves the people—let him love me—let him love us all. [Laughter.] He who was one of the people knew his own character—he knew something of the popular character; he knew the necessity of popular self-restraint, and he was in favor of the doctrine of popular restriction in its broadest sense—popular restrictions imposed not by one man, or ten men, but imposed by the people themselves in their sovereign capacity for their own security. The honorable gentleman from St. Lawrence (Mr. PERKINS,) insisted that there was no propriety in that provision of the report of the committee, for says that gentleman, it would be evidence of the folly and madness of the people if they should select a man without such qualifications. But

he adds, it may work harm and I do not want it there. How work harm? If the contingency should arise. If so then the restriction would be needful. The colleague of the gentleman from St. Lawrence (Mr. RUSSELL,) yesterday denounced the modes in which political nominations were made. He said it was done by party and not by the people. True; but parties compose the people; and if blame be on parties, how could that political millennium have arisen where the lion and the lamb could lie down in peace together? He thought the people in the Convention would find it necessary to impose restrictions on popular parties, and guard against abuses by which their rights would be endangered. But the senior gentleman from St. Lawrence (Mr. PERKINS,) expressed his apprehension lest the restriction as to age should be applied to the judges on the bench. Why, said that gentleman, you cannot elect a Chief Justice until he is 30 years old. And so it is. But were they under the new constitution to elect boys to the supreme bench of New York? If so was it to be expected that the people would ratify their actions? Were the rights and property of three millions of people to be entrusted to the impetuosity of youth?—But the same gentleman insisted that they had more reason to fear from the election of a Lieut. Governor under 30 than a Governor. More danger! Is there danger then to fear from the removal of the restrictions? There was then reason for extending it, and he hoped he had provided a restriction that would be agreeable to the gentleman from St. Lawrence, in the amendment he had intimated his intention to propose—a restriction which was common to every state of the Union, not even excepting Texas. His friend from Rensselaer (Mr. VAN SCHOONHOVEN) insisted yesterday that the people were able to judge and act for themselves. Well, that is precisely what we people in this Convention assembled propose to do. In the exercise of our judgments the people think they have a right to demand to have some security against partizan violence—some security against political phrenzy. There the people could impose restrictions on their delegates the electors—their delegates the majority—their delegates the plurality. His friend from Albany admitted that the qualifications were proper, and that they would have strong weight with him in the nominating convention—that it would be folly if they did not adhere to them. Then why exclude them from the constitution if they were wise?—Why strike them down from the palladium of your rights? But the gentleman from Ontario (Mr. WORDEN) says we have no power to restrict the people.

Mr. WORDEN: The gentleman is mistaken. I never said so—I never made such a remark.

Mr. PORTER had mistaken the gentleman's phraseology then. But if he did not again and again reiterate that they had no right to restrict any but delegated power, and that the electors did not exercise a delegated power, I am a mad man. Why every body heard him, and it is recorded in the public journals. It has gone forth to the world, and against this alarming doctrine I felt compelled me to defend the report. If we place restrictions on the electors do we restrict

the power of the people? Certainly not. We stand in the place of the people. We as their representatives have come together to make a compact with each other. The gentleman from Ontario is a lawyer, and I should like to ask him a question. Can two men make a compact with each other, and if so why not two millions?

Mr. WORDEN:—Two men can make a compact.

Mr. PORTER:—Why not two millions then?

Mr. WORDEN:—Two millions can, but it would be absurd to suppose that two millions will make an absurd compact; and it was equally absurd to suppose that two millions were not capable of designating the person that was to be their Governor, and that restraints must be imposed on them.

Mr. PORTER asked if it was not equally absurd for the gentleman from Ontario to say that restrictions on the people were absurd, and before he got through admit that they were necessary. Was it absurd to say that 2,000,000 might make an absurd compact? Why this committee has followed in the footsteps of the convention of '21. They have conformed their provision to the constitution of the United States, and they found not only in the constitution of the nation but of every state within the limits of the Union, that very provision which gentlemen here would strike out on the ground that the people did not put it there. The gentleman from Ontario admitted that two men could make a compact, and that two millions could do so too. Well, what sort of a compact have we to make? He says the two millions have no right to make an absurd compact. I tell him they have. The compact made by the convention of '21 was an absurd compact. The gentleman himself says this is an absurd provision. Well, the people have a right to make and unmake it. We came here to examine the old landmarks, and if necessary to erect new monuments for defence against executive, legislative, and electoral power. Such a compact was our bill of rights. If we go beyond that it is my right to hunt in every forest, to dig in every farm, to reap on every hill side; but by this compact, we, the people, regard the vested right to property—we agree together to recognize the exclusive dominion of the land holder. Why does the gentleman talk of absurdity? It was the natural right of the people of a state to those who should rule over them. They had a right to elect a king to rule over them and declare that the son of that king should be his successor to his throne. That was the natural right of the people, but we by this compact surrender that right. We, as well as those from whom we have descended have determined that we will have a Governor and not a King; that he shall wear no crown—that two years shall be the limit of his term of service—and that he shall not be elected for life even by the voice of the people. No popular restriction here! But his honorable friend from Ontario (Mr. WORDEN,) and the gentleman from Seneca (Mr. BASCOM) at a later day insisted that this question is involved in this discussion, whether they would not entrust the people with power. Now he said the question was shall the people be entrusted with unlimited power—whether they

would give unlimited, absolute dominion to a plurality of two millions. That is the question involved. But the gentleman from Ontario said the other day that the committee were censurable because they had not reported a provision to exclude the driveling dotard of eighty years. When was it and where was it that the honorable gentleman from Ontario had read in the history of mankind of ambition on crutches? When was it—in what land—in what age, proximate or remote—anti-deluvian or post-deluvian—in a republic or in a monarchy? When was it that the liberties of the people had been subverted by a driveling dotard of eighty years?

Another gentleman from New York the other day said in an able argument in favor of an important position, that minorities had a right to demand a constitutional compact to guarantee their rights against the encroachment of majorities; and his friend from Ontario was called upon to answer and his answer was this—if a majority of the people have a right to impose on me an unacceptable Governor over 30, they have the right to impose on me an unexceptionable one under 30. But that was not the true position. The gentleman had confused all-important distinctions. The minority have not a right to designate the Governor of their choice, but they have a right to demand that the majority shall not impose on them a Governor who will jeopardise their security and the security of the commonwealth. His honorable friend from Ontario, the gentleman from Albany, and the gentleman from Seneca, if he remembered right, have contended that the doctrine of restriction on popular rights has been abandoned and exploded. When abandoned? By whom exploded? Why they stand firm in your state constitution, and in the constitution of the National Government, and in the constitutions of the other states, and they will stand till the great principle of representative democracy shall fail. They are to be found in every state within the limits of this confederacy. They differ in extent it is true. In some they are more, in others they are less restrictive, but in all the people have ascertained their right to restrict themselves and the electors. Even in little Rhode Island, which was referred to the other day—with a population scarcely larger than the population of Albany county—the people have imposed restrictions on the power of the electors. They have said that no man shall be elected Governor who has not all the qualifications of a regular elector—and that means something in Rhode Island where they require every man to be a registered freeholder—to pay a poll-tax, to perform military duty—such duty as a gentleman alluded to the other day in connection with revolutionary soldiers—and to be a two years resident in the state. Only such a man will the people of Rhode Island permit to be elected. The doctrine exploded—abandoned! Why in the constitution of Iowa, adopted but 12 days before this session commenced, the people of that territory have declared that no man shall be Governor of that state who has not arrived at the age of 30 years, been three years a resident of the state, and a citizen of the United States. Again, in the state of Florida, a constitution was adopted by the sovereign people in 1838

which requires a candidate to be 30 years of age, five years a resident of that state and ten years a resident of the United States—the double qualification which he proposed by his amendment. In Louisiana this very year, by a vote of the people, the qualification of 35 years was required for the Governor; it was also required that he should be a resident of the state and a citizen of the United States for 15 years. In New Jersey, the constitution adopted in 1844 requires a 30 years' qualification of age, seven years a resident in the state, and 20 years citizenship in the United States. Again Texas, the land of the "lone star," no longer lone, for tho' it rose in blood, it has found its way to the constellation of the old 13—Texas, the land of the largest and (if he might borrow an expression from the gentleman from Columbia) of the youngest liberty, has adopted the popular restriction he was contending for. No man can be her Governor who was not a citizen at the time of the adoption of her constitution—who has not been a three years' resident in Texas—who has not been for 30 years at least in the land of the living, to secure that degree of maturity which should always be required in a chief magistrate. And next, to come to democratic Missouri. The electors have adopted a constitution requiring a candidate to be 30 years of age, and that he shall have been for five years a resident in the state of Missouri, and ten years in the United States. Now, he would ask the gentleman from Ontario, how was this, if it were an absurdity and an exploded doctrine?—The people of Missouri, at the city of Jefferson, in the year 1845, adopted these provisions. Let them then hear no more of an explosion of that doctrine of popular restriction for the sake of popular liberty. But the gentleman from Ontario, as he had stated before, after his able argument against restrictions in general, declared himself in favor of the restriction of a five years residence.

Mr. WORDEN said he had made no such declaration.

Mr. PORTER had so understood the gentleman. But if he had been mistaken, it was an error gentlemen were liable to fall into.

Mr. WORDEN explained that what he said was, that if the committee had contented themselves with striking out the word "native" and the age of 30, he should not have troubled himself to make any particular objection to the section.

Mr. PORTER would tell the gentleman of one absurdity he never would be guilty of; and that was, he never would vote for a provision which he believed would be subversive of popular liberty. He never would give a vote which he believed was contrary to natural rights and the social compact.

Mr. WORDEN enquired who would?

Mr. PORTER continued:—The gentleman from Ontario would be content to vote for a five years residence, and he took it, would thus vote a popular restriction.

Mr. WORDEN said the gentleman misstated him again. He had made no such assertion.—He saw that the gentleman from Saratoga was not only incapable of comprehending his argument, but had a wonderful facility in misstating

what he had said. He should not therefore again state his argument, if the gentleman could not comprehend it.

Mr. PORTER said he was one of the people, and the gentleman from Ontario thought he could not comprehend that gentleman's argument.—Now he apprehended that gentleman would find many of the people in the same dilemma. The gentleman from Ontario would or he would not have voted for a five years' residence. If he would he should like to know if it would not be voting for a constitutional restriction? If the gentleman would not, he should really like to know what he meant, when he said he would have let it pass without objection, when he was sent here as a sentinel, and was placed by the people on the watch tower to give an alarm when their rights were invaded. But it had been asserted—not by the gentleman from Ontario, for he never would have said that—that the majority is always in the right. Now if the majority were right in this, they were wrong in their arguments against this section, for the very section under consideration has been submitted to the test of a popular majority, in the year 1821. In the Convention of that year that distinguished body took the question, "shall this pass?" and there were yeas 93, noes 9. It was afterwards submitted to the people, and there were in its favor 75,000, against it 41,000. It had been approved then by a majority, and that according to some gentlemen was irrevocable. Why it was the very fundamental principle of representative democracy that the decision of a majority to-day, if erroneous, will be revoked by the decision of to-morrow. Now let him ask gentlemen what they meant by a majority, and he had done. A majority of the people of Saratoga county approved the tariff of 1842. Well then the tariff is right. A majority of the people of New York disapproved of the tariff of 1842. Then of course it was wrong. But a majority of the people of the United States approved the tariff of 1842; and "presto change" the tariff was right again. Thus it would be seen the doctrine was preposterous. He was a believer in the doctrine of majorities—not that he believed they were always immaculate, but because it was the wisest system ever devised for mankind. If the doctrine were absolutely right, then Silas Wright would not be our Governor, for he was elected against the voice of a majority of the people of this state. Mr. P. believed in the time honored provision by which a plurality could make that distinguished citizen our chief magistrate. He had but one word more. It was this—let those gentlemen who mounted the dappled hobby to run the race of popularity, take care lest they receive a fall. Let that man who is willing to overthrow the safeguards of popular liberty, great or small, beware lest he receive the popular condemnation. That man, whoever he may be, will find little favor with the electors of New York, when in their name or otherwise he is willing to destroy one of the barriers against partizan violence, to overthrow or strike down one of the safeguards of popular rights.

Mr. BROWN said there were many subjects which had been embraced within the range of this debate on which he did not propose to say a

word. Those subjects had been fully and amply discussed, and therefore he proposed to direct his attention to a single proposition which he was unwilling to allow to go to the world without giving it a more express contradiction than it had hitherto received. He alluded to the position of the honorable gentleman from Essex (Mr. SIMMONS,) as to self-expatriation, and the rule of perpetual allegiance. He regarded that as a distinctive principle, calculated to produce the worst possible consequences. If the position had been avowed at a political meeting, or if it had fallen from a gentleman less distinguished than the delegate from Essex, or if it had been uttered in a body of less importance than this Convention, and if he were not sure that the opinion would go down to posterity in the published debates of this body, he might have hesitated to rise to say any thing on the subject; but he was aware of the great influence any opinion of the gentleman from Essex had, both here and elsewhere; he desired therefore to place on record, side by side with that gentleman's opinion, his own unqualified dissent. He would proceed to quote from the remarks made by the gentleman from Essex on the 1st July—and the gentleman would do him the favor to believe that he did it in no unkind spirit. Mr. B. was not the man to take advantage of any incautious expression, and make it the subject of remark; but he regarded this as the sentiment of the gentleman's enlightened intellect, and he should proceed to quote what he had said on the occasion referred to:

On the first July, the gentleman said in debate: "It was an old settled rule of international law, Blackstone says it is the law of the world, and Peters tells us it is the law of America, (3, Peters' Reports, 242), that a person coming from a foreign country, an alien born though naturalized here, was not discharged from the allegiance to the country whence he came. Expatriation was not recognized by the international law of the world."

On the 7th July, the gentleman again spoke on this subject: "He desired permission to explain, to prevent misunderstanding. He intended to affirm, that the subject of perpetual allegiance was the doctrine of the old world, so far as we know—though it was growing weaker and weaker, and is becoming obsolete in practice, it would seem, in every nation.—He found in the Code Napoleon it was laid down in very strong terms, and we know it has always been the doctrine of England and of the ancient world, the Romans and the Greeks."

Now, if that be the law of this country—he admitted it to be the law of England and to prevail there—but if it was the law of America, that a citizen coming from a foreign country, after having removed here, is never to be discharged from this claim of perpetual allegiance—if, he repeated, this were the law of this enlightened age, in the middle of 19th century, with such a population as we have, a population continually emigrating to the utmost extent of the habitable earth—and it was time it should be distinctly understood, and that our citizens should take it into consideration. But with all proper respect for the superior learn-

ing of the gentleman from Essex, Mr. B. submitted that the gentleman was mistaken. That it was the principle of international law, or the Roman law, or of American law, as what he would now take occasion distinctly and deliberately to deny, and to put his denial on record that he might appeal to it hereafter.

The case, continued Mr. B. to which the Hon. gentleman from Essex has referred as authority for the rule that the law of perpetual allegiance prevails in this country, is that of *Shanks and others vs. Dupont and others*, 3 Peter's Rep. 242. I have looked into the report of that case, and it fails wholly to support the principle asserted. The plaintiffs were the children of Ann Scott, who intermarried with a British officer during the occupation of the city of Charleston by the enemy. She was a native of that city, and removed with her husband upon its evacuation in 1782, to England, where the plaintiffs were born, and where she died. The suit was brought to recover lands upon James' Island, of which her father died seized in 1782. Judge Story delivered the opinion of the court and as I read it, nothing more is settled than that the plaintiffs' title was protected by the 7th article of the treaty of 1783. It is worthy of remark that the learned judge speaks of a double allegiance, which might be due from the ancestor of the plaintiffs—that to South Carolina, the place of her birth—and that to Great Britain, under whose government she was born. He solves the difficulty by declaring that those who adhered to Great Britain were to be considered British subjects, and those who adhered to America were to be deemed American citizens. My friend from Essex, for whose powers of research and varied learning I entertain profound respect, may have been misled by the opinion of Judge Johnston, who dissented. He does say that the doctrine of perpetual allegiance was the rule of the common law, and that the common law had been adopted into the code of South Carolina. He does however admit that the acts of South Carolina, when asserting her independence, must be looked into, to determine whether she may not then have modified the rigor of the common law, and substituted principles of greater liberality. This learned judge arrives at the conclusion that the rigor of the common law upon the question of allegiance in South Carolina, has suffered no abatement. Such however was not, and never has been, the judgment of the high and dignified tribunal of which he was a member, and such never can be the judgment of any enlightened American court, animated by a just regard for the great principles of public liberty which lie at the foundation of our political institutions.

Such was the case in *Peters' Reports*. And as to the doctrine of the Romans, he had not had time to examine the subject as fully as it deserved; but he had referred to an able writer whose opinion was entitled to great weight (Chancellor Kent), and he found—2 Kent, 42—this language: "Cicero regarded it as one of the firmest foundations of Roman liberty, that the Roman citizen had the privilege to stay or renounce his residence at pleasure." That was the doctrine of the Romans, though they were extending their empire all over the globe. And

then as to its being the principle of international law, he apprehended his friend from Essex was again wrong. He would quote again from the same writer—2 Kent's Commentaries, 43: "The writers on public law have spoken rather loosely, but generally in favor of the right of a subject to emigrate and abandon his native country, unless there be some positive law, or he is at the time in possession of a public trust, or unless his country be in distress, or in war, and stands in need of his assistance. The principle which has been declared in some of our state constitutions, that the citizens have a natural and inherent right to emigrate, goes far towards a renunciation of the doctrine of the common law, as being repugnant to the natural liberty of mankind, provided we are to consider expatriation and emigration as words intended in those cases to be of synonymous import." The same writer says: "This question has been frequently discussed in the courts of the United States, but it remains to be definitely settled by judicial decision." That he took to be the true rule. It was true perhaps that the citizens of this country occupying a place on the Rio Grande at this moment, should not be allowed to renounce their allegiance and consort with the enemy. This right must not be exercised where it would be accompanied by particular danger to the land of which the person happens to be a resident. It must, when exercised, be on proper occasions, as in times of profound peace. On this nearly every writer on international law would agree. But, again, if this rule of perpetual allegiance were to be admitted, to what would it lead? If a man, in whatever land he may have been born—wherever Providence may have cast his lot,—on whatever soil he may have drawn his first breath—were to be forbidden, without the consent of his government, to change his allegiance, he would be subject to a despotism which would not be tolerated at this enlightened day. It would be a rule to which he might apply a term which he used a few days ago, for it would be really infamous, inasmuch as it would circumscribe human effort and human enterprise, and would tend to counteract the divine command to man to "multiply, and replenish the earth, and subdue it." It was the doctrine, as the gentleman from Rensselaer, (Mr. VAN SCHOONHOVEN) said yesterday, of "passive obedience," which was put down by the revolution of 1642 in England. It was a doctrine that would interfere with human happiness and human progression and human liberty, and therefore he could not allow the occasion to pass without thus expressing his disapproval of it.

He hoped for a moment to be permitted to look at the origin of this doctrine of allegiance. It originated in the feudal tenures of the early ages. It was an incident of feudal tenures when held of a superior. When the lands were parcelled out by the men of northern Europe, those who held under them were required to own fealty to those from whom they held. This was the origin of this doctrine; and when, in the progress of time, the land came to be held by a king alone, allegiance was due to him, because all the land was supposed to be held, directly or indirectly, from him. The case was

not, however, then as now, for the government at that time was purely military, created for the purpose of protection, and for that alone. It had no reference to the improvement of the state of society, as in this day; it made no provision for human happiness, by the means through which we seek to do it. It was the iron rule of the strongest. It was in short a military despotism. At that day there was no such thing as people. The masses were in a state of degradation;—they were not the subjects of governmental protection; they were regarded merely as serfs of the soil. It was long after that that government was established to promote human happiness. What had been the practice of England herself? He had shown how it became the doctrine of the common law; it was because it was part of the tenure by which estates were held. And what since that time had been the practice in England?—Did the history of the country from that time to the present day, exhibit a long line of unbroken attachment to it? It did not. We knew that while we were a colony, it became oppressive; and that when it pressed too heavily on the people, they had arisen and asserted the principles which here were asserted in '76, though in a less degree and though they failed to carry them out. Yet on two occasions they have risen with some effect. In the reigns of Elizabeth and James we read that the House of Commons rose against Royal authority, and we find this controversy going on between principle on the one side, and the crown on the other, until it terminated in the Revolution of 1642—a revolution which was memorable for its maintenance of those doctrines and principles on which we have always stood—the principles of human liberty, human rights, and the promotion of human happiness. These were the doctrines of Hampden, Vane, St. John, of Oliver Cromwell, and their companions. At that period this doctrine of allegiance was repudiated by the English Parliament. It was broken down, and they undertook to expel the House of the Stuarts, and one of that house was brought to the block in the city of London. In 1668 the same principle was again asserted, and he found the people rising up against that principle of the common law and asserting that it belonged to them to say on great occasions, in times of emergency, in what manner they chose to be governed. In 1683, we find them expelling another member of that family of the Stuarts, notwithstanding the prevalence of the doctrine of hereditary succession. They found a Convention Parliament passing an act declaring that the House of the Stuarts had abdicated the crown, and was no longer worthy to hold it, and transferring it to another. Blackstone, who was opposed to this doctrine of perpetual allegiance, declared that the allegiance which was due for 600 years anterior to the revolution, was very different from that due after it. The oath of allegiance was changed, leaving its nature undefined and open to the people thereafter. And while this was going on there—from 1642 to 1668—this question was settled here. In Virginia, Massachusetts, Rhode Island and Connecticut—in all the colonies that were settled along the Atlantic border—this principle was settled by the people

who had planted themselves here, and became one of the foundations of the government which was laid here. He would not detain the Convention, but simply repeat that this principle was contended for by such men as Hampden, St. John, and their coadjutors—men whose names are memorable in the struggle for human liberty, and who were not the men to subscribe to such a doctrine as that which the gentleman from Essex had intimated was the prevailing law.

For a moment he desired again to advert to the history of this country. Take for instance the memorable year and day—the 4th July, '76. Then three millions of people composed the colonies of this country, and were subjects of the British crown. Now if those colonists could not be relieved from their allegiance but by act of Parliament, they were under that allegiance when the sun rose on the morning of that memorable day, when the people scattered along the ocean's shore in this country asserted their right to create a government for themselves, and to promote and extend human happiness.—They then asserted the principle of hostility to perpetual allegiance, and they thereby afforded an example for all future ages. They showed that they did not regard allegiance as perpetual, for they asserted the right to sever their allegiance at their pleasure. And how was this done? Did they wait until they had obtained the consent of the parent country? By no means. They asserted their right to do it themselves; and they did it by their own sovereign, unqualified act, depending on no person. They did it in defiance of the British crown, and all the force that crown could bring against them. He knew quite well, and it shows a distinction which was even there admitted, that Great Britain and her court lawyers, have asserted that the people were not relieved until the treaty of peace of '73, while in fact the ties between them were severed completely on the morning of that day which is and ever will be memorable for the Declaration of Independence. And what had been the manner in which Great Britain had treated this matter? The gentleman from Dutchess (Mr. TALLMADGE) had given them an illustration in reference to the war of 1814. They did certainly undertake to assert it. He would refer to the case of Mr. Laurens, who was sent to Holland to negotiate a loan, and being taken on the high seas, was taken to England to be tried for treason. He was there confined in the tower, but they did not dare to execute him. They knew they must abandon the right to claim perpetual allegiance, and that the execution of that distinguished man for such an assumed crime would have been regarded with horror by the whole civilized world.

Mr. B. desired to advert to another fact. The constitution of the U. S. confers on Congress the power to establish a uniform rule of naturalization; and what does that mean? Are these rules of law nugatory? Are they mere idle forms and ceremonies? Congress has exercised this constitutional power from the first to the present day, and if it be the principle of the common law, how shall the laws so passed be interpreted by the courts of law? Were they to call upon the citizens of other countries to take the oath of allegiance to our government, and then declare to them in the face of that declaration, that this

doctrine of perpetual allegiance was a principle of the common law? Why that would be an absurdity. It cannot be maintained for a single moment. Why, it would not alone affect the citizens coming from other countries—it would affect our own population emigrating to South America, California, and elsewhere. The inhabitants of the Western states, who are there aiding in the establishment of a free government, are in great part from other countries.—When this government treated with them for the lands they hold, did it tell them that their allegiance to the government from which they came, was perpetual, and could not be severed? No, they were treated with, and aid and countenance was given to them, as to persons possessing an independent power, and they became in fact parties to the compact existing amongst the people of the republic. Whenever a question shall be presented to the U. S. supreme court fairly and fully on this subject, he had no doubt that its decision would not be in the face of the legislation of this country for the last seventy years. He thought it was due to our naturalized citizens and to the country itself that this question should be definitely settled, and settled soon.

Mr. PATTERSON should not have trespassed again on the attention of the committee, but for remarks made by others in relation to what he had heretofore said—and gentlemen would bear witness that he had thus far, at least, acted on the principle which he had prescribed to himself, to speak only to the pending question. If he departed from that rule now, it was because he had been driven to it by others. Mr. P. denied that he had taken the ground imputed to him, that the people had no right to impose restrictions on themselves. He did say in regard to the restriction upon the choice of the people for Governor, that he would not impose any. But whilst on that point Mr. P. said nothing about the people restricting themselves.—When a general proposition came up, recommending restrictions in regard to other officers, he would give the matter due consideration, and vote as his judgment dictated—but at present he should say nothing beyond what related to the matter in hand—the qualifications for Governor. But he had been complained of, among others, as having made an unfair attack on the report of committee number five. Mr. P. had said nothing in reference to it, except that he presumed the committee could not have fully considered the subject, or they would not have retained the word native. But in that he was contradicted by the gentleman from Orleans (Mr. PENNIMAN), who asserted that every word and letter of it had been fully considered and agreed to by the whole committee. And yet a wonderful change seemed to have come over that gentleman at least—for it was but yesterday he confessed that this term native was an odious one, and he was willing it should be struck out.

Mr. PENNIMAN intended to say that others regarded it as odious. But the drift of his remarks was in favor of sustaining the word native, and if the gentleman from Chautauque or any other gentleman would give him the opportunity, he should vote to retain it. [A voice, "I'll give you the opportunity."]

Mr. PATTERSON said if he misunderstood

the gentleman, so did the reporters—that the committee unanimously agreed to the report.

Mr. PENNIMAN had never yet said a word as to the veto power—but there were those who knew that he and one other member of the committee did not agree to that part of the report.—In other respects, all agreed to it.

Mr. WORDEN:—Is not the gentleman's name appended to the report? It's a little too late to say now that he does not agree to it.

Mr. PATTERSON took the report of the gentleman's remarks in the Argus—and he believed those reports were considered good reports—fair reports. In the Argus of this morning the gentleman was reported as having characterized the word native as an odious qualification—but whether he intended to say that it was odious in the eyes of the Convention or of the committee No. five, Mr. P. would not say. It was enough that he found the word in a report signed by Mr. PENNIMAN and others, and which purported and was said to be unanimous. As to the gentleman from Saratoga, (Mr. PORTER)—another member of committee No. five, Mr. P. was exceedingly gratified to hear him this morning—for that gentleman had furnished a very conclusive illustration of the position that a man under 30, was at least qualified to make a most admirable speech—and against restricting the people in regard to qualifications for Governor. But this gentleman had admitted in fact that the committee had not very thoroughly considered their report—inasmuch as he had himself proposed an amendment which changed the whole character of the report. But the gentleman from Orleans seemed to misapprehend the report himself—so far as related to residence. It did not require the governor to be a resident of the state, and in this respect was not as restrictive as the amendments of the gentleman from St. Lawrence and Onondaga (Messrs. RUSSELL and TAYLOR); for a resident of South Carolina, if he had formerly resided here five years, might under this section as reported, be governor. And yet this was one of the sections that had been so fully considered by committee number five, and unanimously concurred in! And one of the members of the committee (Mr. PORTER,) had actually come forward now with an amendment requiring a man to be a qualified elector and a resident of five years' standing! Another point, illustrative of the consideration bestowed by the committee on this report—this committee had nothing to do with this subject of qualification for office—that whole subject having been referred expressly to committee number 4, at the head of which was one of the delegates from Schoharie (Mr. BOUCK.) Mr. P. had but a single remark to make, and that was in reference to the very able speech of the gentleman from Saratoga. Mr. P. was perfectly delighted with his flights of fancy and with a good deal of his argument. But he had supposed that it was reserved for the distinguished gentleman from Monroe (Mr. STRONG) to impugn the motives of members here, and that he alone was to have all the glory of that. But even the gentleman from Saratoga, in the heat of debate, must impugn the motives of gentleman who took a different view of this subject from him—and insist that they did so be-

cause they wanted to be candidates for office. Mr. P. left that matter with those gentlemen—trusting that no other gentleman would be found impugning the motives of those who disagreed with them in matters of this kind. But one other remark of the gentleman from Saratoga required a word of reply. And that was this—that when that gentleman travelled out of his way to make an imputation against Mr. P.'s private character, as a man, as a citizen, as a husband and a father, Mr. P. threw the imputation back on him with contempt.

Mr. PORTER begged to know to what remark of his he referred as implying the slightest imputation on the gentleman's private character?

Mr. WORDEN: The gentleman from Saratoga might have spoken without knowing what he said—not only in reference to the gentleman from Chautauque, but to myself—for the gentleman threw out an imputation upon me that was never before thrown upon me by any respectable gentleman here or elsewhere.

Mr. PORTER from his position in the house (remote from Mr. WORDEN at the time) did not hear the gentleman.

Mr. WORDEN: (In his seat.) The gentleman will hear from me in the course of this debate.

Mr. PORTER: I am ready for the gentleman from Ontario now or hereafter. As to the gentleman from Chautauque, he entirely misunderstood me. I spoke of his admiration for the sex in jest, as did the gentleman from Onondaga (Mr. RHOADES) the other day. I supposed the admiration he spoke of was mutual—nothing more.

Mr. PATTERSON: I am willing to take the explanation. But the manner of the remark, if misunderstood by me, was also mistaken by others. And I have only to say that an insinuation of that kind will never be made here or elsewhere, against me, by any man, without calling down on that man the expression of such feelings as I entertain for persons of that character. I am content if the gentleman did not mean more than he has explained. But he was extremely unfortunate in his language, if he did not mean to convey a direct charge on me, entirely different from anything implied in the remark of the gentleman from Onondaga. I supposed the gentleman intended a direct attack on me, and no man shall do that without hearing from me. I am happy, however, to learn that the gentleman did not intend it.

Mr. RHOADES. I did not allege that the gentleman from Chautauque admired the sex—but only intimated that they admired him. [A laugh.]

Mr. PORTER. I trust the gentleman from Chautauque, as a gentleman, will accept the explanation I made—for it never entered my mind to make an imputation on the gentleman's private character, of any nature whatever. He entirely misunderstood me, and I hope he is satisfied that no such design was entertained by me.

Mr. PATTERSON was satisfied with the explanation. But he would say, that the reason why he supposed that he was not mistaken was because the gentleman previously reiterated the

charge of the gentleman from Monroe that his course here was taken for the purpose of getting votes.

Mr. RHOADES said as he should be governed in his vote by different views from some others, and as he should not occupy much time, nor say any thing calculated to provoke debate, he felt authorized to say a few words in explanation of his position. He should vote against all the amendments to this section, and against the whole section in the position in which it stood here. And this he said with the greatest respect and veneration for committee No. 5—a veneration which he felt the more perhaps from his proximity to the chairman of that committee, and particularly to the gentleman from New Orleans—[A laugh] Orleans he meant (Mr. PENNIMAN)—it having been so fully evinced on a recent occasion, that that gentleman was capable of administering such sharp, severe and caustic rebukes to all who saw fit to dissent from any part of this report. He had a personal motive for it also—for it had come to his ears that at the time when that gentleman was dealing with others, he had a rod in pickle for himself (Mr. R.)—but that in the gentleman's anxiety to reach the whales and leviathans here, he forgot to draw out the rod intended for the smaller fry. [Laughter.] Mr. R. therefore now said, if he had uttered any thing, or should, in derogation of committee No. 5, that he wished in advance, to take it all back. [Renewed laughter.] He should vote against this section because it did not belong here, and not because it imposed restrictions on the people—if that position had not been already given up. Doctrines had been advanced here on that point which he could not subscribe to. He did not believe that we were sent here, or that it was any part of our duty to say that no restrictions should be imposed on the people themselves.—They had sent us here for that very purpose.—The very constitution that we were sent here to consider and amend, and under which in the main the people were living and submitting to, was full of these restrictions. The very preamble of that constitution spoke of the instrument as a rule of government—a word which in itself implied restrictions. Without them there could be no sound or wholesome government. So the constitution vested the legislative power in a senate and assembly—excluding the people at large from the exercise of that power. So as to Executive and judicial powers—and there was scarcely a section, certainly not an article in the constitution, in which some restrictions were not imposed on the people. He regretted to hear the remark thrown out here the other day, that whatever restrictions the people might think proper to place on themselves, in the constitution, there were times when they would not regard them. Mr. R. did not believe this. The history of this state did not furnish an instance that could justify the remark. That the constitution may have been violated by the legislature—that other constitutions had been sometimes violated to some extent by Executives, who undertook to construe it as they understood it, and not as expounded by the judiciary,—could not be denied—but they never had been violated by the people—nor did he be-

lieve they ever would. Submit to the people a constitution, be it what it might, whether characterized by the largest or the smallest liberty, and when they once adopted it, his word for it, they would adhere to it, until abrogated by the same formalities by which it was enacted. But if the people were really adverse to having any restrictions on themselves, and we believed that to be so, our plain duty was to abrogate the constitution entirely and go home, leaving matters to go on without law. He did not vote against this motion because it restricted the people—for he believed that the people felt the importance of restraints, and would cheerfully submit to them, as necessary to the preservation of real and substantial liberty. And as with the people, so with individuals. Every common sense man started in life under the conviction that he must restrain his natural appetites and passions—and as far as he did this, he became a good member of society. But he went against the section because it was in the wrong bill. He went against it also because, as all admitted, it would be of no practical use. Even those who were for retaining it, did so not because they supposed the people would not select competent men for Governor—but to avoid any possible mistake of that kind, and to preserve and conserve some remnants of the old constitution, and from a feeling of veneration for it. Indeed, there was a remarkable degree of unanimity on this subject—all being satisfied that it would make little difference whether the section was retained or not. He was opposed to it also because it did not go far enough—and was not such as the people would demand, if they felt any necessity of restricting themselves on the subject. If you were to assemble a Convention of plain, practical, intelligent men in the country, without reference to party, and having only in view the selection of a good candidate, Mr. R. believed they would say first that he should be a man of natural, sound and intelligent mind, of good moral character, of good education, thoroughly versed in the principles of our government, and in the constitution of the country, of good health and constitution, with the physical ability to discharge his whole duty—whether as admiral of the navy or commander of the militia—with the physical power to endure the climate of 54, 40 or that of the Rio Grande. Mr. R. did not know whether they would require him to be exactly thirty to a day, or to be a resident of five years, to a day. He thought not.

Mr. RICHMOND: Would you not have him honest too? You've not got that in.

Mr. RHOADES:—That was a matter of course. Honest, wise and intelligent men would of course select an honest man, as well as capable, when not overborne by party influences or party demagogues. With these views he regarded the section as entirely unnecessary and of no practical utility; and however much discernment and intelligence there might be here, he did not believe that we contained all there was of it in the state, or that there was not still enough left among the people to enable them to judge rightly in this matter of qualifications. But he did not mean to say that he would not vote for a section prescribing general qualifications for office, when proposed by the proper committee.

There was no necessity certainly of making the governor an exception, at this time particularly, when the feeling was to strip him of all the power and patronage which gave the office consequence. But a section prescribing the qualifications of all officers, might be well enough; and he would vote for a sound and sensible provision of that character—not because he believed there was any absolute necessity for it, but because it was perhaps our duty to express to our constituents what he believed to be some of the requisite qualifications for office. But such a section would be rather an ornamental than a practical part of the constitution. He hoped however there would be something in them. Perhaps this section would do tolerably well for committee number 5. But it was extremely diluted.—The principles of homeopathy had been applied to it, and perhaps it might be diluted still more. Now, it was an infinitesimal dose of conservative restriction on the popular will, to be put in merely for the sake of the name—and as such he was not disposed to vote for it.

Mr. RICHMOND adverted to the very common practice of gentlemen here, opening their speeches with professions and that they did not mean to occupy attention but a very few minutes—and yet passing from point to point, with a word only on each, until they had inflicted very long speeches upon the body. Mr. R. would only promise not to speak more than fifteen minutes, perhaps not that. Nor did he mean to pursue an argument that had been long ago exhausted utterly—though he might say not without one good result. Gentlemen had taken their positions here as to reform, and we should know where to find them hereafter. Men of talent and influence had come out warmly in favor of reform on this particular question—and so warmly that he promised himself that when we came to matters of real and engrossing importance, he should find them as ready to go with him then, as they were upon this comparatively trivial question—a question which though magnified into one of great importance and as a test of the dispositions of gentlemen in regard to reform, he regarded as one of mere expediency, and one which the people had not agitated, except perhaps so far as regarded the word native. That word was properly struck out, in his judgment. But not so with the qualification of age, as he thought. Not that he regarded it as a restriction on the people—for if he did, he should vote against it—but as a restriction on demagogues who controlled nominations, and to promote their own selfish purposes. And a nomination, as all know, generally carried with it the party vote—for there were few—very few—men who had the nerve or the strength of resolution and character to make head against a party nomination, and very few who could be found to sustain a person in such a stand against his party. As an indication therefore of the temper of this body in regard to reform, he regarded this discussion as all-important—as it indicated strongly that the feeling which existed to strike out a clause which the people never asked to have struck out, would continue when we came to reforms which the people had demanded beyond mistake. For himself, though a friend of real reform, he should vote for 5 and

30. [A voice—"54 40 too?"] Yes, 54 40 too.

Mr. WORDEN said he should not have risen now, but for remarks made during this debate, which he felt it his duty to answer. And hence he felt it to be his right to ask indulgence whilst he did so. He should not undertake to argue this question—because from the opening of this debate, he was satisfied that no argument sound in itself, resting on just principles, would probably have influence here. This question was not to be decided in his opinion by the force of argument or the force of reason. Mankind had not yet become so enlightened as to be free from all influences of education, the force of habit, or the controlling power of prejudice. And since the formation of this government, national as well as state, although there were admitted to be great and leading fundamental principles connected with civil liberty—there had been great difficulty in giving them full application to the affairs and condition of men. True the great charter of American liberty declared that all men were created free and equal, and were endowed by their Creator with certain inalienable rights—no one possessing higher rights or any special or peculiar privileges over another. Though these great principles were recognized, yet there had been great difficulty in applying them to the condition of mankind in this country. We had seen from the very formation of the national and state governments, a class of men, some of them proceeding on grounds reasonable to themselves, who had denied to the people the exercise of full, equal, political rights. They had declared it essential and necessary, in regard to the elementary, sovereign powers to be vested in the people, that it should be curtailed—that there should be some artificial rule or test by which the exercise of that power should be determined. We began by applying this principle to the elective franchise.—The notion prevailed that we must retain in the machinery and structure of our government, a body to represent the aristocracy—the landed interest—that we must have a senate that should be a permanent body—its constituency to be the wealthy or the landed interest—and that should check the caprices or whims of the popular will. That idea seemed to have been exploded in the minds of some gentlemen. So in regard to the elective franchise, it was long the idea in this state, that all men were not to be permitted to enjoy that right—that its exercise must depend on one of these accidental circumstances—that a man must be the owner of a certain piece of land before he should exercise the sovereign right to vote for senator. That idea had been exploded. But yet men had not given up the principle on which that idea was based. These old habits and prejudices were still clinging to them, and they had brought them here—and their very arguments in favor of these restrictions, were the arguments that had ever been put forth in restraint of popular liberty. It was the last expiring effort of dying old Federalism that we saw here laboring to incorporate into this constitution this exploded idea, as to the exercise of popular power. Now, he declared here, that not one gentleman had spoken in favor of these restrictions, who had made an

argument that could not be refuted in the common school house, in any common school district in the land. He asserted it here, that nothing approaching the dignity of an argument had been put forth in that quarter—and this question, he apprehended, was not to be decided on the ground of argument, but by these old prejudices that clung to members here. Some argued gravely and long that we must have these restrictions, or else we might have some raw boy of the north for Governor. Mr. W. wondered the gentleman had not said some uneducated Jonathan. That was the argument, and it was put as if with sensible men, it would carry weight. But we heard from the same gentleman yesterday, that we must have these restrictions and checks against raw boys, lest the educated son of some rich man, from our colleges, might force himself into the gubernatorial chair! Now, his friend, when he had a cause in hand, never involved himself in these absurdities. He had argued here from his prejudices, his habits of education and thinking, rather than from principles or from facts. The gentleman from Chautauque (Mr. MARVIN) said we must have this in the constitution, or forsooth the President of the United States, if he had a boy, would send that boy into this State, and by the power of Executive patronage might cause him to be elected Governor, and by this means subvert the liberties of the State! That was an argument presented to grave men, assembled to form a constitution for two and a half millions of people! And yet that argument was listened to here as if it were potent and convincing! We were told that we must put in these restrictions or else an incompetent man would be elected. But had they proposed to apply the same rule to any other officer of your government? To the supreme court judges or the chancellor, who had twice the power over the interests and welfare of the people of the Governor? Not at all. Until the gentleman from Saratoga (Mr. PORTER,) found himself involved in an absurdity—gentlemen had not talked about the Lieutenant Governor, who, the day after his election might be Governor. Nor had they guarded against incompetency from age, but had left men eligible who perhaps had none of the powers of their former selves to discharge official duties. But Mr. W. had wandered from his purpose. He did not intend to argue this question. He proposed mainly to answer some—he knew not what to call them—some remarks which fell from the gentleman from Saratoga. And he did not know but he might answer something that fell from the member from Monroe (Mr. STRONG.) The former, after commenting on what Mr. W. said, undertook to read him a lecture, and to inform him that gentlemen who mounted hobbies were likely to be thrown. Mr. W. was much obliged to the young gentleman for the admonition.

Mr. PORTER made no application of that remark to the gentleman, but expressly stated that the gentleman had argued the question with ability and fairness.

Mr. WORDEN knew the gentleman made that remark; but after reviewing what he called his argument, he passed immediately to the admonition alluded to.

Mr. PORTER, if the gentleman wished to

have the remark applied to him, had no objection. But if he desired to know the fact, he repeated that his remark followed a reference to an argument which he stated was not used by the gentleman.

Mr. WORDEN presumed the gentleman did understand precisely what he meant himself.—But Mr. W. would say to that young gentleman that he had not been in the habit of riding hobbies, neither did he know how to manage them. He had known but one way to public favor or consideration, either in public or private life—and it might be well for the gentleman in the outset of his career, to turn his attention to it—and that was by a high-minded, honorable and ingenious course of conduct. If by that course heretofore, Mr. W. had secured the esteem of his fellow-citizens, he was grateful for it. If a continuance in that course, should secure to him any greater amount of that esteem, he should be equally grateful. But he should neither mount hobbies, nor be deterred from advocating here or elsewhere any principle which he deemed sound and just in itself, whatever impression that course might make on the public mind—whether favorable or unfavorable. It had been his misfortune to stand up there and advocate measures against the public sentiment of the day. He did not then flinch from what he thought his duty. He should not now. He had had sharp and bitter political contests on that floor with the gentlemen from St. Lawrence and Onondaga—but it was never his misfortune until now to have his motives aspersed, or his arguments impugned by the charge that they were intended to effect political objects, much less for selfish purposes.—That had been reserved for the gentleman from Monroe (Mr. STRONG.) If the remarks which fell from that gentleman had fallen from a high-minded and honorable man, Mr. W. would have felt the force of the rebuke. If they had fallen from one who had never pandered to popular prejudices on the floor of the legislative hall—Mr. W. should have mistrusted that in some unguarded moment he might have rendered himself obnoxious to the charge. If they had fallen from a man who had never truckled to low and vulgar prejudices—Mr. W. should have been apprehensive that he was liable to the aspersion. And so also, had they fallen from a man who had never, even on that floor, appealed to the popular prejudices that he supposed rested in the bosoms of members here, and endeavored to array the lay members against the legal profession. But he would tell that gentleman, and the gentleman from Saratoga, that he did not believe it necessary for him, at this day, to undertake to speak merely with a view to popular favor. He trusted he had been too long before his constituents, and too long in the discharge of public duty, to make it necessary, even if he desired the honor which they charged him with aspiring to, to undertake to speak disingenuously or contrary to his convictions, any where. But he could tell both gentlemen what one of them would not say in his place—that he knew of no political office that the people of the state could confer on him, that he would accept. His public life was ended with this Convention, so far as his present and firm purpose

was concerned—and he knew of no consideration, of no contingency that could arise, that would ever induce him again to take a public political station. Mr. W. did not say this without warrant. It was not now for the first time spoken. There were those among the constituents of the gentleman from Monroe, who knew and had the evidence of this his firm determination in regard to this matter. A word as to another argument of the gentleman from Saratoga, who found fault with him because he said he would have been content to have let this section stand, as it probably would, after the vote on the proposition of the gentleman from St. Lawrence had been taken. And the gentleman read him a lecture, and thanked God that he (Mr. P.) would never be guilty of the absurdity of allowing a provision to stand which he thought objectionable.—Why then did the gentleman assent to this report—yes and sign his name to it—which contained a provision that he now moved to strike out? Was it his intention to commit a fraud on this body—to pass through it a provision which he did not himself approve? Why did he move to strike out the word native, after approving it by signing the report? Where was the gentleman's consistency? Where his boasted integrity in this respect? He either undertook to palm off on this body a clause which he did not approve, or to smuggle into the constitution a provision which he clung to and hoped might pass without comment or observation. The gentleman might take either horn of the dilemma. But Mr. W. hoped the gentleman would consider this before reading him another lecture on consistency. Mr. W. was not indebted to the gentleman from Monroe or Saratoga for these imputations on his motives. The gentleman from Orleans (Mr. PENNIMAN) branched out on this subject yesterday—charging him, and all others on his side of the question, with speaking for popularity. Mr. W. would do the gentleman the justice to say that he did not fall into that error himself, and the reason for it was simply this, that his long speech yesterday was made up, with the exception of some five lines, of praises of himself; and there was no room for praises of the "dear people," [laughter]. He had given us then a schedule of his own good qualities—his high practical attainments and his peculiar fitness for his position here. Having taken on himself that labor, it was not to be wondered at that he did not allude to the "dear people," [renewed laughter]. Mr. W. regretted that this debate had extended thus far, because it was calculated to give an impression to the public unfavorable to a propitious or fortunate result to our deliberations—that we were frittering away the time—he would not say with senseless declamation—but with arguments and positions that carry with them their own want of force and application. But he hoped that the time wasted in this debate, the personalities it had engendered, would induce the Convention to pause and reflect, and go to the consideration of the great business before us with calmness and a proper sense of our responsibilities to the present and to future generations.

Mr. STRONG remarked that the gentleman from Ontario had lost his balance to-day. He

makes a very bold attack on me (said Mr. S.) If I have injured his feelings I very much regret it. I hope that my mentioning merely that it might be that the difference between him and his colleague on this question, was because he might have an eye to the governorship, has not been the means of scaring him from the course. I had the best motive in doing so, and I have repeatedly said that he stood the prominent man for next fall. And when I said that, I did it supposing he so understood it. I had no intention to injure his feelings or to drive him from the course, if he saw fit to take it, and the people nominated him. But the language he uses—I regret very much that he should have the extreme politeness to call my friend from Saratoga a gentleman and me a member. But I had better bear that, than that he should lose his manners. It does not worry me in the least.—Nor do I view it as the opinion of that gentleman, which upon a second sober thought he will retain. In delivering his speech, I am satisfied he has found relief, and will feel better. One word and I am done. He arraigns my former conduct—and says it is not the first time I have endeavored to array the lay members against the profession. If it was a crime in 1840, to carry out, as we endeavored to, the will of the people, when petitions were here, thousands upon thousands, asking for reform in our legal fees—that we advocated and passed a law reducing fees—if that was arraying lay members against the profession, I may have been guilty of it sometime in carrying out the will of the people. If that is a crime, then am I chargeable with crime. I did not suppose his feelings could have got so wrought up, that he would charge as a sin what I supposed to be right and which the people sanctioned. If any body has been the first to touch that question, and to array lay members against the profession, it is he. I have done no such thing. But sir, when we get the report of this great committee of thirteen, of which all expect so much, we shall see where all of us stand. Nothing that the gentleman can say will deter me from doing my duty.

Mr. NICHOLAS said the question had been so fully discussed heretofore that he had not intended to trouble the committee with any further remarks. But the debate had taken so wide a range to-day that he felt called upon to advert to the views of one or two gentlemen.—The gentleman from Onondaga (Mr. RHOADES) expressed the opinion that the advocates of the doctrine of self-imposed restrictions by the people had admitted that there was no necessity for these restraints. They did admit their entire confidence in the capacity of the people for self-government—and that too in its broadest sense—but not the admission imputed by this gentleman, that Mr. N. had heard. They had not admitted the infallibility of the people. They were all too strongly impressed with their own liability to err, and to have their reason influenced by passion, to entertain such belief in the infallibility of the people. Nor was there any thing in this incompatible with confidence in the ability of the people to govern themselves. For if as the gentleman admitted it was necessary for individuals in setting out in life to adopt prin-

ciples and rules for the regulation of their conduct—equally important and necessary was it for communities; for their liability to be led away by passion or sudden impulses, was in no way diminished by an aggregation of their numbers. The contrary was generally the effect. The mass, it was generally understood, were much more liable collectively to be led away by temporary excitements than this same number of persons acting individually and separately.—True, no abuses could be pointed to show the necessity of restrictions, and for the reasons that these restrictions had existed—because your state conventions, by whom candidates had been brought forward, had been restricted to persons of a certain age and residence. Gentlemen on the other side of this question had erred in supposing that Governor Tompkins was elected before he was 30 years of age. Mr. N. knew this was not the fact. Gov. Tompkins had he lived to this day, would have been 72.—He was first elected in 1807. Gentlemen could make their own calculations; but they would find that he was over thirty when first elected Governor. But to advert for a moment to the position of his colleague (Mr. WORDEN) that argument could have no effect here—that the minds of those who differed with him on this question, important as all regarded it, were controlled by habit and prejudice. Mr. W. said he regarded this, if correct, as one of the strongest positions that could be taken in favor of his own side of the question. For if men, selected as we were, from every county in the State, to deliberate upon matters of the highest magnitude and interest to the people of this State, could be so far led astray by the force of habit or prejudice as to be proof against all argument,—if we could not be controlled by the power of reason in the responsible duties devolved on us—what could we expect from the community at large, exposed as they might be to temporary and controlling excitements. He repeated, his colleague had taken a position, which if just towards this body, was a strong and convincing argument in favor of self-imposed restraints by the people on the exercise of their power. Adopt this doctrine, that the people should impose no restraints upon themselves—let the people adopt it, and they would soon commence a downward course, first to anarchy, and then despotism. This had been in all former ages just the position in which tyrants and usurpers had aimed to place a nation's power, in order to pervert it to their own corrupt purposes. Spurning all restraints and scouting the idea of even self-control, the power of the people is just then in a state best adapted to their insidious designs; they then used and moulded it to their own aggrandisement. Let gentlemen who had advocated a repeal of these wise and salutary restrictions reflect upon the history, the rise, the meridian and the decline of all past governments, especially the ancient republics; and as patriots they must and would pause, and led by a common desire which he had no doubt actuated every member of this body to serve faithfully and usefully our country, and perpetuate her free institutions, we should not impair or enfeeble existing safeguards, but when practicable and necessary strengthen and support

them. Mr. M. here alluded to the fact that Gen. Washington, than whom perhaps no man required less of self-restraint, had laid down for his own conduct a series of rules, to which he most rigidly adhered. He was a man of sense—of principle. He knew his own weakness—his fallibility—his participation in all the frailties of our race—and he had the foresight to perceive the importance of fortifying himself against them in advance. And if there was any thing in the conduct of our people showing their capacity for self-government, it was the sense evinced by them of their own liability to err, and the provision made to fortify themselves against it. The argument of the gentleman from Oneida, (Mr. KIRKLAND,) yesterday, Mr. N. said, though strong in the main in favor of self-imposed restrictions, was not so in its application to this qualification as to age. The gentleman assumed that the power intended to be restricted by this section was an elemental power. But in practice, it was to a great extent a delegated power. Mr. N. adverted to the manner in which candidates for office were brought forward, in practice—to the fact that it was done by delegated conventions, in the organization or composition of which, the great mass even of one party had little or no personal agency—that the proceedings of these bodies were generally controlled by a few leading spirits, by whom every thing had been arranged beforehand—and argued that these restrictions instead of operating directly upon the elemental power of the people, would operate rather as a check upon the delegated power, if such it could be called, of these nominating conventions, or upon those who controlled them. And in framing these restrictions, the general rule that experience and the requisite qualifications were found in those over 30, should govern, rather than the exceptions that sometimes occurred. Nor did he regard the argument as having weight, that the restriction should apply to the old as well as the young—for the former had not usually that desire for the care and turmoil of office, that was sometimes a passion with the young—nor were old men the sort of candidates that politicians preferred—being generally too inflexible and rigid in their opinions and views to make them the available candidates which politicians usually sought for. Now, in reply to his colleague's remarks imputing to members here a lingering adherence to the spirit of old federalism, and the doctrines of '93, Mr. N. must be permitted to say, that he thought valuable lessons on the importance of maintaining state rights in all their just vigor, whether against the encroachments of the national or foreign governments—might be gathered by recurring to the doctrines of 1793. Nor did he shrink from the invitation of his colleague to test his position by a recurrence to the doctrines of the democracy of 1846. And he took pleasure in referring his colleague to these doctrines, as exemplified in the modern constitutions of Louisiana and New Jersey—the latter particularly—and the recognitions that would there be found of this doctrine of wholesome restrictions. As to the disparaging allusions made to our own and the constitutions of other states, Mr. N. could not forbear the remark that

though like all human institutions they were necessarily imperfect; yet that so far as this state was concerned, our people had gone on prosperously and happily thus far—had made unparalleled strides towards national honor and greatness, and had enjoyed all the advantages that could result from a practical application of the true principles of government. And for one he gloried in these American constitutions as the consummation and embodiment of all those great principles for which our fathers bled in the revolution, and which were asserted at Runnymede, and in all the subsequent revolutions in Great Britain. And whilst he would amend where amendments were necessary under the increasing wants, business and population of the state, he would preserve as much as possible of this venerated and cherished instrument. Mr. H. closed with the remark that under these views he should vote for the amendment proposed by the gentleman from Saratoga to-day—as being all that was necessary to meet objections to the section as it stood, or that the public sentiment demanded.

Mr. BRUCE had this suggestion to make to the committee, that no gentleman should move to rise and report until this question was disposed of. In the early part of this debate, he made up his mind how he should vote. But that was so long since that he had forgotten how he determined to vote. [Laughter.] If he did not vote as he then determined, he hoped gentlemen would consider that it was because he had forgotten how he was going to vote. [Renewed laughter.] He regretted this discussion. It was a mere discussion on a question of tweedle dum and tweedle dee. He did not care a copper which way it was decided. It was a question in which the people felt no interest; but they did feel an interest in the labors of this Convention, and they were calling on us to know why so much time was taken up in discussing questions of so little importance. But if this debate was to go on, he suggested that it would answer all the purposes for gentlemen, instead of rising here and making speeches, to request our reporters to read the speeches made the day before. [Laughter.]—for the same speeches were made over and over again, day after day. Some gentleman had expressed an anxiety to proceed in our work and present a sound constitution to the people. Now this must be done soon, for if time had its usual effect on our work, one end would rot before the other was completed. [Laughter.] Again some had argued warmly in favor of 30 years of age for a governor. He ventured to say that if we went on at this rate, that there was not now a young man of 21 in the state, who would not be eligible under this restriction, before we got through. [Roars of laughter.]

Mr. MANN briefly expressed his determination to vote against the whole section, with a view of sending it to the proper committee, to frame a general provision in regard to eligibility.

Mr. MORRIS, Mr. CLYDE and the CHAIRMAN having expressed a desire to be heard before the question was taken, the committee rose and reported progress and the Convention

Adj. to 10 o'clock to-morrow morning.

FRIDAY, JULY 10.

Prayer by the Rev. H. HARRINGTON.

Mr. HUNT presented a memorial from the Central Committee of the National Reform Association of New York in relation to the occupancy of land. Referred to the eighteenth standing committee.

The PRESIDENT laid before the Convention a communication signed B. Skidmore, a citizen of New York, making certain complaints of the official conduct of Mr. William Paxton Hallet, clerk of the Supreme Court of New York—upon which a conversation ensued between Messrs. MANN, TAGGART, TOWNSEND, KIRKLAND, BASCOM, WARD and others.

Mr. WARD asked if it was proper to receive a communication which reflected on the character of any public officer? What had the Convention to do with it? To entertain it would be to give encouragement to charges of a like nature against others, when there were proper ways by which they could be arraigned if they had done wrong. He wanted further time to consider it, and therefore moved to lay it on the table.

The motion to lay on the table was carried by a vote of 33 to 25; but as there was no quorum voting, the question was again taken, and it was agreed to by a vote of 50 to 32.

A motion by Mr. TOWNSEND to print the communication was lost.

LEGISLATIVE DEPARTMENT.

Mr. W. TAYLOR, from committee number one, made a report as follows:—

The standing committee on the apportionment, election, tenure of office, and compensation of the legislature, having considered the subjects referred to them, beg leave to report the following proposed amendments to the constitution, in connection with the sections to which they belong.

ARTICLE FIRST.

§ 1. The legislative power of this state shall be vested in a senate and Assembly.

§ 2. The senate shall consist of thirty-two members, and the senators shall be chosen for two years. The Assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

Substitute the following for section five:

The state shall be divided into thirty-two districts, to be called senate districts, each of which shall choose one senator. The district shall be numbered from one to thirty-two inclusive, and shall be divided into two classes, to be called the first and second class.—Numbers 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29 and 31, shall constitute the first class; and numbers 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30 and 32, shall constitute the second class. The seats of the Senators first elected pursuant to this Constitution of the first class, shall be vacated at the end of the first year; and of the second class at the end of the second year; in order that sixteen senators shall be annually elected. [The representative population for a single senate district is 74,985.]

District No. 1, shall consist of the counties of Suffolk and Queens. 58,657

" No. 2, shall consist of the counties of Kings and Richmond. 74,024

" No. 3, shall consist of the first, second, third fourth, fifth, and sixth wards of the city and county of New York. 67,938

" No. 4, shall consist of the seventh, tenth, thirteenth, and fourteenth wards. 74,845

" No. 5, shall consist of the eighth, ninth and fifteenth wards. 70,020

" No. 6, shall consist of the eleventh, twelfth, sixteenth, seventeenth, and eighteenth wards. 81,869.

" No. 7, shall consist of the counties of Westchester, Putnam and Rockland. 69,342

" No. 8, shall consist of the counties of Dutchess and Columbia. 91,062

" No. 9, shall consist of the counties of Orange and Sullivan. 66,840

" No. 10, shall consist of the counties of Ulster and Greene. 75,900

" No. 11, shall consist of the counties of Albany and Schenectady. 84,382

" No. 12, shall consist of the county of Rensselaer. 59,671

" No. 13, shall consist of the counties of Washington and Saratoga. 78,921

" No. 14, shall consist of the counties of Warren, Essex, and Clinton. 68,277

" No. 15, shall consist of the counties of St. Lawrence and Franklin. 75,222

" No. 16, shall consist of the counties of Herkimer, Hamilton, Fulton and Montgomery. 84,815

" No. 17, shall consist of the counties of Schoharie and Otsego. 81,646

" No. 18, shall consist of the counties of Delaware and Chenango. 75,645

" No. 19, shall consist of the county of Oneida. 78,696

" No. 20, shall consist of the counties of Madison and Oswego. 86,822

" No. 21, shall consist of the counties of Jefferson and Lewis. 81,760

" No. 22, shall consist of the county of Onondaga. 67,419

" No. 23, shall consist of the counties of Cortland, Broome and Tioga. 72,166

" No. 24, shall consist of the counties of Cayuga and Wayne. 89,632

" No. 25, shall consist of the counties of Tompkins, Seneca and Chemung. 86,037

" No. 26, shall consist of the counties of Steuben and Yates. 71,237

" No. 27, shall consist of the county of Monroe. 63,356

" No. 28, shall consist of the counties of Orleans, Genesee and Niagara. 85,028

" No. 29, shall consist of the counties of Ontario and Livingston. 71,957

" No. 30, shall consist of the counties of Allegany and Wyoming. 65,891

" No. 31, shall consist of the county of Erie. 68,671

" No. 32, shall consist of the counties of Chautauque and Cattaraugus. 75,750

§ 6. An enumeration of the inhabitants of the state shall be taken under the direction of the legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature at the first session after the return of every enumeration, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of color not taxed; and shall remain unaltered until the return of another enumeration; and shall at all times consist of contiguous territory; and no county shall be divided, in the formation of a Senate district, except such county shall be entitled to two or more senators.

§ 7. The members of Assembly shall be apportioned among the several counties of the state, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, paupers, and persons of color not taxed; and shall be chosen by districts. The legislature, at its next annual meeting, shall divide the several counties of the state into as many districts as each county respectively is now by law entitled to members of Assembly, to be called Assembly districts; and shall number the same in each county entitled to more than one member, from number one, to the number such county is entitled to, numbers inclusive, each of which districts shall choose one member of Assembly. Each Assembly district shall at all times contain, as nearly as may be, an equal number of inhabitants, and shall consist of contiguous territory; and no town or ward shall be divided in the formation of an Assembly district, except

such town or ward may be entitled to two or more members. An apportionment of members of Assembly shall be made by the legislature at its first session after the return of every enumeration; and the Assembly districts, in the several counties of the state shall be so altered as to conform in number to the said apportionment; and shall be constituted as herein before directed; and the apportionment and the districts shall remain unaltered, until another enumeration shall have been taken. Every county heretofore established, and separately organized, shall always be entitled to one member of the Assembly; and no new county shall hereafter be erected, unless its population shall entitle it to a member.

§ 9. The members of the legislature shall receive for their services a compensation, to be ascertained by law, and paid out of the public treasury; which compensation shall not exceed the sum of three dollars per day; and after the year 1817, shall not exceed the sum of three dollars per day; for the period of ninety days from the commencement of the session. When convened in extra session, by the Governor, they shall receive such sum as shall be fixed for the ordinary session. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, on the most usual route. The Speaker of the Assembly shall, in virtue of his office, receive an additional compensation, equal to one third of his per diem as member.

§ 10. No member of the legislature shall receive any civil appointment within this state, or to the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, during the term for which he shall have been elected.

§ 11. No person being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the Legislature. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Substitute for sections 15 and 16, so far as relates to Senators and Members of Assembly, the following:—

§ 15. The first election of Senators and Members of Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November one thousand eight hundred and forty-seven, and all subsequent elections shall be held on the Tuesday succeeding the first Monday of November in each year, unless otherwise directed by the Legislature. The Senators and Members of Assembly who may be in office on the first day of January one thousand eight hundred and forty-seven, shall hold their offices until the thirty-first day of December following, and no longer.

WM. TAYLOR, Chairman.

Mr. TAYLOR said it was proper perhaps that he should state that every proposition in the report had been agreed to by the vote of a majority of the committee. The minority had assented to the report being made, reserving to themselves the right to submit their views when in committee of the whole. Indeed he might add that every individual member of the committee would feel himself at liberty, after reflection and discussion, to vote in accordance with his sense of duty, even though it might be that he should take opposite ground to that taken in committee. He then moved that the report be committed to the committee of the whole and printed, together with the accompanying table of apportionment.

The motion was agreed to, and also a motion by Mr. STOW, to print 400 extra copies.

EVENING SESSIONS.

Mr. CHATFIELD offered the following resolution, which he briefly explained:

Resolved, That when this Convention adjourns it adjourn to meet again at 4 o'clock this afternoon, and that it will be in afternoon sessions, commencing at 4 o'clock each day, until the further order of the Convention.

Mr. PATTERSON opposed the resolution — He thought it was premature, and would interfere with the deliberations of committees. His own committee met at half-past 3 o'clock, and as it was a rule of duty with him to vote on all questions in every body of which he was a member, if this resolution was adopted, he must ask to be excused from service on the committee. When the committees shall have all reported, such a resolution would be very proper, but it was not so now. He moved to lay it on the table.

The motion was carried.

DEBATE IN COMMITTEE OF THE WHOLE.

Mr. BAKER called for the consideration of the resolution to fix the time to terminate debate in committee of the whole on the second section of the report of the first standing committee, at 5 minutes to two o'clock.

A lengthened conversation ensued.

Mr. CHATFIELD opposed the resolution, on the ground that it was too restrictive. If it would not only terminate debate, but cut off any other amendment that gentlemen might desire to offer, and it was impossible at that time to see what aspect the question would assume.

Mr. TOWNSEND, in the course of some observations, said he hoped if gentlemen felt desirous to speak on the pending question, that the utmost latitude would be allowed.

Mr. BROWN said his experience had shown him that all such attempts to cut off debate failed of their object. It would be much better to leave the matter to the good sense of members.

Mr. HOFFMAN hoped the resolution would not be adopted. He had no desire to address the committee, but he hoped the Convention would not adopt a rule which would become a precedent, and a stringent one. It would operate as a rule against the freedom of debate—and that freedom was one thing which would make this body respected. Besides, it would cut off every amendment that should not be pending at the time the debate should be stopped. It would be the adoption in effect of the previous question in committee of the whole, which nothing short of an iron necessity would justify.

Mr. PATTERSON also spoke in opposition.

Mr. BRUCE hoped the resolution would pass. He thought the time for argument had passed and that the time for action had arrived.

Mr. STETSON said if the resolution were to be passed it should be amended, to limit it to the termination of debate.

Mr. CLYDE had been anxious to close this debate, but if there were gentlemen who felt it to be their duty to express their views, he would sacrifice his own wishes, and vote against the resolution.

Mr. BERGEN said they had spent ten days in the discussion of this question; there were 18 committees, and only 102 working days before the new constitution should be submitted to the people, being but 6 days for each committee's report. But if they were to spend 20 days on this report, and an equal proportion of time on each of the others, they must go back to the people for an extension of time. He would be glad to give every gentleman an opportunity to be heard if there was time to do it; but there was

not, nor could every gentleman expect to be heard if they were to take several hours for that purpose. He hoped the debate would be stopped.

After a few remarks from Mr. TOWNSEND, Mr. WRIGHT of Erie, moved to lay the resolution on the table.

Mr. BERGEN called for the yeas and nays, which were ordered, and being taken resulted thus:

AYES—Messrs. Ayrault, Bascom, Bouck, Bowditch, Brayton, Brown, Cambreleng, D. D. Campbell, Chatfield, Clyde, Conely, Cornell, Cuddeback, Dana, Danforth, Dorlon, Flanders, Gebhard, Graham, Greene, Hoffman, Hochstetler, Hunt, A. Huntington, Kenedy, Kirkland, Maxwell, Morris, Nellis, Nicholas, Nicoll, O'Connor, Parish, Patterson, Pennington, Rhoades, Richmond, Riker, Ruggles, Shaver, Shephard, Simmons, E. Spencer, W. H. Spencer, Stanton, Stephens, Strong, Taggart, Tallmadge, W. Taylor, Tilden, Tuttle, Vache, Vanschoonhoven, Ward, Warren, White, Willard, Wood, A. Wright, W. B. Wright, A. W. Young—63.

NOES—Messrs. Allen, Archer, F. F. Backus, H. Backus, Baker, Bergen, Bruce, Brundage, Bull, Burr, R. Campbell, Jr., Candee, Clark, Cook, Crocker, Dubois, Forsyth, Gardner, Harrison, Hunter, E. Huntington, Jordan, Kemble, Kernan, Kingsley, Mann, McNeil, McNitt, Powers, Russell, Salisbury, Sanford, Shaw, Sheldon, Stetson, Stow, Taft, Townsend, Mr. President—38.

Mr. FORSYTH then offered the following—saying that he hoped some limit would be assigned to this debate—though it might be remote.

Resolved, That the debate in the committee of the whole upon the second section of the report of committee No. five, terminate on Tuesday next, at two o'clock, and that the question be then taken on all amendments then pending.

The resolution was laid on the table.

Mr. NICOLL offered the following, which was adopted:

Resolved, That the Secretary of the Regents of the University be requested to communicate to this Convention the number of academies participating in the distribution of the public moneys subsequently to the year 1842, with the aggregate amount of money distributed and the aggregate number of pupils instructed in each year, and that he also state the amount of money distributed to the said academies, or to any of them, in each year, for the purpose of educating common school teachers, with the number of pupils so educated in each.

Mr. W. TAYLOR offered the following, saying that it was the suggestion of an eminent citizen of great experience in legislation, who desired that it might be considered by the appropriate committee—and that he thought it highly deserving of it as a check upon hasty legislation:

Resolved, That it be referred to committee No. two, to inquire into the expediency of providing that whenever a bill shall have been read for the third time in either house of the legislature, no other business shall be done by the House until the question upon that bill shall be decided, and that such question shall not be reconsidered during the session; and also that every bill, upon its third reading, shall be read in full and at length.

Mr. RICHMOND suggested that no bill should pass except by the vote of a majority of all the members elected—as a proper safeguard against bills passing by reason of members opposed to them, leaving their seats on the final question.

Mr. W. TAYLOR assented to such a modification—but under suggestions from various quarters, consented that the resolution should lie on the table.

Mr. RUGGLES offered the following, which was adopted:

Resolved, That it be referred to the standing committee No. two, to enquire into the expediency of requiring the legislature of this State to amend the law for the election of Senators in Congress in such manner that in case either House shall fail to make a nomination within ten days after a nomination by the other House, to fill a vacancy, the election shall be made without further delay by joint ballot.

Mr. LOOMIS offered the following, which was adopted:

Resolved, That it be referred to the committee on colleges, academies and common schools to inquire and report upon the expediency of securing by constitutional provision that appropriations for colleges, academies and other institutions of learning shall be made on some just principles of proportion, and forbidding special appropriations to particular institutions, to the exclusion of others. Also to consider whether the office of Regent of the University may not be dispensed with without public detriment; and whether the present mode of appointing trustees of such institutions ought not to be abolished.

EXECUTIVE QUALIFICATIONS.

The committee of the whole, Mr. CHATFIELD in the chair, again took up the Article in relation to the Executive powers and duties.

The question recurred on Mr. W. TAYLOR'S substitute for the second section—providing that no person not a qualified elector of this state, except as to residence in the county or town, shall be eligible to the office of Governor.

Mr. MORRIS, having the floor, said he would waive his right, if any other gentleman desired to speak. He asked if the CHAIRMAN of the committee desired to speak?

The CHAIRMAN had not determined whether he should speak at all.

Mr. O'CONNOR thought he had been misunderstood—he knew that he had been misrepresented in a printed report of some remarks made by a highly respectable member of the house—and he did intend to say a few words, with the consent of the house.

Mr. MORRIS yielded the floor, and

Mr. O'CONNOR said he found himself represented in a printed report of some remarks made by a gentleman in that house—who certainly deserved to stand as high in the estimation of his fellow members as any other—with having put forth certain doctrines and opinions that he should suppose no man there would imagine could be advocated with success, or deserve the refutation even of a simple denial. And it was for this reason alone that he asked leave to add a few words to what was formerly said by him on this subject. Mr. O. did attach great importance to the question now before this body. Because he thought, though practically insignificant, the insertion of this five years' qualification or its rejection, involved a principle vitally connected with a proper understanding of the true nature of a democratic form of government. And it was in that point of view and in that only, that he regarded the question as worthy of investigation. Most certainly the people of the state of New York, would never elect a man to a public office, so important as that of Governor who had not yet attained the age of 30—unless he was an individual of most distinguished merit and precocity. If such an individual should present himself, then it would be a case to which no rule of this kind should present an impediment to the exercise of the popular will in pro-

moting him to the station of which the God who created him had pronounced him worthy. Mr. O'C. made the same remark in regard to the five years' residence. This was a mere arbitrary thing. The worst man that could possibly be selected for this high office would be most likely to possess this paltry, insignificant qualification. The most worthy that could be selected from this great nation to hold that station, might be destitute of it. If common fame were not a common liar, this very second section owed its existence to the influence of an eminent member of the convention of 1821; whose name does not appear to be connected with the introduction of any part of it. Now that very distinguished citizen had a son born, Mr. O'C. believed in New-York, now in the ripe maturity of a vigorous mind and body, enjoying in the amplest degree the confidence of all classes of his fellow citizens and eminently qualified for the high station of Governor, by reason of his intimate acquaintance with financial matters, by reason of his intimate relations with all the arts of peace if not the arts of war—fortunately it was the former we had most occasion for—intimately connected with the business of this state during his whole life—who yet, for twenty-five years past had been a resident of New-Jersey, residing on the west bank of the Hudson, opposite the city of New-York, but spending daily, he presumed, twelve or fourteen hours out of the twenty-four, and even on the Sabbath a considerable portion of the day, in the city of New-York. And under this rule that gentleman could not be elected Governor without a five years' probationary residence. He repeated therefore that this was a most insignificant qualification, because the most unworthy candidate was almost sure to possess it, and the eminently worthy very apt to be without it. We had been told by gentlemen here that if there were no such restriction, our people might have elected Gen. Andrew Jackson, renowned for his ability in war and not less for his ability in peace—that they might elect Gen. Zachary Taylor, renowned for his obedience to the law, for his peaceful and unobtrusive walk through a long life, whose name never seriously attracted the public ear in connection with public affairs until but yesterday, when he became the champion of our country, successfully defended our Southwestern border, and removed the doubts that foreign carping critics attempted to cast upon us—we were told that but for this restriction, the people of New-York might call to the high station of Governor an Andrew Jackson or a Zachary Taylor, who had not this qualification of a five years' residence. Mr. O'C. would like to know what evils would ensue if the people of New-York had happened on some occasion to have been guilty of the monstrous indiscretion of selecting for Governor the distinguished civilian he spoke of, or either of these distinguished military chieftains? He contended that for all practical purposes, this was a most idle qualification—a most idle disqualification to throw in, as a barrier to the free choice the electors might make when selecting some person to hold the helm of state in perilous times. But, though practically of no importance, and though the course of this debate had produced but this single tendency to

change in his opinion—to wit, that we ought rather to liberalize the common law in relation to holding office—still, upon the whole he thought we might as well adhere to the common rule that all electors and no others shall be eligible to any office. If prescribing a different rule, he would rather say that any citizen of the U. S., though he did not happen to enjoy the adventitious advantage of having resided even a year in New-York, so as to be a qualified voter, should be eligible to office—he would rather liberalize and declare that every citizen of the U. S., wherever he may have resided, who should satisfy the majority of the electors of New-York that he was fit to be chief magistrate, should be eligible. And if that should fail to result favorably—if by this relaxation of guards, it should so happen that on some occasion a hero like Jackson or Taylor might be called to govern New-York, instead of the insignificant favorite of some petty cabal who had barely the naked qualification of a residence of one year or five years in the state—in God's name let the evil come, and he trusted that the prosperity and freedom of the Empire State would survive the trial! But the proposition with which he started in this case, enshrined in the elementary principles of a representative democracy whose basis is absolute equality in all the members of the political body, he (Mr. O'C.) contended that it was improper, unwise, and unbecoming in the people to impose these restraints upon their free choice, and because it would be unwise so to do, we who were acting for them, preparatory to their final judgment, should not recommend to them the adoption of such restraints. No man there, he trusted, was ignorant of the fact, that we could impose no restraints on the people—that our action was perfectly void unless the people should approve it. All of us knew that; we required not to be taught so at this late hour. We knew, and no man could deny it, that the people had the right to impose these disqualifications, and so far to restrain their own free action. A majority might agree to that—but the question was ought a majority to agree to it. They ought if any good could result from it, and if it was not repugnant to the true principles of representative democracy based upon liberty and equality. He asserted in the first place, and thought he had proved that no good could result from it, and secondly he asserted that it was repugnant to the true principles of a democratic state where equality was the first principle of government. If a portion of the citizens of this state were competent to high office, and another portion were not, he should like to know whether the constituent body, by such a principle, were not divided into two classes—the class of patricians who were competent to high office, and a class of plebeians who were not. Was such a rule, no matter in how slight a degree introduced, consistent with the principle of absolute equality among all the members of the state? He apprehended not; and that we should act most absurdly in introducing a qualification so useless, so insignificant in practical consequences, for the mere purpose of writing in the fundamental law that the constituent body was divided into two sections—the competent and incompetent to hold

high stations. This was his principle—not the idle opinion imputed to him most singularly by the gentleman of high intelligence before alluded to. Now, a word more in defence of this proposition against a remark made by the very distinguished gentleman from Saratoga (Mr. PORTER) who, as had been well said, had in his own person vindicated the claims of early youth to favorable distinction, and their just claim to be entrusted with the highest station—that honorable gentleman was pleased to say, and the honorable gentleman who claimed the privilege of closing this debate, (Mr. MORRIS,) Mr. O'C. believed intended to say, that there was a certain inconsistency in this doctrine, inasmuch as the constituent body were not the whole people—that they themselves acted in a sort of representative position—that they formed but a small portion of the whole people—and that they themselves represented aliens. Indians, negroes, disfranchised felons, infants, and to close the list, the fair ladies. Nay, we were told that they not only represented these classes but the unborn millions who were to come after us and who were to be governed by the laws we might establish. Now all this was true in a poetical sense, but not in a political sense. The electors of this state no more represented all these classes, than the emperor of Russia or the Sultan of Turkey or any other despot represented the people of this country. He deemed that the electors, the white citizens of the state over 21, and the negroes who happened to have 250 dollar's worth of real estate, represented these non-voting classes. The former constituted the political body and with them reposed the whole power of the government. We controlled these non-voting classes, not by choice, not by representation, but by reason of our mental and physical superiority—either by our superiority in mental power for the purposes of government, or by our mental and physical superiority combined. We controlled the Indians, because they were fewer in numbers. We controlled the negroes, so far as we did control them, for the same reason—we controlled felons because we chose to deprive them of the rights of representation. We did not sit here pointing to the records of a felon's conviction as the commission appointing us the felon's attorneys to make laws for him and in his name. We did not represent infants—nor did we represent the ladies. All these classes of persons constituted the subjects of government, being under the shadow and protection of the laws. They were not members of the political body—and the bringing forward of this argument served to show how wholly those who brought it forward misunderstood the character and nature of representation in the democratic sense. It might be that it was unjust in those over the age of 21 thus to control the whole power of the government; but they had done it. They had done it—and let those who considered it improper, at a suitable time and place, bring in their resolutions to enfranchise the Indians, the Negroes, the infants and all those now prohibited from voting. Then we would debate the question whether they should take part in the political power of the government. All he had to say now was that when the ladies were permitted to vote, he

should request the right of voting for one of them for Governor. We had the right beyond all question, to recommend this measure or any other having an aristocratic tendency—because we should not cease to be a republic and a free state, though we should travel some distance from the true principles of a democratic state. If we should diverge from them in some moderate degree, we should still be a representative democracy. But, he contended, that every departure from the true principles of democratic equality among all who were permitted to participate in the political government of the country, was so far a departure from the true principles of a representative democracy, whose basis and foundations rested on the principles not merely of liberty but of absolute equality. Reference had been made to the bill of rights, to show that all these non-voting classes had rights. True the bill of rights showed that they had rights; it contained restraints upon our officers and agents to prevent them from dealing cruelly or improperly with those who were the subjects of law, to whose care and guardianship we the people were obliged to entrust them. But the bill of rights did not give them any *political* powers; and from it no argument could be drawn which bore at all upon the principle with which he commenced this discussion, and by which he was willing to stand or fall—and he trusted he should have a chance to place himself on record as having sustained it. When principles were at issue, and he was known to be present and an actor, he wanted to be known as an advocate of the right. In following out its consequences this argument of the people's *right* to impose upon themselves any rule they pleased, the gentleman from Saratoga (Mr. PORTER,) had happily illustrated it by saying that we have a *right*, if our constituency should concur, to create a monarchy. No doubt of it—True, we had a right to create a monarchy. But the moment we should exercise that right, adieu to the Republic. It was the right of suicide. A great deal had been said about the people not calling for these alterations. He should like to know how we were to find out what the people called for. Had we no jurisdiction to examine a question presented by this constitution, unless we could point to an editorial or communication in some paper in some quarter of the State, pointing to that question? Must we produce a county convention resolution to justify an examination of any part of the constitution?—Where was that written in the law? Each one of us represented at least 20,000 persons, and each one of us stood here speaking the voice of that 20,000. And let no man say that the people did not demand this alteration, when 20,000 of them, speaking here through one of their representatives, invited the examination and asked the convention to apply its judgment to the question. But it was not true that the people had not complained of this second section, and strange would it be if they had not complained. When that constitution of '21 was enacted, the gentleman from Orange (Mr. BROWN) who had been frequently alluded to—sometimes rather erroneously in relation to his history—had just about attained his full age, and was legally competent to be, and in point of ability, very fit to

be a candidate for any public office. His true history was not, as supposed by one gentleman, that he emigrated as a matter of choice. In fact, although he drew his first breath in a foreign clime, he never knew any other country but the free land of America, and had even hailed it as his native land. In 1821 he was competent to be Governor, had the people chosen to elect him—fully competent. But the new constitution disqualified him, and for twenty-five years he had stood disqualified, though the negro who had blacked his boots was competent if he owned 250 dollars' worth of land. He; Mr. O'C.) knew an old soldier of the Revolutionary war, who served under Washington, and was wounded at the battle of Trenton, who at the time the constitution of '21 was adopted, exclaimed with the utmost indignation against his disfranchisement. He had no hope of being governor, but felt outraged at his disfranchisement; and spoke of it with the utmost indignation—'I am competent, said he, to be elected to the highest office in the Union, to the chief magistracy, to sit in the chair of my immortal general; but I am stamped as incompetent for governor of New York—I, though I drew my first breath in a foreign clime, though born with your country, though I bled to accomplish your independence!' Twenty odd years ago had this second section been the subject of great observation; the smaller features being, it is true, generally overlooked in indignation against its most odious ones. Twenty years ago it excited indignation for its injustice, declaring, as it did, that he who might sit in a seat that Washington occupied was not fit for the seat of chief magistrate of our state. A grey-haired old man now near life's utmost limit, standing in a relation to him (Mr. O'C.) the nearest and dearest that any man ever held to another, pointed to that section at the time it was enacted, and pronounced it as having had its origin in a heart hostile to the men who left the old world to die or conquer in the cause of Liberty in the new. He was not to be governor, but Mr. O'C. trusted he might yet live long enough to be qualified for the station, if the free citizens of the state should see fit to elect him. If Mr. O'C. was correctly informed, an instance of great public dissatisfaction at this section had occurred. The party in this state usually in the minority, but which he granted embraced the greater amount of wealth,—undoubtedly the greater amount of high attainment in point of education—that claimed to be, and for aught Mr. O'C. knew might be, the most respectable, and which in all things but political influence, probably, was the most influential—had within the last 25 years settled their choice as a candidate for governor at one time on a venerable and distinguished citizen of New York who was born with our federal constitution and became a citizen when we first became a nation; a man every way competent to be President of the United States; but who, under this law, was disfranchised by reason of foreign birth—they were obliged by reason of this second section to give up the idea of nominating him. He alluded to an illustrious and distinguished citizen, ALBERT GALLATIN, whose name was connected with the public history of the Union; who had brought a vast amount

of talent and ability to the aid of the general government in its infancy when that kind of talent was greatly needed—who had helped to build up an important department of the government—who now in far advanced and venerable age, stood at the head of a literary institution in our commercial emporium diligently furthering the effort to render it the literary emporium of the new world. Upon the occasion alluded to, it was understood that that venerable patriot, scholar and philanthropist, was, though born in a foreign clime, the choice of the conservative party of the state for the office of governor; but this second section was in the way of their choice. It disfranchised him, and defeated their free choice. He (Mr. O'C.) hoped that to him too might be granted length of days to become a free citizen of this state.—Again, he, (Mr. O'C.) did protest against this cry that what had been written, what had preceded us, should stand, unless we found something absolutely mischievous in the working of it, unless we could show that some ward meeting or town meeting had cried out against it. For himself, in spirit he was conservative. He was for the preservation of every safeguard of private right, of every barrier for the protection of property and every institution for the preservation of steadiness and uniformity in the law and in its administration. But he was disposed to be radical in rooting out all antiquated evils and principles intended to create or to perpetuate inequalities and disqualifications—whatever might tend to the erection of one class above another in the state. He would have a pure, perfect, representative democracy, where all men who had any share in the government should stand equal, and where the true principles of the Revolution should be carried out to their fullest extent. Why, he asked, should he be asked to revere for its antiquity this law of 1821! It was only about half as old as he was himself—and he should be sorry to claim reverence on the score of age. But if it were as old as that law which declared the right of kings to govern as divine, he would root it out—the more readily for its antiquity—thinking it had lived full long enough, if as old as that despotic law whose eley was properly pronounced here yesterday by the gentleman from Orange (Mr. Brown,) the law that forbade any man going out of his native country—a law which destroyed patriotism and pronounced every man's native land his prison, of which the despotic governor might well be called the jailor. If it were as old as this, because inconsistent and incompatible with the very genius and essence of our government—though it might never have a chance in a million of years to operate—yet for its inconsistency with the true principles of our government, he would root it out and condemn it. He trusted in the good sense of this convention and their true understanding of the principles of the great people who selected them to make a fundamental law—destined to live a long or a short period as it should meet the public wants and wishes—he trusted in them to sweep from the constitution not only this paltry, little, artificial qualification—but the whole section, that it might never again serve to exclude the warrior of the revolution from high office—and never again occupy eight

days of the precious time of a Convention of the State of New York.

Mr. MORRIS said, if no other gentleman desired to speak, he would take the occasion to say a few words. (No other gentleman rising.) Mr. M. went on to say that he stated yesterday, before the committee rose, and he now repeated that in his judgment this subject of the qualifications of Governor did not belong to committee number five—and that that part of the Article which related to the power of the legislature to pass a bill against the veto of the Governor, did not belong to committee number five. But it was due to the committee to state the reasons why in the opinion of some it did belong to them, and the object of presenting them for consideration. The resolution of reference charged that committee with the tenure of office, among other things, of the Governor. This word tenure meant not only the duration of the office, but the conditions on which it was held. Hence no man's judgment could be questioned who should be of opinion that this matter did belong to committee number five. He was of a different opinion himself, though the subject was not discussed. But his idea was then and now, that this section as to qualifications should be reported as it then stood for the purpose of enabling the Convention to dispose of a subject in regard to which there was a difference of opinion as to where it did belong. As to that part of the report which had not been reached, and which referred to the veto power, that was obviously of so questionable a character that it might belong to one committee or another—and the section on that subject was therefore inserted as it stood—part of it belonging legitimately to the committee, whatever might be thought of that part relating to the action of the legislature in case of a veto. Having disposed of this preliminary matter, he would pass to another.

This debate had been so long continued that gentlemen had had to be indulged frequently in explanation of some remarks previously made, and it had been absolutely necessary to make them. One gentleman would attribute to another some expression, and it would appear in the papers of the evening or morning, and it would be caught up here and bandied about, accompanied with violent gesticulations, as if the gentleman had actually used the expression that perhaps had never passed his lips. Now, though he sat still until actually poked out, [A laugh] convinced that it was not only not necessary at the time, but in bad taste then to speak—still, when he did rise, it was with the intention and determination to speak cautiously, and certainly courteously—for he knew this house better than his colleague, who supposed there was only about one man in five who could speak here. Mr. M. said he knew the moment he cast his eye round the house, that he who thought there was a man here that could not express himself fully and beautifully on any subject, was no physiognomist, and did not understand bumpology [Laughter.] He therefore spoke with a deliberation that he was not exactly noted for. In the few observations he made on that occasion, he stood and measured his words, and he almost weighed his sentences; because he

knew where he was. He knew from the smiling faces around him that Bob was to take it [Laughter] before the debate closed. And yet, in the course of the debate which followed,—without alluding to any particular gentleman—words were put into his mouth which he never uttered, and sentiments which he never entertained. But he sat still, for he was one who loved to bide his time—and knew that he should be permitted to make the proper corrections.—He was charged with using this expression—that there should be checks and bits on the people. He never uttered them in the world.—They never entered his brain. Still the changes had been rung on the words all round the house—and but for a good memory and good principles, he should have thought he did use them. The words he did use were these—checks and guards—and their application, as he understood them, were—checks on the delegates—guards for the protection of the people. That was the meaning of the words as he used them. Another expression had been attributed to him by a gentleman—not his associate—which deserved a remark. That gentleman, with an emphasis of look and utterance that made him at the time suppose they were italics, double leaded—turning and looking at him with an eye that could not be resisted—exclaimed—"the gentleman from New-York don't want a foreigner as Governor"—as if he (Mr. M.) had made use of that expression. Now when driven into a smile—and we were full of them here—he told gentlemen expressly that he would not go across the Atlantic for one, because it might be misinterpreted, and he might have two things imputed to him neither of which belonged to him—but that he would go to an adjoining state, and pick up a native-born citizen—and he would not let him be governor, until he became a citizen of our state. He never used the expression imputed to him. They had also put him in print, as using two words—"30 years" and native." Neither of them passed his lips. He trusted it was not the intention of the reporters to misrepresent him. He did not believe it was. Probably it was a mistake of the printers. At all events, the sentiment conveyed by them, as attributed to him, he never entertained. His whole life bore conclusive testimony to the contrary.

Now the question was precisely what it was when he had last the honor of addressing the committee—because the word "native" had then been struck out; also the "thirty years." And though the discussion ever since, until this moment, had been mainly on these two qualifications, yet both had been perfectly settled two or three hours before he last addressed the Chair. He now understood the section which it was asked to strike out, to be, that the Governor was to be a citizen and a resident of five years. That was the section as amended. Gentlemen appeared to conceive that it was something very wrong in a member who had signed a report, if he should in his argument express views different in some measure from those presented in their report. It seemed to be particularly so regarded in this case, from the fact that he stated the report to be unanimous. It was unanimous, for the purpose of presenting

the subject to the Convention. All the gentlemen kindly signed it with him, because they were willing that it should be unanimous for that purpose. And he had yet to learn that there was any impropriety in that. The chairman of a committee signed all the reports, and gentlemen associated with him were responsible so far as the presentation of it for consideration went. He stated, upon the introduction of the report, and with the sanction of his colleagues, that, though unanimous, the committee did not come here wedded to the precise article presented—that they should not consider it an imputation upon them, if other views prevailed here—that they were not bound by their action so far that they could not, if convinced, upon argument here, that they were wrong, vote accordingly—being desirous not only that the proposition should be scrutinized, but to review and scrutinize it themselves. That was the view under which the report was brought in—some gentlemen approving of it entire, and some not; but all assenting that it should be presented.

Now, as to the question whether any qualifications should be required for a Governor of this democratic government—and he used the word in no party sense, but as indicative of the principle of our institutions—we were met with the objection that it would be contrary to the spirit of our institutions to require any. It was argued that it would be an imputation on the people who were to make the selection. Now, his learned friend and associate (Mr. O'CONNOR) was right when he predicted that he (Mr. M.) took the same view of this matter that the gentleman from Saratoga (Mr. PORTER) did—that the electors were not the people, but merely a part of them. And Mr. M. denied that we came here merely to represent the electors of the state. We had others and as dear ones to protect as they. We had other interests to look after than theirs. When we spoke of the people we meant the whole mass—the 2,500,000. Mr. M. took the position that we did represent here—and we were the only single body that did—the whining infants and the mothers that bore them—the child from infancy to manhood—the women from childhood to the grave—and all human nature, whether distinguished as an elector or not—for they all constituted part and parcel of the people, and we were here as their representatives, not as the mere naked representatives of those who voted for us. We were here to make an organic law to protect the rights of those who could not vote. And he was rejoiced that we had already a report (by Mr. TALLMAGE) that showed that this Convention felt the responsibility cast on them, and though at a late day, were coming forward to protect the rights and property of an important part of the people—though they could not vote. He meant the women. We were here representing widows and all who could not go to the ballot boxes—to protect the witness, no matter whether they were adults or children, females or Indians. He was glad to see that an enquiry on that subject had been sent to a committee. We represented all these. We were to frame an organic law to protect all these. And when he spoke of the people he meant them in the mass—not those whom that

mass, by their institutions had appointed to the office of electors. The man who voted, voted in a representative capacity. The very constitution we were now framing made him a representative—in casting his vote, he voted for and represented five or six others of the community. It was, therefore, that we were so cautious whom we made electors. Hence we had had such a hard fight for years to extend the privilege of being this representative—the authority to vote. And he asked were human rights the less, the rights we boasted of, the rights set forth in the Declaration of Independence—were they the less because it was a pining infant, or because it was a female, or because the boy was 20 and not 21? Certainly not. We were not a pure democracy. It did not dwell here. He did not know that it did any where except among the Indian tribes. Ours was a representative democracy. If it were a pure democracy your infants could vote if they had the strength to go to the polls. So could the female and every other human being.—But this was a representative democracy. We were here under that system of government—to determine whether all should vote.—We had the right to recommend that all should vote; and if the people were to adopt that, then there would be none of this representation in voting. They would all be the original people themselves. Each man, woman and child would represent himself or herself. We had not done that. We should not probably do it. But he wished we could bring it down below 21. He should be glad to see it extended to widows who had property to protect, and who in general were more capable of protecting it than the drunken husband who dissipated it while he lived, and perhaps died in a debauch. [A voice, "I hope we shall have no property qualification."] Mr. M. hoped so too. He did not belong to that tribe—to that breed of politicians—though he wanted property protected, and the women could protect the property; if that qualification of a man was given to her it was all that was necessary. With these views and positions—which he believed were precisely those of the gentleman from Saratoga, (Mr. PORTER) who was the first man to avow them here, and Mr. M. bowed to the gentleman as an original—then we were here creating qualifications from the beginning. The first step was to qualify a voter. That qualification we should probably leave as it was. We should say he should be a male, and 21, to begin with. It might as well be said that it was questioning the intelligence of the people to presume who should be entitled to vote. Why not! Why was it not as much an imputation on their intelligence to inform them, by way of "checks and guards"—not "checks and bits," who should vote, as to prescribe the qualification for governor. It was necessary to do that. It was beneficial for the mass that it should be done. Here commenced our representative democracy. A man must be 21. Not only that, he must be a citizen of the State—that is, must have lived in the State one year. More than this, he must have lived six months in the county. See how it stood then. For Mr. W. did not believe that any gentleman's democracy was so rampant as to wish to

destroy either of these qualifications of a voter. Why was that done? For the protection of the masses that could not vote. True—old men could take care of themselves. But the people—the great mass—the two millions one hundred thousand women, children, minors, &c.—they it was that were to be protected by these checks and guards—not bits—checks and guards. There was the first qualification; and he asked if it was deemed proper to make that qualification for the elector to protect the mass, why was it not proper to have qualifications for the governor also? Mr. M. agreed with others, that this question was practically of very minor importance, and with his learned associate from New York (Mr. O'CONNOR) he did not believe we should have a Governor elected by the people, who would be under 30. And he would be a young man. Mr. M. belonged to the young men—and had been one of them at their meetings and conventions. Yet he was above 30. Therefore, he considered a man of 30, a young man—young enough to have something to learn by experience and practice. The mass of men did improve beyond that age, unless they were these precocious lads—these Jonah's gourds, that grew up in a night and withered in the morning. This question was important only because it was on the threshold of our proceedings. And this was an excuse and an excellent excuse for the time spent and the ability elicited and displayed on both sides of the question. For the principle settled here was to go through the whole of this organic law—and he saw that the gentleman now occupying the chair (Mr. CHATFIELD) felt precisely as he and his associates on committee number five felt, that these equalizations were necessary. For in the article reported by him the other day—the next after that of committee number five, he proposed that an engineer should be elected, and that this engineer should be a man of seven years' practical knowledge of his profession. It was a wise report. But gentlemen might exclaim against that report—"trammel the people!"—"are the people so ignorant that they can't find out who will make a good engineer?" Or as his friend behind him had it, "the people cannot bind themselves—it would be entirely illegal." They might bind the engineer when made, but could not bind the aggregate who selected him, by prescribing a qualification in advance! Now all knew that an unskilful engineer might run the state down hill instead of up—and that if you put him on your railroads and steamboats, he might burst all your boilers. Mr. M. had yet to learn that a skilful engineer was so much more important to the mass than a qualified Governor—or that it was any more important that an engineer should know his business than that the judiciary should know the law. [A voice. "The Governor is the pilot of the ship."] The Governor was the veriest engineer of them all—not Roman—for that would not be applicable. He did not believe that Rome was ever democratic. But waiving that—the people did not govern us. We were governed and controlled by delegates of the electors. And but for that truth, we, the essence of the people—for we were all essences, and he claimed in his representative

character to be one-sixteenth part of the people of the city of New York—not merely of the voters—he repeated, but for that truth, this body would not now have been in session. It was uncomfortable to admit this, but the truth was so. He might say, that if we had been governed by the people, or even by their representatives, this body would not have been in session. But it was this trickery and chicanery—this "tickling of my elbow, and I'll tickle yours," of the combinations of designing, selfish men, for personal aggrandizement, and procuring office—which had pervaded the state, (and both political parties had been guilty in this respect,) which had aroused the people to demand more stringent checks and guards for their protection; to prevent the power of the people being used for political aggrandizement, and to fill the pockets of the managers—this had brought us here. It was to break up this machinery, of which the people had become weary, that we were here. And Mr. M. trusted that we should make such an organic law as would carry protection to the rights and privileges of the most humble, whether child, woman, or, as his learned associate had suggested, unfortunate convict. Mr. M. admitted that convicts were represented here. Because we were as much bound to take care of human nature, whether it were a felon, or the citizen at large. He was not ashamed to admit that on this floor; and that it should be his effort to incorporate in the organic law, that which might protect, reform and bring back to usefulness those who may have been convicted of crime. Mr. M. believed he had run his rope out—[Laughter, and cries of "Go on,"]—if not the time he intended to occupy. He did not know, if he should talk an hour, that he could more fully express his views. In his judgment, this instrument would be infinitely better with these qualifications of citizenship and five years residence in it—though practically it might not be required. But he preferred that the people of the great state of New-York should not now, on the second section of their labors, proclaim to the world that we believed we might be in a situation not to have a man among us that could fill the important office of Governor—and that therefore we would leave the constitution open to that our friends down east, or out west, might come here and relieve us from this dreadful dilemma of ignorance and incapacity. Though it might never be required, he should like to have New York declare in her constitution her confidence in her own citizens—that she should put it on record that she believed, what the fact was, that you could go into no hamlet or village, shire or half shire in the state, without finding a man fit for any office. If he could believe that we ever could be so destitute of timber that we could not find from the shore of the Atlantic to the Lakes a man capable of performing the duties of governor of this great state, then he would sing out at once—in God's name strike out these qualifications, and let us go to Boston in Massachusetts, or New Hampshire, (which did furnish a great many very great men for pretty much all parts of the Union) and ask from these states a governor. In such case he would prefer to put in the constitution a confession, which we lawyers called a *cognovit*

here at the start, that we had not virtue and intelligence enough to control ourselves. Had we not better send to these other states for delegates to make the organic law, if that was to be the principle to be proclaimed by this advertisement in advance—the striking out this section. He should vote against all the amendments, because he preferred the original section as amended. Then he should be happy to have the gentleman from Saratoga give us a section in reference to the Lieut. Governor precisely like this. But he should like to see a vote on the section just stood.

Mr. PENNYMAN entered into some explanations in relation to the jurisdiction of the committee, of which he was a member, over this subject, which had been called in question; and added that the committee were unanimous on every question except the veto power, which he should explain on a future occasion.

Mr. CHATFIELD (having called Mr. PATTERSON to the chair) said, although during this debate, he was free to confess he felt a strong desire to address the committee on the pending proposition, he was led from the indications this morning upon the resolution to terminate debate at a quarter to 2 o'clock, to conclude that it would not be expedient, nor in accordance with the feelings of the committee, nor desirable, to add any further remarks on the subject. But in consequence of the kindness extended to him yesterday, when there was manifested a desire to sit there till the question was taken on this section—by the committee rising with a view of enabling him to address the committee—he had felt it to be his duty to come down from the Chair, to offer an apology for not availing himself of that kindness so extended to him. (Cries of “go on” from all parts of the house.) He could not with any consistency, in his judgment, occupy the time of the committee at the present moment with further remarks on the subject before them, for he always felt an unwillingness to address any body of sensible men whom, he knew, felt impatient to get at the question, and had a disinclination to hear further debate. It was an unpleasant position to occupy, and he should be unwilling to detain a body of reluctant hearers, and therefore he would allow the question to be taken, without protracting the debate further with any remarks of his. (Cries of “go on, go on.”) If it was the desire of the committee he would yield the floor and allow the question to be taken. (Renewed cries of “go on.”) He had certainly desired to express his views as to certain monstrous political heresies which had been put before the committee during this debate. He had been astonished to hear it urged that no change should be made so long as no practical evil had arisen from the provisions of the present constitution. He confessed he had no reverence for existing institutions. He had there on that floor as a member of this body, no reverence for individuals or for men. He was not here for that purpose. As he had taken occasion on a former day to say, they stood there on the elements of society, with the principles of government scattered around them, without order, or arrangement, and it was their business to arrange and apply them so as to se-

cure the best interests of the people whom they represented. He felt it his duty to do that without in any manner being bound to existing institutions. If they were not to touch provisions, from a reverence for existing things—if they were not to touch them because there was shown to be no existing evils, they were then without an errand or motive, or work to accomplish. Now, whenever he found any thing in the Constitution opposed to the leading principles of our government—though gentlemen may say that no practical evil has arisen—he was just as free to strike it out, and to insert a principle in consonance with his views, as though it had ever found a place there, and was known to the Constitution. What is the length and breadth of the argument which they heard there? Why, if the spirit which prevailed here, had always existed in this country, we should have been in a state of colonial vassalage to this day, and subject to the British crown. Reverence for existing things would have made them slaves to monarchical power. Why were they here this day? It was because the spirit of change had burst the bands which bound us in former days, and recognised a principle more consistent with the happiness of man, and of the whole human family. But enough on that subject. He wished to answer a remark of some gentlemen of this house, which he conceived to be either unjust or disingenuous. It was that every gentleman who sought to liberalize the Constitution, and to strike from it obnoxious provisions, is a demagogue, and is tickling the ear of the “dear people,” from the petty, contemptible motive of self-aggrandisement. He was happy in having been placed where he heard every word which had fallen from gentlemen in this debate, and he could therefore state that no such remark had fallen from the liberal portion of the Convention. They all came from the other side. The charge is thrown upon us, and I infer the principle advocated is supposed or known to be sustained by public sentiment. If so, I ask how such gentlemen can escape the charge they apply to us? Why did those gentlemen seek to make restrictions? Why did they seek to impose “guards and bits,” as remarked by the gentleman from New-York (Mr. MORRIS)? Was it because it was in accordance with public sentiment? If they believed what they said, then he asked if those gentlemen were not as much demagogues as those upon whom they have cast the accusation? He had the right to throw back the imputation on them, which he did not believe attached to any one. He took a different view of it. He believed every gentleman was acting with a consciousness of his own responsibility to his constituents, with the best of motives, and the firmest purpose to carry those radical reforms into full effect, which the people called for in constituting this Convention.—But they were told, and the most loudly by the gentleman from Essex (Mr. SIMMONS), that the people have not called for these particular reforms. Now he asked the gentleman from Essex how he determined what influenced the mind of every voter on voting for this Convention? How can the gentleman from Essex undertake to say what influenced my vote, and the voters in his own section of the country, in favor of

the Convention? It might be that a very different motive influenced those in other sections. He denied to the gentleman from Essex the right to sit in judgment on his vote; and on the motives which influenced his conduct in voting for these great measures of reform. Again, when the charge of demagoguism was cast on them, he desired to look at the conduct of gentlemen on the other side of this question, to see how they escaped the imputation. Gentlemen had taken pains to declare before-hand how desirous they were to strike out the word "native" from the Constitution. Why were gentlemen so particularly anxious to be the advocates of that measure? Why, if there was danger to be apprehended from any part of the section reported, it was to be apprehended from that particular portion of it. It was well known to every one, that the German or the Irish portion of the population at any time held the balance of power between the two political parties; and if the demagogues at whom gentlemen were so much frightened, did really superintend and control the nominating conventions, they could put forward a foreigner for the express purpose of securing the votes of the foreign population, and who did not see that by party drill a combination could be thus effected which must result in the election of such a person to the office of Governor. Of the course pursued by gentlemen then, he might say—using a vulgar expression, that they had taken exceeding pains to stop up the tap, but had left the bung-hole open. He must not, however, be understood as applying these remarks to the committee for striking out the word "native," for we should be wanting in justice, and magnanimity, aye, and gratitude, if we were to sanction the imposition of restrictions of so odious and infamous a character. It would give him no uneasiness, if the people should be pleased to elect a man who did not happen to be born on this side of the water, and he would leave them entirely free to make such a selection. He had no doubt many men could be found of that class who would administer with fidelity and ability the government of the State. He knew many distinguished citizens who were not native born, for whom he should feel it a privilege to vote. But in alluding to this subject now he had only done it to show that gentlemen on the other side were running the same race of demagoguism which they charged against others. He would now pass on to other suggestions. And what did we hear from the advocates of restriction? Why gentlemen had argued all the way through on the assumption that the people will, without consideration, *volens volens*, act wrong. That is the basis of all their arguments; and therefore they wish to throw checks and guards around the people to prevent the people from acting wrong. Now on this subject entirely different views were entertained by the opposite sides of the house. He held that the only proper repository of political power was the people, who as a general rule would act right and take care of their own interests. Why what was the length and breadth of the opposite argument? Was it that a man would go to the poll and vote contrary to his own interests? Why such a course would be suicidal. His side of the house held that the

people would act right, and they therefore said it was proper to entrust them with power.—He never would consent to put restrictions in the constitution unless they were to accomplish some great good by it. He never would place himself in the attitude of *hampering* the people unless some great good was to result. But what was the contemplated good here? Was it to prevent the election of some young man under 30 as their Governor? It had been said that practically there would be found to be no force in the proposed limitation, for the people never would elect a young man under 30; but if an individual should stand out from the community, distinguished above all others, giving evidence of capacity and talent to induce the people to elect him, where would be the danger?—History was replete with useful lessons on this subject. If any period of our judicial history was distinguished above all others, it was when our bench was occupied by young men. Look at a Tompkins, a Spencer, and a Kent. At what age was Tompkins placed on the Supreme bench? At the age of 30. At what age was Spencer placed there? At about 32. What was the age of Chancellor Kent? About 34, and who was there that did not believe he was as competent at the age of 30 as at 34? At what age did the distinguished member of this body representing the county he came from (Mr. NELSON) take his seat on the judicial bench as circuit judge? At the age of 27. What was the age of John Birdsall when he was appointed judge of the 8th circuit? Twenty-six. And he might go on to enumerate other names to show that our judicial history is most brilliant when we had young, talented, vigorous men on the bench rather than when we had impaired old age and men in a state of dotage. Again, who penned the Declaration of Independence? At what age was the distinguished author of that instrument when he wrote it? But 33. And who was there who did not believe that 3 years before when he was preparing his notes on Virginia he was not as well qualified for the important task? Our military history is also replete with useful instruction. What was our condition when the Hulls, the Dearborns, the Wilkinsons, the Smyths, and others were in command on the lines? Was it not one of uniform reverses and disasters? Who redeemed the country from those unpropitious circumstances; this reign of grannydom? Was it your old men? Your men of experience?—Men who had fallen into the sere and yellow leaf? No sir, no, it was not men whose vigor had waned. It was your Browns, Scotts, your Croghans, your Izzards, your Perrys, your McDonoughs, who stepped forth and redeemed your army from the infamy and disgrace into which they had fallen, and not men who had passed the vigor of their days, he might almost say too, their discretion. There was another individual (supposed to be an allusion to Gen. Scott), who while young, when in the vigor of his faculties, his bosom swelled with patriotism and he could go out and successfully fight the battles of his country; but when his head became whitened, when he had obtained all that experience in which gentlemen here contended there was so much safety, they found him more

distinguished in handling the soup ladle than the sword. He asked gentlemen to turn their attention to the list of immortal men of 1776, whose names are affixed to that instrument [pointing to a copy of the Declaration of Independence.] What was the age of the members of the congress of that period? Who were its most active and influential members? He could show them that it was the men who were under 30 years of age. Again, who have been the most distinguished men in the service of the people at large? Was it not your men who commenced their career under the prescribed age? At what age did Mr. Clay enter the United States Senate? The charge had been made that he was within the prescribed limit; it has never been denied and we are to assume that it is true. At what age was Mr. Webster when he represented New Hampshire in the great representative body of the country? Thirty? No, he had not attained that age. At what age was Tompkins when he succeeded to the gubernatorial chair of this state? But 32. When our present Governor entered upon his career in another body in this hall, what age had he attained? But 23. And was he not then qualified to discharge the duties of Governor, or of every relation of life, or of any station to which his partial country might have elevated him? He was as fit at 24 to discharge the duties of Governor of the state as he is at this day. At what age was the ex-President of this state, (Martin Van Buren) when he was one of the leading men in the senate of this state? He was about 30 when he took his seat there. He would point to another illustrious instance, which no one would gainsay; he alluded to his ingenious and eloquent friend from Saratoga (Mr. PORTER), whose speech yesterday, so full of argument, so replete with eloquence, so laden down with tropes of poesy, so ornate with figures of rhetoric, led them to believe that he would become one of the most useful members of this body. Did any one doubt his ability to administer the affairs of the executive office of this state? The exhibition he had afforded of talent left no doubt on that subject, and yet the record showed him to be under the age of 30. Yet what was the argument of that gentleman himself? Why speaking of gentlemen of this body of foreign birth, he said he saw them coming here with the confidence of their constituents to lay the foundation of the commonwealth anew. Now was not the gentleman from Saratoga here with the confidence of his constituents and by the will of a free people? By what other right was he there? Was not he at less than the age of 30 there with as much of the confidence of his constituents as he would have been if he were 2 or 3 years older? That gentleman was now doubtless in the full vigor of his intellectual powers. No after years will strengthen them. He may add to his fund of knowledge, and to his acquaintance with things, but the strength and vigor of his intellect will never receive any acquisition in Mr. C.'s judgment. But there were other propositions to be examined which he thought they should find to be *non sequiturs*. He would begin with the gentleman from Essex who was the very personification of logic, who could never open his mouth without uttering an

axiom that was self-evident; and what was the propositions he laid down and what were the conclusions which were drawn from these propositions? Why if he was to employ a man to do business for him—to carry goods from New York for instance—he would like the widest latitude of selection; *ergo* the people are to be placed under restrictions. If he was to appoint an agent to carry his will into execution he would require the widest latitude of selection; *ergo* the people are to be curtailed. Why this was evidently a *non sequitur*, a *felo de se*, for it destroyed itself. Nor was his friend from New York (Mr. MORRIS) more happy. He would place checks and guards. Why? Because the electors are not the people—they are only a part of the people; *ergo* the people should not elect their Governor. We are here to protect those that cannot vote; *ergo* the people should be restricted in their choice of a Governor. The men who vote act in a representative capacity; *ergo* the people should be checked and guarded by the constitution. He would bring in widows who have large property to be protected; *ergo* the people should not be allowed to choose their Governor, only a portion of them. The gentleman from New York went on further to say he would not allow the people to elect "Jonah's gourds," and therefore restrictions were to be placed in the constitution. By all this he was reminded of an ancient syllogism—it undoubtedly had its origin in a classic age—which was equally as consistent. "Adam was the first man. Jonah was in the whale's belly; *ergo* Sampson caught the foxes." [Laughter.] His friend from Ontario (Mr. WORDEN) had taken the only view of the question the other day of which it was susceptible. There was perhaps nothing practically beneficial to be attained by it, but as he understood it a great principle was involved, and that was most pertinently put by the gentleman from Ontario, who showed that it was the remains of old federalism. What had been the doctrine of that party while it was in existence? What was the doctrine of Alexander Hamilton? It was that the people were not to be trusted and that checks and guards must be placed around them and that you should elect your Governor for life. There was a fear exhibited of too much democracy; when the Governor was to be elected he must be "rich and well-born." Senators too must be elected for life for the same reason, for the people were not competent to govern themselves. Such was the doctrine of old federalism; and of a like character were some of the restrictions imposed by the Convention of 1821, and those who were anxious to impose checks and guards on the elective franchise at any time and under all circumstances were entitled to the term of federalists—as much at this day as 25 years ago. Look at all the changes made since 1777 up to the proposed amendments now offered and it would be seen the people had not gone backward. All the changes have been in favor of popular liberty. All the steps taken have been to secure to the people those rights which were denied to them by the doctrines of Federal concoction. Evidence was afforded of the progress of liberal opinions among the people by the fact that justices of the peace were now

elected by the people instead of being appointed by a council of appointment. In that matter Federalism had to give way. Also in the matter of a property qualification in connection with the elective franchise. He would impose no other restriction on the eligibility to the office of governor than that of being an elector or one of the people. Beyond that he would trust every thing to the people to make their own selection. But there were other matters to which gentlemen had referred; and in reference to some remarks made, he said no one would hear him urge that this Convention had not the power to place guards and checks and restrictions. It doubtless had the power, but it was unwise, unjust and inexpedient to exercise it here. This Convention had to propose to the people to adopt or reject; it was for them then to determine whether they would send down to the people a liberal constitution compatible with their views to adopt, or one of a restrictive character which the people could not consistently take. He confessed he was for going to the people with a most liberal constitution.—He was willing to trust the people in the election of their officers. He was willing to have the 170,000 young men of this state under thirty years of age pass their judgment on our action, for every gentleman knew that very soon that class of voters would be the controlling majority. He was willing they should say by their votes what kind of a government they would live under. For himself he was advanced to the middle period of life, and it was more important to those that were to follow him than to those whose heads were already whitened with the frosts of winter what the Constitution was to be. He would send a constitution embodying those liberal principles which he had cherished through life, and if the people approved them he should be grateful. The gentleman from Saratoga had charged that those who were in favor of the removal of the restrictions were old men. Now, on looking around, he found the charge was untrue—there was no dividing line. Mr. C. spoke briefly of the intelligence of the people and their fitness to possess the power of electing their officers and managing their own state affairs. The School District Libraries had converted them into a reading and thinking people, which had banished the sottish habits which consumed the time with the cider cup and the pipe. They were conversant with and able to argue on the questions of the day and the abstract subject of government. And yet they were not to be entrusted with self-government, lest they should elect some green, raw, long-legged gawley of a boy who cannot read or write. Such was the fear of the gentleman from Essex; but the constituents Mr. C. represented would no more elect a raw boy than the gentleman from Essex would adopt democratic sentiments. While the progress of events in this country had led them to make changes, they were stigmatized as the "progressive democracy." And there was more in that than was contemplated. It is an age of progression.—Every step is a progressive one, based on increasing knowledge among the people; and every step had demonstrated that the people can be entrusted with the carrying out of the fun-

damental, radical principles of self-government.

Mr. SIMMONS said that having been alluded to so many times for making certain suggestions, which had not been answered, he desired to say a few words. He had thrown out the suggestion that the cutting down of the restriction of 30 years to 21, which was applied alike to native or to naturalized citizens, would in practice, work to the disadvantage of that class of our population from which our eminent men emanated—the middling and the working class of our people. The public men who had been the most successful in our own and other states, had sprung from that class and were self made; and hence at the early age to which gentlemen desired to throw open the Governorship, they had not acquired that education which would justify them in coming forward, nor could their friends bring them forward, till they were 30. If we were to throw open the door thus, it would be an invitation to young politicians to rally round some individual who had been more fortunately born and educated; and the effect would be to say that the age of 30 shall hereafter be preserved for candidates from among the farmers' sons; but if you happen to be born wealthy, and get up by the aid of friends and influence, you may be candidates at 21. The very candid gentleman who was last up (Mr. CHATFIELD) had produced a great many instances of persons who little after 30, had made good public men, and *ergo*, as he would say, the doors must be thrown open to persons of 21. That was his logic! Mr. S. did not remember that the gentleman had produced any from 21 to 30 to whom the Governorship had been thrown open. Mr. S. granted that 32 or 33 would do. He thought Mr. Jefferson was old enough to write the Declaration of Independence, at the time he did write it; but he thought also that all the gentlemen who had been named, knew more at thirty than they did at twenty-four, and that they knew more at forty than they did at thirty. He would not, however, go over all that ground again; but he expressed his sorrow that the debate had taken a political turn, and that the gentleman from Otsego should have given it that direction. He must say he had expected better things from him.

Mr. CHATFIELD interposed to remind the gentleman from Essex, that if a political turn had been given to the debate, it came from that gentleman's side of the house.

Mr. SIMMONS replied, that he was just going to say, that if the gentleman from Otsego had given it a political character, he had some apology in the fact that it had been commenced by other gentlemen. He regretted that such was the fact. In the course of the first two or three days of the Convention, the gentleman from Chautauque (Mr. PATTERSON) made the first suggestion of politics while we were selecting our officers. He was in hopes they should have been able to go through their business without conjuring up the ghost of departed controversies; but the gentleman had found out that this limitation of age was a remnant of old federalism. Well, if that were so, the old federalists were stronger than he supposed

them to be. In the Convention of 1821, there was evidently a majority of them; and in the states of Missouri and Florida, and, in short, nearly all over the country, it was so too. He however, was inclined to think that what the gentleman from Utsego meant by federalism, was what he sometimes called old hunkerism, and that it was the new patent liquid-blackening democracy, which applied to this other stuff the term of old federalism. In respect to this, he had only to remark, that he was naturally conservative in his feelings and sentiments, and just so far as this and no farther; that when he took up a constitution or law that had done well for years, he thought it had earned and gained a reputation for being *prima facie* right. At all events, it threw on the party seeking to change it the burden of proving that it was abused or unjust or dangerous, and to give some reason why it should be changed. He thought that was a sound principle, and that it should be continued until cause was shown to the contrary. Now the question was, what is sufficient cause? When we produce a good practical proof of a thing—when we prove a particular provision to have stood for a great many years and to be a favorite with the American government every where, we gave *prima facie* proof of its being good and just; and he wanted to know if we were to abandon a practical good to mere theoretical speculation. If any one practical evil could be shown, very well; but would mere theoretical speculation answer the purpose? He had but another remark to make and then he was through. He differed wholly from gentlemen in regard to the value and utility to the public—to democracy or federalism, or whatever else it might be called—and to the common welfare; he considered it not useful to the state, to have any laws or provisions based on the idea of the importance of selecting distinguished talent for office. He thought distinguished talent had done more hurt than good in the world. He thought the knowledge that was the most useful was the common every day average sense and practical knowledge of the people; and hence he was afraid of any precocity—of any eccentric or cometic star, that might arise in the political firmament. He would prefer, he had no doubt it would be better and that the world will sometime come to it, that the mass of the people, the average bulk of the people, would be able to take turns in doing the public business. But if we went on on this principle of selecting and attaching importance to immense talent as to eligibility to office for Governorship, by and by we should get at the doctrine which prevailed in monarchies, of not selecting their kings out of their own people. He believed the British had to take their kings from Germany. Now, he was willing to take ours from our own people. But if it was republicanism to cultivate a general sentiment, and embody it in the organic law of the state, that every thing depended on selecting a personage of great genius, or shining talent, and that though a person may be competent for public life at 21, he is not more so at 30, it was assuming that to be the genius of our institutions which was not what he had supposed. His idea was that republicanism was founded on

the assumption that the great mass of the people had within themselves sufficient intelligence—not that they should all be judges and Governors, but to select from that number not merely a startling genius, but some one capable of doing the duty. He thought we should never really rest on the foundation of free government—a government of law as contradistinguished from arbitrary will—until we attached much less importance to office, and came down to the opinion that we had thousands of men fit for any office; that no office required more than one occupant; and that we could take turns. When we could get the public sentiment to that conclusion, so that we could see a great number of persons in every county and town competent to conduct public affairs, then he should think there was some republicanism in the country. He thought if less importance was attached to governmental talent, they would have a larger field to select from. He granted it required a degree of public information which came after the private education was obtained, and at 30 that would be attained. But he had yet to learn that the true qualification of any officer depended so much on any sparkling talent he might exhibit, as on the sound, severe acquirements of experience. If that was right, then it became a mere question of fact, at what age were the highest qualifications for the public offices attained? Were they in fact attained before 30? If not with the general mass, and he went for the mass, he did not wish this Convention to adopt any measure which would give to individuals of hereditary means the power to rally round them a class of friends and turn politicians before they had acquired a profession and a station in life. If they induced their young men to turn politicians, they would do them great injustice and injury. To make a young man Governor before he was thirty, would be to kill himself. Some had been made governors early in life, and what became of them afterwards? One such he had never heard of since. It seemed then, if we regarded the interests of the individuals themselves, we should require them first to do the business of life. If they were professional men, let them go through the rough and tumble of its labors, before they aspired to the highest honors of the state. It would do them good. But make them governors first, and they were immediately laid on the table, and became very small lights. He objected then to seducing young men from their ordinary business; and he desired that young men of wealth and numerous consequent advantages, should be placed on the same level with the young men who came from the body of our farmers—so that all might come forward at a time when they had acquired a little sobriety and experience. He had heard no argument during the debate, against the adoption of this restriction by the former Convention, and by the Conventions of so many sister states; nor why it should not be retained, unless they were to receive as an answer, the very modest assertion that it was absurd, scandalous, infamous, and old federalism. Thus then they were to despatch a principle which had been incorporated into all the constitutions of this country, from the earliest period down to

this time—having just found out that all who had gone before us, as well as all our contemporaries over the United States, were fools, compared with ourselves; that they were old federalists, warped by prejudice, and incapable of comprehending an argument. But if these restrictions were to justify such terms, he thought, before they got through with the business of this Convention, we should find plenty of restrictions which would indicate a distrust of future generations, as of antecedent ones. He confessed he never was in a Convention before, so distinguished for modesty. It was almost equal to the profundity of the arguments urged there. They had in their Constitution a provision which had done well—which in practice worked very well; but the idea was, that we should now rise up, and by speculation and theoretical fancies, strike it out of the Constitution, and insert something that will more nearly square with the madness of democracy. We knew it had been adopted by the Convention of this state, and ratified by the people, and by the people and conventions of other states; but we were all incapable of distinguishing an absurdity—we were old federalists, and were incapable of comprehending an argument! That was the logic of this whole debate, and it was about as respectable as the modesty exhibited there.

Mr. CHATFIELD enquired if the gentleman believed the people of 1821 would have rejected this constitution provided this restriction was not in it? He also reminded the gentleman of the fact that the people had got rid of one federal prejudice as exhibited by the rejection of the property qualification.

Mr. SIMMONS believed if the people conceived it to be a downright absurdity—if they could have been brought to believe that they were in the dark and that they had not got hold of the light of this new born democracy, they would have been for being converted.

Mr. CHATFIELD asked if the people had not by a steady progression discovered many of the absurdities which existed, and connected them? It was for this Convention to correct other unnecessary absurdities. But he dissented from another position of the gentleman most emphatically. That gentleman reasoned that we were not to invite our young men to become politicians. Now in this country of all others, it had become a principle of government that the people must enquire and examine for themselves. How did they make men wise? By giving them subjects of reflection and motives to reflect. Every time we give a new office to the people we give them a subject for reflection and a motive for reflection. He was disposed to increase the knowledge of the people and to increase their usefulness by multiplying the inducements to become acquainted with public affairs. This would provide a means of education which would secure a multitude of men qualified to be useful in public stations; it would increase the safety of our institutions by supplying men qualified to protect them. It was necessary too, that we might not retrograde in the march of improvement. Take from the people all motives to examine—remove from them all inducement to act and judge for them-

selves—and how long would it be before a large mass of our people would be in the condition of the unlettered hordes of the Scythians and Scanavian slaves over which Charles XII of Sweden reigned, as had already been alluded to? He would not compare our people to the ignorant serfs, and hence he thought the figure was an unhappy one. He would multiply their usefulness by stimulating their acquisitions of knowledge. For this purpose he would not simply give them one or two officers to elect—he would give them all that they could elect compatible with convenience. He would not say "safely," for he believed all might be safely left with the people; but it was not convenient for all to be so elected. He thought the gentleman from Essex had not looked at this matter in all its extent. We now gave the people some 50 officers to elect, and the gentleman from Essex seemed to think if they were at liberty to be elected to the highest office under 30 years of age, they would be thus invited to become politicians rather than if this absurd qualification were retained. But can not our young men now go to the polls? and were they not eligible to every office but that of governor, under 30; and yet the gentleman feared that we should make our young men politicians. The position was too absurd for a man of that gentleman's distinction.

Mr. SIMMONS asked the gentleman from Otsego if he thought the school of politics was a good school for the education of a young man?

Mr. CHATFIELD replied—that, among other things.

Mr. JORDAN moved that the committee rise and report progress—saying that there were those in that quarter of the house that desired to speak.

The committee refused to rise and report.

Mr. WARD then said that if there was any gentleman who would state in his place that he desired to detain the Convention with any further remarks, it now being two o'clock, he would renew the motion to rise, with a view to a recess until this afternoon. He was for having this question taken to-day, at all events. The debate of the last eight days had scarcely touched the question—which was simply between citizenship and 5 years residence, and citizenship and residence of one year. The whole argument, however, had turned on the question of age and nativity, both of which had long ago been struck out.

Mr. JORDAN did desire to speak to this question, but mainly with a view to show in what manner this range of discussion had grown up—in insisting that it had grown entirely out of the proposition advanced here by those who went against all qualifications, that the people had no power to restrict themselves—a position many felt called upon to combat, and did combat with success. Certain gentlemen had succeeded, without opposition, in striking out what they called certain remnants of federalism in the old constitution—to wit, the qualification of age and nativity—but not content with that, they proposed to wipe out all that was left of the section—to wit, five years residence, and hence, with the incidental topics thrown in, from day to day, all this debate had arisen. Mr. J. concluded with

the remark that he did desire to speak on these questions to-morrow, and particularly to defend the democracy of '21 against the new light democracy of the present day—but the committee being impatient for the question, he would not urge the point.

Several gentlemen expressing a desire to have the question taken nakedly on the motion to strike out,

Mr. W. TAYLOR withdrew his amendment, and

The question was put on striking out all that remained of section two—citizenship and five years residence—and the committee refused to strike out, 41 to 56.

Mr. W. TAYLOR then renewed his motion to strike out and insert.

Mr. PATTERSON thought the motion too late. The committee having refused to strike out had determined affirmatively to retain.

The CHAIR decided otherwise.

Mr. CROOKET moved to rise and report progress. Lost.

Mr. W. TAYLOR'S motion was then put and lost.

Mr. NICHOLAS asked if it would now be in order to move to restore the qualification of age, by a reconsideration.

The CHAIR replied that it was his intention by his own rule to permit that—but that on examination it did not apply.

The committee rose and reported progress, and the Convention

Adj. to 10 o'clock to-morrow morning.

SATURDAY, JULY 11.

Prayer by the Rev. Mr. HUNTINGTON.

The PRESIDENT laid before the Convention a communication from the Secretary to the Regents of the University in answer to a resolution. Referred to the committee on education and common schools, and ordered to be printed.

Mr. TAGGART offered a substitute for the 19th standing rule of the Convention, authorizing a motion for reconsideration in committee of the whole.

After a brief conversation it was referred to the committee on rules.

HAI F HOUR RULE.

Mr. SWACKHAMER offered the following:—

Resolved, That no member shall be allowed to speak over thirty minutes to any one question the first time, either in Convention or committee of the whole; and that in all subsequent remarks on the same subject, each member having previously spoken, shall be limited to fifteen minutes.

Mr. HOFFMAN suggested its reference to the committee on rules. He hoped if such a rule was to be adopted, it would be only after the strongest necessity was shown for it.

Mr. SWACKHAMER said he should like to know if the committee on rules was composed of speaking members?

Mr. CHATFIELD, as one of the committee, said there was one member of that committee who spoke altogether too much—that was himself. [Laughter.]

Mr. SWACKHAMER hoped this important rule would be adopted. He admitted that some question might arise, which would call for a deviation from it; but as a general rule, it would be found necessary. He would concede to others what he claimed for himself, and say that all came here with an anxiety to carry out the reforms that were desirable; but if gentlemen were allowed to speak five or six times on each question, business would be obstructed. Speeches of five minutes often conveyed more information than speeches of five hours. Again, under this rule, every member would have an opportunity to express his views. We did not want speeches on political economy, or the first principles of government; we wanted practical remarks regarding the wishes and desires of our constitu-

ents, and the amendments it was desirable to make in the Constitution. Adopt this rule, and he ventured to assert that they would have more general knowledge from among themselves, and more from the people, than they could get from five to six hour speeches of gentlemen on this floor, who often seemed to keep the mill going after the grain was all out, for the purpose of seeing the chaff fly.

Mr. STRONG remarked, that perhaps every gentleman there had not the same facility of condensing his ideas, as the gentleman from Kings. He always thought that the liberty of speech and the freedom of the press, were fundamental principles of democracy. It might be that it would take him thirty minutes to say what the gentleman from Kings would say in fifteen. Under these circumstances, he felt compelled to vote against the resolution.

Mr. CAMBRELENG, as one of the committee on rules, and as one who had not troubled the Convention much, hoped the resolution would be referred, not with the view of adopting it at all, but that some provision might be made to limit the number of times that members should be permitted to speak in committee of the whole, which had not yet been done. They had had practical and illustrious examples of the consequences of the adoption of such rules as this in the United States congress. The effect of such rules had been to lengthen the sessions of congress some two months. Prior to the adoption of those rules, no one ever heard of the sessions of congress going beyond the 1st July; but now the middle of August would probably see congress in session. If they fixed the speaking to any particular time, they might rely on it that at the end of that time, three more speeches would grow out of it. He thought however that there should be some limitation in committee of the whole, and he was therefore in favor of this reference.

Mr. SWACKHAMER thought there was a reason for the duration of the present session of congress, the country being involved in a foreign war. In reference to the remarks of the gentleman from Monroe (Mr. STRONG) he would say that he never allowed his political feelings to interfere with his public duties; but if the

gentleman from Monroe could not say all he had to say in thirty minutes, he should splutter out his words a little faster, as Mr. S. did. [A laugh.]

Mr. HARRISON said, although he did not hope to see this resolution formally adopted, yet he hoped the members of the convention would attend to the admonition it contained.

Mr. CROOKER—Oh, they will all take warning. [Laughter.]

The resolution was then referred as suggested.

PRIVATE GRIEVANCE.

Mr. MANN called for the consideration of the memorial laid on the table yesterday, from Burtis Skidmore, of New-York, and it was taken up.

Mr. M. said when he was up yesterday, his impression was that the memorial should be referred to committee No. 19, but he now thought it should go to the committee on the judiciary. The gentleman from Westchester (Mr. WARD) yesterday objected to the consideration of this memorial at all, because it reflected on the official acts of the clerk of the supreme court. For that very reason Mr. M. thought it ought to be referred and referred properly.

Mr. NICOLL said it related to abuses which had grown out of assessments in the city of New York, and he was of opinion that it should be referred to the committee on municipal corporation—No. 14.

Mr. SHEPARD thought his colleague misapprehended the communication—it was an accusation against Mr. Hallett of corruption in office. That was all there was of it. It charged that Mr. Hallett, as clerk of the Supreme Court, had taxed the fees of himself as commissioner, and allowed himself a large amount of money for nominal services. If that were true, what had this Convention to do with it? We were not here to try individual cases of corruption.—The remedy was through the constituted tribunals. He moved that the communication be laid on the table.

The motion was lost.

Mr. NICOLL now moved a reference to committee No. 14.

The PRESIDENT said the pending motion was to refer to the judiciary committee.

Several gentlemen called for the reading of the endorsement of the memorial and the memorial itself, and the Secretary accordingly read the endorsement, as follows:—

Communication of Burtis Skidmore of the city of New York, in reference to the acts of the Clerk of the Supreme Court in said city, in officiating as Commissioner of streets and making extravagant charges as such, and appearing before himself as clerk of the Supreme Court, and taxing his own costs and charges as Commissioner, having received both appointments from the same tribunal, and acting as party and judge at the same time

The memorial stated the fact charged in the endorsement with more minuteness, and was accompanied with certain printed advertisements from the New York Municipal Gazette.

Mr. BROWN understood that the memorial designed nothing more than to bring to the notice of the Convention certain facts, and not to make any accusation against Mr. Hallett; the facts were, that Mr. Hallett had acted as a commissioner for the opening of streets, and that as

clerk of the Supreme Court he had taxed his fees as such commissioner, having received both appointments from the same tribunal.—There was no accusation of fraud or oppression on the part of Mr. Hallett, but a statement was made of facts, to prevent which for the future, the Convention should make some provision.—He undertook to say in regard to the clerks of courts that there had been many practices which should be corrected. In his part of the country the sums paid to them had been too great, and the system had operated oppressively. It was not the fault of the clerks, but of the law, and it was a proper subject for consideration and correction. He added that this subject was already under the consideration of the judiciary committee, with a view of providing that an annual salary shall be paid to these clerks, and he should do all in his power to prevent their touching a dollar of fees beyond their salary.

Mr. RICHMOND agreed with the gentleman from Orange. He saw nothing slanderous in the memorial, or any charge of corruption; it seemed to be simply a statement of facts, and as such should be referred.

Mr. MORRIS said the object of the paper was to inform the Convention of facts upon a matter on which they were acting, and should be properly referred, that the facts stated might be used. He had been looking to ascertain what committee it would be proper to send it to. This appeared to be a question whether an officer should hold two offices and perform the duties of both—the one office coming in conflict with the other. There would have been none of this difficulty if the constitution had provided that the clerk of the Supreme Court should hold no other office of trust and emolument. As this was not a judicial office, he thought the reference should be to committee number six.

Mr. CHATFIELD, as chairman of number six, explained why that committee had not acted on this subject; that supposing the judiciary committee would bring in a report in relation to it, they had delayed their action until they saw what the judiciary committee would do. He thought this memorial should go there.

Mr. MORRIS withdrew his motion.

Mr. STOW inquired if any other officer than the clerk of the Supreme Court was authorized to tax in these cases?

Mr. MORRIS replied that there were two others.

Mr. STOW then denied the right of Mr. Hallett to make these assessments. By accepting one office he was disabled from accepting the other. This matter therefore did to some extent involve the character of Mr. Hallett. He thought, that if it were referred at all, it should be referred to committee number six.

Mr. RUGGLES was rather inclined to the opinion that this was a personal grievance with which the Convention had nothing to do. He understood it to be a case in which several officers had authority to tax costs, and it would seem that Mr. Hallett had done it, he having authority to do so. But there could be no doubt if Mr. Skidmore had appealed to the Supreme Court, that a new taxation would have been ordered; for it seemed Mr. Hallett had taxed a

large amount to himself. There were provisions of law sufficient to correct any abuses or errors of this sort; it therefore appeared to him that the Convention was not called on to act in this matter. The facts were now before the Convention, and if there should be anything worthy of consideration, he did not know that there would be any necessity to refer them; but he repeated there were means of correction elsewhere.

Messrs. STOW, WARD, STETSON, TILDEN, SHEPARD, HARRISON, CROOKER, FORSYTH and SIMMONS continued the discussion.

Mr. FORSYTH moved to lay on the table.

Mr. MANN said if that motion prevailed he should call up the motion every day to the end of the session.

The motion to lay on the table was lost.

After some further conversation the whole subject was referred to the committee on the judiciary.

LEGISLATION.

Mr. W. TAYLOR called for the consideration of his resolution, offered yesterday.

Mr. RICHMOND offered the following amendment as an addition, which was accepted by the mover, and in that shape the resolution was adopted:—

"And that no bill shall pass into a law without the assent of a majority of all the members elected to each branch of the legislature, to be determined by the recorded ayes and noes of the members and senators voting thereon."

LIMITATION OF DEBATE.

Mr. SWACKHAMER submitted the following:

Resolved, That the question on all motions and resolutions of reference to standing committees shall be taken without debate.

The resolution was negatived without a division, only 26 voting in the affirmative.

RULE TO STRIKE OUT AND INSERT.

Mr. SHEPARD gave notice that on Wednesday next, a motion would be made to reconsider the standing rule or resolution whereby a motion to strike out and insert is declared one and indivisible.

DISABILITIES OF THE CLERGY, &c.

Mr. HARRIS called for the consideration of a memorial of certain citizens of Albany on the subject of the existing disqualifications of clergymen and females. [Its object is to give to clergymen the political and to females the natural and social rights of which the memorialists allege, the present constitution deprives them, by a provision in the new constitution.]

A conversation ensued, in which Mr. KENNEY, Mr. HARRIS and others, took part. The memorial was then referred to two several committees to consider the several parts which appropriately belong to them.

Leave of absence for 8 days was granted for Mr. W. H. SPENCER.

A conversation took place on the subject of the annoyance to the Convention of the noise of vehicles passing through the adjoining thoroughfares.

Mr. HARRIS intimated that a remedy would be applied by the Common Council.

The PRESIDENT laid before the Convention a communication from the Comptroller, showing the sums paid to the members of the Legislature during several years, in compliance with a resolution—Referred to the committee of the whole having in charge the report of committee No. 1.

The PRESIDENT also presented a communication from James Ridgley, of Columbia county, on the propriety of abolishing capital punishment—Referred to the committee on the judiciary.

THE EXECUTIVE DEPARTMENT.

The committee of the whole Mr. CHATFIELD in the Chair, again took up the Article on the Executive powers and duties.

The third section was read for amendment as follows:—

§ 8. The Governor and Lieut. Governor shall be elected at the times and places of choosing members of the Legislature. The persons respectively having the highest number of votes for Governor and Lieut. Governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieut. Governor, the two houses of the Legislature shall, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieut. Governor.

Mr. NELLIS proposed to insert "next" before "Legislature."

Mr. DANA thought that would mean not the legislature chosen at the same time the Governor was voted for, but the next after that.

Mr. RUSSELL said that would be the construction undoubtedly.

Mr. TILDEN said that would be inaccurate—as the two houses were not chosen at the same time—a portion only of the senate being chosen annually.

Mr. HARRISON proposed (modifying his proposition at the suggestion of Mr. JORDAN) to say the two houses of the Legislature, "at their next annual session shall forthwith," by joint ballot, &c.

This alteration was agreed to, and the section passed over.

The fourth was then read for amendment as follows:

§ 4. The Governor shall be general and commander-in-chief of all the militia, and admiral of the navy of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. He shall communicate his message to the legislature at every session, the condition of the state; and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures, as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall receive for his services the following compensation, viz: Four thousand dollars annually, to be paid in equal quarterly payments. Six hundred dollars annually, to be paid in equal quarterly payments, for the compensation of his private secretary; and the rent for, and the taxes and assessments of his dwelling house, shall be paid by the state.

Mr. TAGGART proposed to strike out all after the word "executed," and to insert:

He shall at stated times receive for his services a compensation to be established by law, which shall neither be increased or diminished during the term for which he shall have been elected.

Mr. TAGGART said his amendment would leave the section as it stood in the old constitution. He moved it, not upon the principle of re-

taining the old constitution where it could be done, but because he regarded this fixing of salaries as a matter peculiarly of legislation, and as not belonging to a constitution. He would not bind up the people on such a question, by placing the compensation beyond their reach, through the legislature. Nor had there been so much complaint of the salaries nominally paid to public officers. But the subject of complaint was, that they were merely nominal, and that in many cases by reason of fees and perquisites, the actual compensation of public officers was very large, and very uncertain. The committee, he thought would have fully complied with the resolution referring this matter of compensation to them, had they merely reported a clause as to the manner in which the Governor should be paid for his services, without specifying what his own compensation should be. And as a general rule, he thought we should find it inexpedient to fix salaries in the constitution.

Mr. MORRIS said the committee supposed when this matter of compensation was referred to them, that it was not the understanding that they were to turn the matter over to some other body. But they did not intend to recommend that the compensation should be the amount fixed here—but merely to show what the present compensation was, and to give the Convention something to act upon in fixing a salary which should cover the whole ground. And his individual opinion was that it would be infinitely better that the salary of every officer to be appointed under the new constitution should be incorporated in the instrument itself—that it was part and parcel of the principle of the compact, and should be submitted to the people with the constitution. Apprehensions had been expressed, that if this was done, the people, seeing the immense sum which it cost, even under the low salaries now paid, to carry on the government, might reject the constitution on that account.—Mr. M. had no fears of that kind. He believed the mass of the people would be found infinitely more willing and desirous to give a proper compensation to their servants, than their representatives in the Legislature. And when this Convention shall have done what he believed it would—tie up the power of the legislature, and limit the large discretion now exercised by them in the passage of such laws as they saw fit—that the legislature, having the more leisure, would spend a great deal of time in cutting down salaries. The people themselves were the persons to say what salaries should be paid to public officers, and they would be better satisfied to have it incorporated in the constitution itself.

Mr. TAGGART insisted that the clause to be struck out was far from fixing a definite compensation.

Mr. MORRIS replied that this learned Convention had already discovered, he presumed, that this report was not exactly perfect—and other committees, when they came to report, would probably make a similar discovery in regard to theirs. [A laugh.] He did not think it perfect, though it was according to his best judgment when reported.

Mr. LOOMIS regarded this question as impor-

tant with reference to future action on the subject of fixing salaries—more so than with reference to this office. For there were good reasons why his salary and the pay of the legislature should be fixed by the constitution—for they constituted the law-making power and would otherwise fix their own salaries. Still, he was prepared to vote for this amendment, and on this principle—the very opposite of that suggested by the gentleman from New-York (Mr. MORRIS)—that the people themselves, through the legislature, could at future times, express more directly their views, than in voting on this constitution. For a vote for or against the new constitution would not express their preferences for one mode or the other of fixing compensation; nor, perhaps, their opinions as to the amount named. Some might think it too high; others too low—and still, regarding the new as better than the old constitution, as a whole, they might be compelled, against their judgments to vote for the sum named and for the principle of fixing salaries in the constitution. Better leave the matter open to the legislature, who would be as wise as we were, and the people could more directly act upon the naked question of compensation. Besides, he desired to disembarass the constitution of every question not necessarily belonging to it. This proposition would leave the matter to the legislature, with this restriction only—and a very proper one in his judgment, considering the influence which the Executive might exert, from his high station, over the opinions of members—that they should not alter the salary of the governor for the time being. Better avoid fixing salaries when we conveniently could—so that the people in passing upon the new constitution, might not be embarrassed by such considerations. He desired to see reforms in the constitution, which he feared might be hazarded by inserting too many of these matters which belonged to or might properly be left to legislation—especially matters which circumstances might require should be changed, and about which men might differ. He would leave it for those who came after us to provide for the compensation of their own officers, as a general rule.

Mr. RHOADES sustained the amendment—and for the additional reason that there was a disposition to divest the Governor of an important part of his duties—and if this were done, it would enable him to devote some time to his private business, and render a high salary less important. If the appointing power for instance, was taken from him, he would have less necessity for a private secretary, and would be relieved from a load of duty. Better leave it to the legislature. The people would be better satisfied with it. Another reason. If the governor was to reside here for all time to come, there might be a reason for continuing this large salary. But the time might come—and it was not far distant, when the Governor would live further west, where he could live cheaper, where the habits of the people were more simple, and where this salary would not be needed. The seat of government might be removed to Oneida, perhaps farther west to Onondaga.

Mr. RICHMOND was of opinion that a man

might live there without money; that there was salt enough there to save him.

Mr. RHOADES replied, that salt had saved the state an immense amount of money. [A laugh.] It might save all the expenses of government. Salt Point, if the capitol was removed there, might save all that was not expended.—But the gentleman from Monroe might be looking forward to the time when the Executive would reside at Rochester; and Mr. R. presumed he would say that any gentleman qualified for Governor, and those who would make speeches here were regarded as such, might live there at half the amount of the Governor here. He did not know but we might grow extravagant at the west, in the prospect of having the capitol there and the Governor living among us. But that he thought not likely to happen.

Mr. SWACKHAMER moved to add to the amendment—

“But in no case shall he receive more than \$4000 annually.”

Mr. TILDEN hoped, if we were not going to fix a salary ourselves, as he hoped we should not—that we should neither fix a maximum or minimum. He concurred generally in the views of the gentleman from Herkimer as to the propriety of striking out this clause, and restoring the old constitution, which left it to the legislature with a single restriction only—that the salary of the Governor for the time being, should not be altered. There was one case, he confessed, when he was inclined to insert a specific compensation. He alluded to the judiciary. But he saw no necessity for doing it in any other case.

Mr. SALISBURY was willing to leave this matter to legislative discretion, within certain bounds. Make the maximum large enough for a fair and just compensation—but put some limit to it—for if there was a propriety in limiting legislative action in any case, why not in this. And he should like to see something definite in this respect, that it might be known what the salary actually was. He did not like this back door to the treasury, in the shape of salaries to private secretaries, rents and taxes. He had drawn up an amendment, proposing that the maximum should be \$6000.

Mr. LOOMIS: Fix a maximum, and that will always be the sum.

Mr. SALISBURY intended the limit should be liberal enough to cover the salary of a private secretary, house rent, &c. He thought the Governor received as poor a compensation as any officer in the state. Even the clerk of Erie county, he found by the returns, was receiving \$6000 a year.

Mr. TILDEN remarked, that though we should divest the Governor of the appointing power, in a State like ours, with its steady growth and accumulation of business, the Governor would always have as much to do as any one man could properly discharge. Mr. T. understood that the applications for pardons were about eight a day—and if the Governor had nothing else to do than to pass on all these cases, he would be pretty well employed. We could not and ought not to adopt a rigid rule of compensation—not to be changed by circumstances. Nor did he believe that the Executive duties

would be so far diminished as to allow him to devote any portion of his time to his private affairs. He was for moderate salaries—yet such salaries as would command the requisite talent. There might be false economy in salaries as well as other things. He would, however, fix no limit—though if any were made, he should prefer \$6,000 to \$4,000.

Mr. WOOD said the past history of the state showed that \$4,000 would command the requisite talent—and the price of living was so variable, that some scope should be allowed.—He would, therefore, fix a maximum compensation, leaving the legislature to reduce it according to circumstances, and to pay the private secretary a proper compensation.

Mr. TAGGART urged that the amount of salary should be established by law; without maximum or minimum being suggested here.—And he trusted before the Convention adjourned, we should provide that no officer of the government should receive any compensation, by way of fees or perquisites or expenses, beyond their regular salaries.

Mr. PATTERSON thought there was another item of expense incurred by the Executive that had been overlooked here—and that was his postage. He had understood that that had amounted under the old rates to between 7 and \$300 a year. Now, if we were going to fix his salary, all these things should be taken into account. His own opinion was that no man with a family, could live here on \$4,000. And if any body supposed the Governor could get along without a private secretary, he had only to step into his room, any day, to be convinced of his error. The applications for pardon alone, were five or six a day. And the applications for charity were even more numerous—for there was scarcely a poor person who happened to get inside of Albany, who did not apply to the Governor for assistance—thinking that his salary was immense, and that no other beggar had thought of applying. And the cheapest way to get rid of these annoyances was by paying for it. When you placed a man in that position, you should take into consideration all the circumstances connected with it. He would not give an extravagant salary; but it should be a just one, and should be enough to command the requisite talent. Whether we paid it or the legislature, he cared little. But if we were to fix it, he desired that members should vote understandingly.

Mr. WOOD thought \$4,000 would be a fair salary for the Governor. His stationery, postage, secretary, &c., he would have provided for by law.

Mr. STETSON asked the mover to change the phraseology of his amendment, by striking out the words “during the term for which he shall have been elected,” and to substitute “after his election, and during his continuance in office.”

Mr. TAGGART assented to that—[and it became part of his amendment.]

Mr. TALLMADGE asked indulgence whilst he attempted to bring the question back where it should be—to a discussion of first principles, such as belonged to a constitution—and not of the minute details which belonged to legislation.

That he might not be misunderstood, he would say that he thought the committee did right in reporting on this question of salary—for the matter was expressly referred to them, and it was in their discretion to recommend a specific salary or some general provision for the arrangement of it. Again, that he might not be misunderstood, in the remarks he was about to submit, he intended no quibbling about the precise amount stated here. Four thousand dollars was little enough. He who received it should be worthy of it, be it more or less. But he must say this in regard to allowing the rent and taxes on his dwelling house. Often, they rented furniture, either from the owner of the house or the manufacturer—and that might double the expense of the house alone. He mentioned this to show that if we were going into the details of this matter, we should have to go further still. Again, whilst he objected to going into this detail of salary in this case, his own judgment was that if we freed the legislature from fixing their own salary, we should have gone far enough in the matter of compensation. That done, they could be safely left, under the reservation suggested in the amendment. And it would be scarcely respectful to the legislative branch, were it practicable or necessary for us to undertake, in the constitution to regulate all the details of government. The first constitution stood from 1777 to 1800—the next from that period to 1821—and that of 1821 had stood until this time. Might we not entertain the hope that the constitution we were engaged in framing, would stand the test of another quarter of a century? And was it not arrogating too much for us to attempt to fix all these details of salary? We came here fresh from the people of to-day; but not from the people of twenty years hence. In his judgment it would be arrogating to ourselves more than was discreet, to attempt to say what the Governor's salary should be for the next quarter of a century. But he was against exercising this power, to do which intelligently, we must go into all these minute calculations of postage, and house-rent and taxes, &c., &c.—and he thus early expressed his regret that it should be proposed. But it was a radical defect that there was no prohibition in the clause as it stood, against this salary being altered, directly or indirectly, during the term for which the Governor shall have been elected. That was a great principle, and should not be lost sight of here. He had seen lobbying members active on behalf of an Executive, to raise his salary by a law passed during his term. Whatever we did, he urged that we should preclude that, by saying that the compensation once fixed should not be altered so as to affect a Governor during his term. Never let him be found catering for pence in the lobby of the legislature. But should we effect this object by fixing a salary, and providing for house-rent and taxes, and yet saying nothing about furniture? Might there not be room for catering there? He had no allusion to any body in this; his remarks were general. His object, and his only object, was to prevent the Governor's salary being altered during his term, either from motives of gain on the one hand, or of hostility on the other. And hence it was that he would

place a land-mark here as between the Executive and the legislature. Besides, as regarding this matter of postage, he was quite sure every officer of the government had his postage on official letters paid by the state. From the days of Geo. Clinton down to the present hour, there had never been a question about it. It went to the contingent expenses of each department, and never burthened the individual. But this was a matter of detail that was not worthy the attention of the Convention. Our business was with principles—general principles—not with mere legislative details. The amendment proposed was precisely the old constitution—and in one particular certainly very properly. It spoke not of salary, but of compensation. A fixed salary was one thing—the perquisites another and different thing.—Hence the importance of this word compensation, which covered the entire receipts of a public officer, for official services—and this compensation being once fixed by law, as it should be, not by constitution, there would be no room for abuse by way of increase or diminution during the term. But that matter should be left to the legislature. His constituents no doubt, would prefer to have a direct voice in that matter, through the legislature, from time to time. They might not be opposed to \$4000 now. On the other hand, he had no hesitation in saying that a man who would serve for less, should serve for nothing—for he would not do it unless a man of wealth, and then perhaps he ought to serve for the honor of it. But it was all important to place the Governor independent in point of salary of the legislature—that if he felt called upon to vote to any measure, it should not be in the power of the legislature to say, if you do, we will reach you through your salary. The Executive should be in a position to overlook, calmly and without fear or favor, the whole field of legislation, and every agency in the state, and should not be placed as it were at the mercy of the legislature; so that in high party times, he might be above the influences that might be brought to bear on him from that source, and on the other hand, the legislature might not be beset by the friends of the Executive, to raise his compensation. Better hold it where it is, above all better hold on to this phrase compensation—and to the principle that this compensation should not be altered during the term.

Mr. WARD briefly expressed his preference substantially for the old constitution in this respect, as proposed by the gentleman from Genesee.

Mr. SWACKHAMER remarked that the suggestion that the salary of the Governor might be increased in the shape of a provision for furniture, was a good reason why there should be some limit fixed. He should be willing to say that his salary should not be more than \$6000, nor less than \$5000.

Mr. BASCOM disliked this idea of a maximum. That was the way in which a great many salaries were fixed—for very soon the maximum became the settled amount. He should be glad to see salaries fixed in the constitution—but there was force in the remark of the gentleman from Dutchess, (Mr. TALLMADGE) that if our constitution was to endure for a quarter of

a century, we could not see the contingencies that might arise requiring changes in this respect. If we were to have a convention regularly every ten years, then there might be a propriety in fixing salaries. As it was, the proposition of the gentleman from Genesee was the safe ground—without maximum or minimum.

Mr. BRUCE was entirely opposed to leaving any part of this to the legislature. He was for fixing the salary of the Governor in the constitution. Gentlemen seemed to imagine that we were making a progressive constitution. Mr. B. conceived that it was to be the ground-work of law as long as it endured, and if circumstances required that it should be altered, let the people set to work and remodel it. He was averse to leaving this matter of salaries to be a topic for party agitation by party demagogues—for nothing was easier than for them to raise a cry about high salaries, to draw off public attention from important issues, and make our elections hinge on some mere abstraction of this sort. He would make a plain matter-of-fact instrument of this. He would have every thing fixed in it, with no room for additions, under pretence of house rent or furniture or by perquisites. At the same time, he was not prepared to say what the salary of the Governor should be. He was willing that it should be liberal and ample, but he wanted it fixed and known.

Mr. SALISBURY was decidedly in favor of fixing a limit beyond which the legislature should not go in the way of salary or compensation—and he would have that limit include every thing—and include fees or perquisites of every kind or description. He approved of the amendment of the gentleman from Genesee, as far as it went—but it left the matter too much at the discretion of the legislature. He thought it our duty to guard the treasury in respect to salaries, as well as in every thing else. And he should be very much disappointed if this body did not put some wholesome restraints on the legislature in regard to the expenditure of the public money. And he would begin with this matter of salaries. He had no objection to a maximum of \$6000, but he wanted some limitation.

Mr. DANFORTH agreed substantially with the two gentlemen who had spoken last, that the compensation of the Governor should be fixed by the constitution. He would do this as one means of relieving the legislature from some portion of their duties. The complaint was that they had too much business. Such were the complaints that reached him, and he believed that his constituents expected him to aid in placing checks and guards—he believed that was the phrase, (Mr. MORRIS—That's it,) on the legislature, in reference to expenditures of the public money particularly. They did not believe the legislature was in a condition from year to year to have the purse-strings of the state in their hands without any restriction. What portion of the sessions of the legislature might not be occupied in fixing salaries?—especially of the Governor, if he should happen to be of the party opposed to the majority in the legislature—a case that might arise. He would guard against such a contingency, by fixing the salary in the organic law, and submitting it to

the people. They were looking for it, he apprehended, not only in regard to the Governor, but the state legislature and the judiciary. He repeated, we should sustain the report of the committee, so far as it fixed the salary—the precise amount he had not determined in his own mind.

Mr. WOOD'S amendment fixing the maximum at \$4,000, was negatived.

Mr. SALISBURY then proposed to fix the maximum at \$6,000.

Mr. DANA proposed \$4,000 annually for the governor, and \$600 annually for his private secretary—but the motion was ruled out of order.

Mr. SIMMONS proposed to add to the amendment:—

"But such compensation shall in no case be less than \$2,500 nor more than \$5,000 per annum."

Mr. SIMMONS thought \$5,000 would be a proper sum, but he did not want to fix the limit at such a sum as to induce the going up to that limit; he would therefore fix \$5,000 as the maximum and \$2,500, the half of the maximum, as the minimum. He wished to guard also against such a squabble as once occurred in Kentucky, where the legislature, desiring to legislate out of being a co-ordinate branch of the government, reduced the emoluments to 25 cents. He thought \$5,000 would be enough, and the gentleman from Chautauque would perhaps bear in mind that applications for charity were somewhat in proportion to the known income of the person applied to. It would be better to reduce the salary down to the Governor's wants. He should be well enough satisfied to fix a round sum, but that would be a little inconvenient—they could not carry the analogy through: there are a thousand offices and if they fixed one they should go through the whole list. He had no distrust of the legislature and he was satisfied that the legislature would fix a reasonable limit.

Mr. MORRIS thought there was reason why the Governor's salary should be fixed, if no others were. The Governor by the exercise of the veto power for instance, might occasion a conflict with the legislative branch, and thus these co-ordinate branches of the government might be coadjutors against each other. [Laughter.] There might be another good reason why it should be fixed, for they had heard in the course of a debate this morning that it was a very improper thing for a man to tax his own costs. One gentleman had proposed \$2,500, but no man could be got for that who was fit to be a Governor. A man certainly might make money at that rate if he lived on crackers and cheese and slept in the park (laughter); but such a man would not be fit to be Governor of the great state of New York. It was true they could arrange it so that the legislature should not reduce the amount during the term for which he is elected. But there were some of them there old enough and not very old either, not to have forgotten that there are sometimes high conflicting party scenes. Some conflicts have occurred between a Governor and a legislature. It should be remembered that in a legislature there have been such things as accidental majorities and they have sometimes felt that after a coming election they would have to remain at home, and that the Governor they had been

fighting with would be re-elected, and therefore if they had the power to reduce his salary, they might be induced to do it; for they might talk of the delegated power of the elected as much as they pleased, yet they were all possessed of the ordinary feelings of human nature, and these would sometimes block up the sense of justice and integrity. To guard against that—to guard against the consequences of that irritation which such a legislature might feel towards a man for doing his duty—doing that which would make him popular with the mass and secure his re-election—for going counter to their wishes, they might determine to cut his comb by reducing his salary—if they could not prevent his re-election, having the purse-strings, they could starve him—to guard against that, if there was one officer more than another to be appointed under the constitution, whose salary should be fixed, it was the Executive of the state. The next was the legislature. He would tie both up. He should vote against all these amendments, expressing the hope, however, that his learned friend (Mr. SIMMONS), who believed that \$5,000 was not too much, would put that in.

Mr. STETSON expressed his obligations to the gentleman from New-York (Mr. MORRIS) for the speech he had made, in which Mr. S. fully concurred, except so far as it went for fixing salaries. He agreed that in such a contingency as a conflict between executive and legislative power, vindictive feelings might be engendered and the legislature might attempt to cut down the salary of the Governor for his

second term. He had, therefore, suggested this change of phraseology so as to prevent any such change "during his continuance in office." This was the language used in the Missouri constitution, and he was of opinion would accomplish the object.

The question was then taken on the amendment of Mr. SIMMONS, and it was negative.

Mr. SWACKHAMER moved to add to the end of the amendment of the gentleman from Genesee (Mr. TAGGART) the words, "the annual compensation shall not at any time exceed \$6,000, nor be less than \$5,000."

Mr. TOWNSEND thought that would meet the objections of several gentlemen, for that was about the rate of fluctuations of money at times. The amendment was lost.

The amendment submitted by Mr. TAGGART was then agreed to, 65 voting in the affirmative—the negatives not counted.

On the motion of Mr. CROOKER the committee rose, and reported progress, and obtained leave to sit again.

Mr. JORDAN offered a resolution in relation to the noise occasioned by the passing of carriages through the streets, and contemplating an appeal to the Common Council to diminish the annoyance.

Mr. HARRIS appealed to the gentleman from Columbia to let his resolution lie on the table as his object would be accomplished without any further action.

Without taking any question thereon, on the motion of Mr. LOOMIS the Convention adjourned to Monday morning at 10 o'clock.

MONDAY, JULY 13.

Prayer by the Rev. Mr. HUNTINGTON.

HOOR OF MEETING.

Mr. CHATFIELD offered the following:—

Resolved, That after to-day the daily sessions of this Convention shall commence at nine o'clock in the morning.

Mr. SIMMONS said it seemed to him this would be more proper after the reports of committees were all in. The afternoon, with the extreme heat of the weather, would be worse than useless to a committee, for it would have an unfavorable effect on the spirits and on reflection. He was of opinion the resolution had better lie on the table for a week. He wanted a little time to think of his duty in this Convention; for there was less advantage in declamation in this body, than in consideration out of it. He moved to lay it on the table.

Mr. F. F. BACKUS hoped the resolution would be adopted. If they were there from nine to a quarter to two, that time might be sufficient for all the purposes of the Convention.

The motion to lay on the table was lost.

Mr. STRONG had no objection to meet at nine o'clock; but he thought they should provide for an adjournment at one o'clock. He moved such an amendment.

Mr. CHATFIELD hoped there would be no restriction of that kind, for the majority had always that under its control

Mr. STRONG withdrew his amendment.

Mr. SIMMONS said if they were to meet at nine, there was no use in throwing away the intermediate hour between the breakfast time and 9 o'clock. He thought they had better come in at 8 o'clock and adjourn at 12; but it was a very bad apportionment to come here at a time when it was beginning to be very hot. No man would do his own business at home in such a manner; no man whose business depended on the exercise of mind. If we met at 8 o'clock and sat till 12, we might by and by meet again at 3 o'clock. To that he had no objection. He moved so to amend as to fix the hour of meeting at 8 o'clock, and on that he would call the yeas and nays.

Mr. CHATFIELD had personally no objection to that; he could come as early as the gentleman from Essex—even at 5 o'clock, if necessary. He however had fixed 9 o'clock, because he believed that was as early an hour as the majority could be got there. He had several times attempted by resolutions to expedite the business of the Convention, but gentlemen had interposed objections, and appeals had been made to wait. Now when were they to get rid of this eternal answer—by and by? The gentleman from Essex now wanted a delay of a week; but Mr. C. apprehended the time had come when they should expedite business. If it

was to be 8, well 8 be it then; but he feared the majority would not be got there at that time.

Mr. SIMMONS was a little too far advanced in life to go off on the impulse of the moment; but he thought it was due to the people that they should have the best time of the members of the Convention. If they came there at 9 o'clock, there was an intermediate hour from the breakfast time of which no use could be made. But if they came at 8 o'clock they would be able to devote 4 or 5 hours to their duties, and they would then have time to read over their documents out of the House. They could not make a constitution any more than they could do ordinary legislation, by simple debate. Now hitherto he had not had time to read all his documents and yet where he lived he was called a man of some industry. He hoped they should come at 8 o'clock and adjourn at their discretion—whether at 12 or 1 o'clock, and then in the afternoon they could get prepared for the ensuing morning's business, and get some new ideas; thereby relieving them from the necessity of repeating those already uttered.

Mr. LOOMIS had felt for some time impressed and strongly impressed with the great necessity devolving on the members of this Convention to be diligent in their business. He was forcibly struck with the remark of the gentleman from Kings the other day, (Mr. BERGEN,)—that we at that time had but 102 working days. Now we have but 96 from this time to the election. If they struck out 2 days, leaving only one calendar month for consideration by the people, they should have but 4 days to devote to each of the reports of the committees, and here they had been more than a fortnight on 2 or 3 sections of the first report made by a committee. Six weeks of the session have elapsed and less than one fourth of the committees have reported. This delay might lead them to the conclusion that these reports would come remarkably well considered by the committees, and therefore less consideration might be necessary on the part of the Convention. He nevertheless thought they should spend their afternoons in other duties than those of the sessions of the Convention, but he was willing to meet at as early an hour as the convenience of members would permit. He would not consent yet to hold afternoon sessions as suggested by the gentleman from Essex, until the committees had time to complete their reports.

Mr. SIMMONS explained that the gentleman from Herkimer had misunderstood him.

Mr. LOOMIS then passed to another point in connection with the discussions here. He had been pained to see the latitude which had been taken in debate, much of it being irrelevant to the immediate question before the Convention, for the last two or three weeks; and he hoped they might hereafter find that the occupant of the Chair would feel himself compelled to limit the debate to the subject under debate. He desired to see these subjects fully discussed.—They are never too fully discussed so long as they were confined to the question—for such debates are almost always short necessarily.—If members would take these views—if they would see the necessity of abridging these discussions and consuming no more time than is

necessary to a full and free discussion, if they met at 9 o'clock they should have probably a proper adjustment of their time.

Mr. RUSSELL objected to the amendment to fix 8 o'clock as the hour of meeting. He thought it would be impracticable, or at least extremely inconvenient, for most of them breakfasted at half-past 7 o'clock, and therefore those who lived far from the capital could not be here at that time. He thought, as they could not at all times hear all that was said in the course of their debates, that the morning hour from 8 to 9 could be very profitably occupied in reading and reviewing the debates of the preceding day in the daily newspapers.

Mr. STETSON moved the previous question.

Mr. SIMMONS said he did not desire to press his motion against the wishes of the house; he therefore withdrew it.

The resolution was then passed fixing the hour of meeting at 9 o'clock.

COUNTY SUPERINTENDENTS.

Mr. PENNYMAN offered the following, which was adopted:—

Resolved, That committee number seven be instructed to enquire into the expediency of abolishing the office of county superintendent of common schools.

TAXATION OF PERSONAL PROPERTY

Mr. MURPHY offered the following:—

Resolved, That the Comptroller be requested to cause to be prepared and furnished to this Convention, a statement showing the amount of the capital stock actually paid in, and secured to be paid in, of the moneyed or stock corporations deriving an income or profit from their capital or otherwise, including free banking associations, and having their principal office or place for transacting their financial concerns in the city and county of New York; and also showing what portions of such capital stock are held by persons residing respectively in the said city and county, elsewhere in the state of New York, elsewhere in the United States, and by persons residing out of the limits of the United States, and also the amount of such stock if any belonging to the state, and to incorporated literary and charitable institutions; and that such statement distinguish the amount so held in each of said corporations and associations.

Mr. TAGGART said he should like to hear some reason for calling upon the Comptroller for all the information contemplated by that resolution.

Mr. MURPHY said there were various reasons. They were approaching a discussion when it would be well to know how much of the stock of the incorporated companies of this state are held elsewhere than in this state. His particular object in offering this resolution was in regard to the duties of the special committee, which was raised on the motion of the gentleman from New York (Mr. MORRIS) who proposed, for the consideration of this Convention, a proposition to be inserted in the constitution to tax personal property where it was used and not at the domicile of the owner. There are in the city of New York many incorporated companies and associations, the capital of which is not all held by the people of the city of New York, but by persons residing elsewhere, in the state and out of the state and out of the United States. The capital of those companies and associations exceeds thirty millions of dollars, which is assessed in the city of New York. That city has drawn together that capital and she enjoys the

benefit of it, and he was willing she should; but some nevertheless might object that after having drawn in all this capital from all other parts of the state, she should have the right to tax other property which is now exempt from her taxation.

Mr. TAGGART was satisfied with the explanation.

Mr. TOWNSEND suggested—that it should be not object to the resolution—that it should be narrowed in its details or it might require so long to prepare an answer that it would be useless for all practical purposes when it should come in.

Mr. MURPHY replied that the Comptroller had already a list of all these companies and associations, and by addressing a letter to them severally, they could furnish all the required information without much trouble.

The resolution was then adopted.

Mr. RUGGLES presented the following which had been forwarded to him from a highly respectable gentleman. It was on the subject of taxation, which is already before a committee of the Convention, but there were some suggestions which were not yet referred and therefore he desired this resolution to go to that committee. The resolution was referred to the 2nd standing committee, as follows:—

Resolved, That it be referred to the standing committee number two, to inquire into the expediency of adopting a permanent and uniform system of taxation, which shall operate equally upon all classes of citizens, which shall regard actual property, whether real or personal, including all debts due from solvent debtors, as the only legitimate object of taxation;—which shall define what is real and what is personal property, and shall take from the legislature the power of converting the one into the other, and thereby interfering with private and vested rights—which shall protect the citizen against double taxation in any form or under any pretence whatever—which shall secure to resident citizens the right to be assessed for their personal estate in the city, town and county where they reside and not elsewhere—and which shall assert and permeate the principle of assessing all property at its full value subject however to a deduction on account of any debts which the owner may in good faith have contracted and be liable to pay; so that each one may bear his due proportionate share of the public burthens according to the value of what he really possesses.

Mr. SHEPARD moved that copies of the journal of the Convention be transmitted to the corporation of the city of New-York, as the same is published. He explained his object to be to furnish the information it contained for the use of the Convention sitting in the city of N. York to revise its charter.

The resolution was adopted after being amended in several particulars, one of which provided for the transmission of the documents as well as journal, at the close of a conversation in which Messrs. SHEPARD, CONELY, PATTERSON and some others took part.

EXECUTIVE DEPARTMENT.

The Convention went into committee of the whole on the article reported by committee No. five, in relation to the powers and duties of the Executive, Mr. CHATFIELD in the chair.

Mr. STOW wished to enquire before they passed from the fourth section, if they would be at liberty to move amendments in the House

that had not been offered in committee of the whole.

The CHAIRMAN replied in the negative.

Mr. STOW said he understood that to result from a special rule of the Legislature and of congress, and not from the parliamentary law. He wished to call the attention of the committee to this subject and to intimate his opinion that they would find it necessary to depart from the rule they had established in this respect. He should now move, for the purpose of having the opportunity to renew it hereafter, to strike out of the 3rd line of section 4, the words *or the Senate only*. His object was, that if they adopted what it appeared to be the inclination of the Convention to adopt—though he was not fully in favor of it—that the Senate shall not partake of the appointing power, then the provision to convene the Senate was useless and ought to be stricken out.

Mr. MORRIS said as he understood it, the real object of the learned gentleman was, to be prepared to make this article comport with subsequent articles of the constitution that might be adopted.

Mr. STOW assented.

Mr. MORRIS then stated that when the committee shall have got through this article he intended to move that any further action be suspended until the Convention shall have passed upon other articles, and for the reason he assigned when he introduced the article now before the committee, namely that he had no doubt the action of the Convention on other articles would make it necessary to alter this in some respects. Therefore to give an opportunity to do that he should ask that this article as amended by the committee of the whole be laid on the table without granting leave to sit again.

Mr. STOW said that was only another mode of arriving at the same result; yet he did not see how, according to the rules under which they were acting, they could arrive at this or any other amendment, unless they were offered in committee of the whole. He did not wish to press his motion further than was necessary to keep it within his power to offer it hereafter.

Mr. TALLMADGE denied that they could not move in Convention amendments which had not been offered in committee of the whole. He briefly explained the position which he assumed.

Mr. W. TAYLOR made some remarks on the same subject.

Mr. STOW said that having accomplished his object he would withdraw his amendment.

Mr. FLANDERS moved to strike out "The Governor shall be general and commander-in-chief of all the militia, and admiral of the navy of the state" and insert the "The Governor shall be commander-in-chief of all the military and naval forces of the state."

The amendment was agreed to.

No further amendments being offered to the 4th, the committee passed on to the fifth section, relating to the pardoning power.

The Secretary then read the fifth section as follows:—

§ 5. The Governor shall have power to grant reprieves and pardons after conviction, for all offences except treason and cases of impeachment. He may commute sentence of death to imprisonment in a State prison for

life. He may grant pardons upon such conditions, and with such restrictions and limitations, as he may think proper. Upon conviction of treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon or direct the execution of the criminal, or grant a further reprieve. He shall in his annual message communicate to the Legislature each case of reprieve, commutation and pardon granted since the next previous annual message of the Governor, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Mr. STEPHENS offered to amend by inserting the following at the end of the 10th line, after the word "reprieve":—

After the word "reprieve," in the 10th line, insert as follows:—"But no reprieve, pardon or commutation shall be granted except notice of the application therefor, with the grounds or reasons thereof, and the names of the applicants be given for two weeks prior to such application, in such manner as the Legislature shall determine."

Mr. STEPHENS said he owed it to himself to say that the amendment was prepared by a friend and colleague (Mr. NICOLL), who had requested him to offer it for him, his colleague being absent. He did not say this with any wish to be understood as disapproving of it, for he thought it was creditable to his colleague. It was necessary that there should be some restraint placed on the pardoning power. It was an axiom that the certainty of punishment was a greater preventive of crime than its severity; and as the tendency of our laws is, and as he thought properly towards mildness, it was the more necessary that punishment should be certain; but as the law now stands there is no certainty. The prison statistics according to the report which had been made to the Convention, showed that during the last 10 years 60 persons had been sentenced to imprisonment for life; the average term of imprisonment of persons sentenced for life was 7 years. The pardons of those confined for lesser terms averaged 1 to 18. Now he meant no imputation on the Executive of this state, nor those who preceded him. He knew the difficulties of their position and the influences that were brought to bear on them. He knew that prayers and tears assailed them, but there must be a remedy and this resolution goes as far as it can to ensure a remedy. In the first place it requires the publication of a notice of every application to the Governor. As the law now stands the proceedings are entirely secret and altogether *ex parte*. The convict himself or his friends prepared a statement of his case which was always a favorable one, frequently exaggerated, and often false. And instances had occurred of the application resting upon forged papers throughout. The distinguished gentleman who now occupies the Executive chair, in his report to the Convention, has called attention to the great extent to which this *ex parte* business is carried. He states expressly that while the applications for pardons last year, amounted to 700, but in 16 were there any remonstrances or opposition, or unfavorable proceedings of any description; and of the rest the whole were placed in the hands of the Executive, and perhaps acted upon by him without any knowledge of the pendency of the application to the parties against whom the wrong had

been committed, and without being known to the people of the state. Now it was monstrous that a convicted felon—a man who had the benefit of the wise provisions of our laws, and of the tribunals of the country—who had a learned judge to preside at his trial, and the aid of learned counsel, with the privilege of examining his own witnesses—that such a man, after being thus tried and found guilty and sentenced to punishment, should then come forward, and on the statement of himself or his own friends, should be again let loose on the community to commit crime anew. It is a mockery of the court that tried him—a mockery of the witnesses who proved his guilt, of the paraphernalia of justice, of the citizens of the state who incurred the expense of arresting, prosecuting and convicting him. A pardon to his mind was in some sense equivalent to a satisfaction of a judgment in a civil suit, and it should never be adjudicated but in presence of all the parties. This notice which his amendment proposed, would bring it to the knowledge of all to whom the wrong had been done, and would afford them an opportunity to make their statement. There was no doubt that in many of these applications for pardons the circumstances set forth were false; but if the wronged parties had an opportunity to be heard they might show that the case stood precisely as at the trial—that no one solitary feature had been changed to alter the position in which the prisoner stood—and that they were no more entitled to a pardon from the Executive than they were to a verdict from the jury. But the resolution contemplates something farther. It not only requires the publication of notice of the application, but a statement of the grounds or reasons on which it is founded, with the names of the applicants. This would bring the whole case under the authority of responsible names to the bar of public opinion. At present, applications are handed round and men of respectability are found from carelessness willing to oblige, and very often from a real feeling of sympathy for misery even though they knew it to be the result of crime, who are willing to sign. Politicians also are a class of men to whom such papers are presented, and perhaps in many cases they sign recommendations for pardons as they do recommendations for office—the chances being a thousand to one that it will never be known that their names are signed to the application. The secrecy with which the whole is done invites and encourages carelessness and recklessness; but if men knew that the whole case was to be put before the public they would pause, and no man who desired the good opinion of his fellow citizens would incautiously ask of the Executive to throw open the prison doors, and let loose again upon society a convicted felon to prey on the public. He would pause before he put himself in such a connection before his friends and neighbors. This would cut off many applications to the Executive for pardons, and there would be no such thing as *ex parte* adjudications. With these observations he submitted it to the consideration of the committee.

Mr. CROOKER suggested that the amendment should not come in at the place designated by the mover.

Mr. MURPHY concurred in the views of the gentleman from New-York, as to the pardoning power, and the propriety of some limitation being given to it. They had all seen the evil of politicians and others, who might be supposed to have some influence at Albany, joining in these recommendations for pardons; and when the pardons had been obtained, and the community was stirred up by the pardoning of the guilty, they were the first to join in a hue-and-cry against the Executive, for granting the pardon. But it seemed to him the provision submitted did not meet the evil, and therefore he asked the mover to accept the following amendment, to carry out his own proposition. Insert after the word "applicant"—"and other persons recommending the same, directly or indirectly."

Mr. STEPHENS accepted the amendment.

Mr. MURPHY continued: The amendment, as proposed by the gentleman from New-York, required that the names of the applicants for pardons should be published for two weeks prior to the granting of the same. Now the term "applicant" is too limited a term, for there were many persons who would approach the Executive by letter or in other indirect ways, who were not strictly "applicants," but who, nevertheless, had strong influence with the Executive. He wished to include all who, whether directly or indirectly, recommended the Governor to pardon convicts, and that publicity should be given through the newspapers, that the community might know who there were in high or conspicuous places who would join in procuring the release of felons. He would also suggest that the notice should be published at the place of trial and conviction.

Mr. RUSSELL suggested that a general provision only should be inserted in the Constitution, and that the details should be left to legislation, as there would be great difficulty in carrying them out by the Constitution.

Mr. BASCOM said, if it was proper to entrust the Governor with the pardoning power at all, it was proper that he should be left without a prescribed rule of practice to guide him in the exercise of it. He could see that not only inconvenience and difficulty, but expense would be the result of this proposition. No doubt the proposition might throw difficulties in the way of making applications, so as to reduce their number; yet the gentleman had failed to see that if it required the Governor to give 700 or 800 notices to district attorneys, of these applications, there would arise a new system of professional practice in the state. The district attorneys were to be notified—for what purpose? Why, such a notification would be in fact a rule to show cause why the pardoning power should not be exercised. And could it be supposed that they would fail to show cause against applications for pardons, and that their fees and travelling expenses would not be heard of when their annual bills were allowed. Another proposition was, that these notices should be published in the newspapers of the county. Were gentlemen aware that the publication of legal notices and the laws of the state, were swelling up their expenses to a considerable amount, and for very little good. And this proposition

would not only do that, but serve to make our district attorneys a perambulating body, to oppose applications for pardons in every petty case of crime. He hoped no such rule of practice would be provided by the Constitution.—The Governor himself would doubtless regulate such matters; and where he does entertain an application for pardon, he will give proper notice to the tribunal that convicted, and afford the prosecuting attorney an opportunity to be heard.

Mr. BROWN said it seemed to him this proposition should not be adopted without some further consideration. He believed there were very few gentlemen but would concur as to the existence of great evil in the exercise of the pardoning power; and after what had been said in this debate, he was persuaded gentlemen would see the necessity of limiting it. But, he asked, if they supposed it could be done by these preliminary notices? It appeared to him they would fail to accomplish their object. The object was avowed to be to compel gentlemen in high places—gentlemen exercising political influence—when they apply to the Governor to grant pardons, to put themselves on record.—But pass this provision and the convict himself or some friend for him, will give the notice of application for pardon, and those who wish to influence the mind of the Governor will do it in some other way so that they will not appear in it. He would unite with the gentleman from New-York in limiting this power to pardon, but he thought a moment's reflection must satisfy that gentleman that this was not the way to do it. But there was another matter that required observation. This power has been abused—very much abused. He did not intend to charge an abuse of this power with the deliberate design to do wrong, for he was satisfied it had been done in the exercise of the best feelings of the human heart. He doubted not the Governor had been misled by some applicants and deceived by others, and that some applications had been so made as to make it difficult for any man to resist. But the great difficulty lay at the bottom of all this. Convictions may take place where the object of it is innocent. For such cases the pardoning power was here vested in the Governor, and in the Crown in Great Britain. Such convictions either took place by the perjury of witnesses, or other causes, and thus innocent persons were consigned to an ignominious punishment, and the pardoning power was properly exercised when it interposed between him and that sentence. No civilized people would wish to take away or restrain the just operation of such a power, and his object was to bring to the notice of the Convention, before it should establish a rule in the fundamental law of the state, under which the legislature would have no power to interpose or legislate, a position in which they might be placed. Suppose it should be required that two or six weeks' notice should be given of these applications for pardon, and suppose the object for whom the application was made was a convicted murderer, and the execution was fixed for the next day, or the next week, there would be no opportunity for Executive interposition. He would simply suggest then that the gentleman

from New-York could not accomplish his object in the way proposed, and that if he should procure the adoption of this provision he might do that which in all after time he might regret.

Mr. STOW said he should fail in his duty if he did not protest against this amendment.—Gentlemen had not considered the pardoning power who proposed this. They had all looked at it as an act of mercy towards the convicted criminal. Their great error was this—they had overlooked the fact that it was a political power to be resorted to where expediency required it, and often for the protection of the community itself. The guilty man was sometimes the object of it that he might be used as witness, and in such cases all the circumstances must be kept secret—the motives and purposes must all be kept secret. It was, therefore, to be used for the benefit of the community as a political power, as well as for the relief of the innocent. There were two sides to his question. It was not merely convicted persons, but the community also that was interested in it. How often would it be that men would not allow their names to be used publicly in such cases, though the best interests of the community might be promoted by them.—For their own safety they would decline. Again in how many cases must it be exercised on the spur of the moment to restore a witness. How often must the Governor intimate in advance, to the court and to the Attorney-General and the District Attorney the course to be pursued. It was a great question and it would not do to narrow it down to a mere question of mercy to the accused. He asked, however, to propose a modification. He thought there should be some restriction. He thought the legislature might require the Executive to give notice to the District Attorney or the judge before whom the case was tried, and might also require the Executive to give his reasons for pardoning, and to file them amongst the archives of the department of state. But it would never do in cases of the development of wide-spread conspiracies or treason, to adopt a rule which would afford facilities to co-conspirators.

Mr. WATERBURY said this was a subject of great interest in the county in which he resided. To sustain the truth of this statement, no better evidence would be required than the fact that 19 men from his county were now in the state prison, two of whom had been under sentence of death. He recited the difficulties he has had to surmount in his attempts to obtain Executive clemency for those men, and he hoped it would not be made more difficult than at present to obtain the ear of power for the condemned.

Mr. WARD did not see any necessity for the proposed amendment of the gentleman from New-York, and yet there might be no objection to insert such a proposition in the constitution. It was due to the Executive to state that he had, so far as Mr. W.'s observation extended, pursued the course indicated by this amendment, which the gentleman from New-York proposed to make obligatory on him by the constitution. It had been the Governor's practice, before granting pardons, to address a letter to the judges who tried the case, requesting to be fur-

nished with the minutes of the proceedings of the trial. He not only pursued that course, but he procured information from the agents of the prison respecting the conduct of the prisoner. This had been the uniform practice of the Executive of this state for some years past, so that full knowledge of the case was procured. He, however, was disposed to favor the amendment which the gentleman from Erie proposed to make.

Mr. STETSON did not consider the pardoning power merely as an attribute of mercy; it was a very important duty to be performed—and this was a view which had not been adverted to—for the equalization of punishment.—There were still many cases provided for in the Revised Statutes in which he hoped this power would be frequently exercised—cases of an anomalous character of crime which required that punishment should be more nearly equalized to the moral turpitude of the act committed. The varied range of crimes are brought within classes by the Revised Statutes and an act of a lesser is punished by the same imprisonment as one of greater moral turpitude, for it was not always in the power of the court to apportion the punishment. In such cases it became necessary that the Executive should interfere and adjust the punishment to the character of the offence committed. A striking instance occurred during the time Governor Seward was the Executive of this state. The crime charged was an attempt to kill—where the party shot in the dark. It was perhaps a reckless act and the crime charged was on the principle that he ought to know the consequences of what he did. The man shot recklessly through a hedge and killed a horse, the punishment for which was five years imprisonment in the state prison.—Thus the Revised Statutes dealt out the same quantity of punishment in disregard of the special circumstances of the crime. He mentioned this to draw the attention of the committee to the fact that the pardoning power was necessary to adjust the punishment for crime as well as to restore those whom it is necessary to use as witnesses.

Mr. SIMMONS thought the feeling that prevailed in reference to the pardoning power, was that natural and almost necessary struggle that arose between a feeling of equality—as in the consultation of many persons, and the little remnant of monarchy which must exist in some form or other. There must be something trusted to one man, and the circumstance that it is a one man power, exercised by any individual alone, exposed him to suspicion. Since he had resided in this state, where there is no executive council, by and with the advice of whom the Governor does so and so, but where the Governor does it, he had thought that certain unnatural and constrained suspicions arose in every case of pardon, as though an attempt was made to obtain political capital; and yet he did not know an instance where the power had been abused. He thought it had been very discreetly exercised, though it must be varied with the time and the temper of the individual; for they could not confide such a great power, without taking the risk of individual idiosyncrasy. We in this state, deem it necessary,

when a person is on trial for a crime, that there shall be more than one judge, however learned; and therefore we have one or two sensible lay men on the bench with him. This feeling arose out of our institutions. We are accustomed to a multiplicity of councillors; and when it became necessary to decide a question of life and death, we felt as though it was wrong, and subjected a person to suspicion, who exercised it alone. And this perhaps would be so, until we came up, and the public consented to adopt what the New England states have had from the beginning—a Governor's council, in all criminal cases. Let it consist of the heads of departments, and it would cost nothing; and let the Governor consult with them in all cases of pardon. He differed with the gentleman from Erie, and but a little. He drew a distinction between pardoning after and before conviction. In the latter, it was nothing more in effect than entering a *nolle prosequi*. It was proper there should be in the hands of the pardoning power the discretion to enter a *nolle prosequi*—so that if a soldier standing in the army did not act in the character of a soldier, the Governor might exercise it. But he would prefer that in cases after conviction, there should be some little regularity. It would frequently happen that there was a latent equity and strength of moral justice in a case; and it might be so strong as to threaten to shake the stability of the laws, if no remedy was provided; for if there was no such power lodged anywhere, juries would exercise it themselves. It was nothing more or less than the natural equity which belongs to every case, as contradistinguished from the naked, rigid, hard dictates of law; but in criminal cases it has not been reserved to courts of equity, and reduced to rules—for it has been arbitrarily exercised, and kept in the hands of the Executive. Now it would be very desirable if these pardons after conviction could be reduced to some rule. He did not see the necessity of resorting to the pardoning power to make a witness; and they would be more satisfactory, and tend to promote uniformity, and to strengthen the law. And the true way would be to associate with the Governor the heads of departments to constitute an executive council. He would have it so organized though, that they should never overrule the Governor to execute a sentence, but that he should not carry it out into execution against a majority of the council. He thought this would give in a short time time that satisfaction which institutions like ours demanded—that is, something beyond the one man discretion.

Mr. LOOMIS said on hearing the remarks of the gentleman from New-York, and the statement which that gentleman had quoted, he had been favorably impressed towards this proposition; but further reflection and the remarks of other gentlemen had satisfied him that it was inexpedient to adopt such a proposition. It was nothing more nor less than legislating by this body what the governor has already power to do. It will be competent for the governor at any time to say that he will grant no pardons until notice has been given at the place where the crime was committed. There might have been an abuse of the pardoning power

but he did not think it had been unduly exercised. Its exercise had been the necessary result from the excessive severity of our criminal laws. The exercise of the pardoning power was the high prerogative of the state, that could not properly be invested except in some individual or body representing the power of the state, and in no one so fitly as in the chief executive officer. He believed there was no country where the chief executive officer was not invested with the pardoning power, though it might be there were other bodies associated with him. The Governor he thought might continue in the possession of that power, though if the business in that branch of his duties continued to increase as it appears from a report it had done, it might be necessary for this Convention to devise some means by which the Executive may be relieved from the onerous burden. He thought they might as well insert some provision authorizing some officer—the state prison inspectors or somebody else to aid as advisers, though he would after all leave the controlling power with the Governor. They might organize a small body of officers, and perhaps none were so good as the state prison inspectors, to act as advisers of the Executive, leaving him to act at his pleasure on his own discretion. Under these views of the case, he was of opinion they had better not adopt the amendment of the gentleman from New-York.

Mr. RUGGLES said the constitution as it now stands, gave to the Governor power to grant reprieves and pardons in all cases, except treason and impeachment. He observed there was a paragraph in the report made to the Convention which stated that most of these applications for pardon are *ex parte*, and made under circumstances in which probably those who were interested in the question had no knowledge of the application or of the pardon. In some instances undoubtedly, pardons had taken effect without the knowledge of those who take an interest in them, but if notice was to be required, there might be some inconvenience found to exist in capital cases. He could, however, see no objection to giving the legislature authority to require notice in all cases that were not capital. There may be that power now, though there was a doubt about it; if so, it should be removed by a provision in the constitution. He made that suggestion to the gentleman from New-York.

Mr. RHOADES reminded the committee that he had heretofore offered a resolution on the subject of making the state prison inspectors a body of commissioners, who should be associated with the Governor, as the pardoning power. That resolution was laid on the table at the suggestion of his friend from Onondaga, who thought the object could be accomplished by moving an amendment when the Convention was in committee of the whole on the report of committee No. 6. He now suggested to the gentleman from New York to allow this to go over until that time.

Mr. NICHOLAS thought this was a proper time and place to dispose of this pardoning power, and he differed with the gentleman as to the propriety of postponing this amendment or any question referring to the subject. The gentleman's resolution to which he had alluded proposes to associate the state prison inspectors as

commissioners, as they were termed, with the Governor in the exercise of this pardoning power. It appeared to Mr. N. then, and on further reflection he was confirmed in the opinion, that any such connection would be inexpedient, and for several reasons. One was, that the inspectors of prisons would not be at the capital at a period when the Governor might have occasion to consult them; but without any such association, the Governor would always have it in his power to confer with the inspectors. In regard to the amendment proposed by the gentleman from New York, it struck him that it would not attain the object the gentleman had in view.—He did not perceive how it would be the means of bringing before the Governor any necessary information to enable him to act discreetly and judiciously in the exercise of this power, that he would not otherwise possess. It might serve to get up an excitement in the neighborhood, and counter statements might be submitted, but this was not the kind of information on which the Governor should rely in coming to a conclusion. He should rely on the judges of the court, and the prosecuting attorney, whom he always had power to consult, and therefore by the adoption of this amendment they would only trammel this power with greater embarrassment. He was aware that this power had been indiscreetly used, he might say injudiciously used. He had the knowledge himself of this having been the case; but he was not disposed to impute it—indeed he knew in the case to which he alluded, there was no intentional abuse of power; it was simply from a mistaken feeling of kindness. He was informed many such cases had occurred; still it was a power that must belong somewhere, and he did not believe it could be so safely invested as where it now is. If they should divide this responsibility between individuals the fact would be that it would be frittered away, and it would not be exercised with the discretion that it had been by one man. As to the Governor, it was expected that his duties will be curtailed and much diminished; he will, therefore, have more leisure hereafter than heretofore to attend to this important duty, and perhaps more leisure than would belong to any other class of officers with whom he might be associated. The association with the Governor of other individuals residing away from the capital then, was highly objectionable. If such an association was to be effected, the inspectors would be almost constantly travelling to and from the capital; and though he was not disposed to apprehend any very serious consequences to result yet from the intercourse of the inspectors with the people, they would be much exposed to the importunities of the friends of convicts, and be led away by sympathy; and if there were any danger of official influence being perverted to political purposes, might not these inspectors, with this power, be liable to such misconduct? Besides, the arrangement would be inconvenient and expensive; these inspectors would be called to the Capitol expressly to meet the Governor to act upon every application for a pardon. This power must be lodged somewhere—its exercise would be attended with perplexity and difficulty, wherever reposed, but it appeared to him that it was safer where it now was than if the responsibility was divided between several men, especially if we adopted the amendment proposed by the committee requiring the Governor to report to the legislature the number of cases pardoned, and the names and offences of the convicts.—Such a report was the only additional check that could be safely imposed, and this would prevent

the exercise of this important prerogative from slight or insufficient causes.

Mr. WATERBURY was well aware from personal knowledge, and by application to the Governor, that too much indulgence is attributed to the Executive. He knew that the Governor required the most full and satisfactory evidence of the propriety of the pardon, before a reprieve was given, and was unmoved by the entreaties or tears which were brought in aid of an application. He believed there was no danger to be apprehended from leaving with him the responsibility of the exercise of the pardoning power, while by giving it to a half-dozen, the rights of the criminal to a fair hearing would be much restricted, by the chances of the different opinions which different persons would form from the same testimony.

Mr. TALLMADGE sustained briefly the section as to the pardoning power, as it stood in the existing constitution. He contended that the power of pardon was an essential power in a government, which must be lodged somewhere, and that no where could it be more safely lodged than where it had been, for so long a period—with the Governor—who was responsible, at stated periods, to the people. Though he confessed this power had been indiscreetly exercised in some instances, yet he did not believe that it was from bad motives—nor were they cases of such importance as to require essential changes in the existing constitution. Better put up with occasional indiscretions, than to place embarrassing or prohibitory restraints upon its exercise—or to interfere with the proper jurisdiction of the Executive. He preferred decidedly the section of the old constitution as it stood.

Mr. STEPHENS acquiesced in the suggestion of the gentleman from Onondaga, that his proposition should be voted down now.

Mr. STOW thought this the proper time and place to dispose of the amendment, and of the question as to where the pardoning power should be vested. And he now gave notice that he should follow up this proposition with another which he should insist on having adopted.

Mr. STEPHENS then said that he regarded all that had been said in regard to district attorneys, and an increase of lawyers' fees as entirely inapplicable to his amendment—requiring as it did, nothing that might not be done by the convict or his friends. As to the case stated by the gentleman from Orange, it was an extreme one, not likely to occur. As a general rule certainly, the matter could be safely left to the Governor, with the statements on both sides before him—and if it should appear that the persons were rightly convicted, by a proper tribunal, he ought to abide the punishment prescribed by law. But he would not follow the gentleman further. It was a subject he confessed, with which he was not familiar in all its bearings—and he acquiesced in the suggestion of the gentleman from Onondaga very cheerfully.

Mr. TALLMADGE here remarked that he should move at the proper time, to strike out all the new matter in this section, leaving it as it stood in the old constitution.

Mr. RICHMOND in reply to Mr. STEPHENS, said there were many cases of conviction where the proceedings were legal, but where great injustice might be done by the infliction of the penalty. A man might be convicted on the testimony of a witness, who it might turn out, might be mistaken. The proceedings might all be legal, and yet the man suffer a great wrong. As to the idea of the gentleman from Onondaga,

that we should have a board composed of the Governor and the inspectors of the prisons—

Mr. RHOADES advocated no such thing. He merely alluded to an enquiry he had proposed—but avowed no attachment to any such plan.

Mr. RICHMOND, before he could assent to such a plan, must know who were to appoint the inspectors. If they were elected by the people, he might favor the plan. Otherwise not. He should prefer the state officers, as suggested by the gentleman from Essex.

Mr. SIMMONS agreed with the gentleman from Dutchess, (Mr. TALLMADGE) in the necessity of preserving in an active and vigorous form the power of mercy in a government. The highest government in the universe had this attribute, and some theologians thought, he believed, that it was in council. The idea of Montesquieu, that the English government was a Republic disguised under the form of a monarchy, was to some extent true, compared with some other monarchies of Europe. And on the other hand, it was a matter of surprise that our government, under the form of republicanism, was perhaps the only kind of government in the world, that had real monarchy in it. A convict in England was pardoned by the Queen; but she never knew any thing about it; it was done by a cabinet. The King and Queen were persons of straw. Why should we be so peculiar—when a monarchy repudiated this one man power, and turned it into a creature of straw? Why should we insist on having a real man exercising the whole power alone? And this too where the general feeling in the country was against these one-man decisions, whether by a judge or an Executive? Until some principle of this sort was proposed, better than the present, he preferred to hold on to the power as it stood—a bird in the hand was worth two in the bush. This pardoning power must exist somewhere, and if taken away from the Executive, juries would exercise it. But there were strong suspicions now of the abuse of this power—and the effect of it must be injurious to the cause of humanity and mercy, operating as it must upon the Executive. He was for having an Executive Council. Such as they had in New England—not for this purpose merely but some others—for he believed it necessary to regulate this power, and reduce it to something like law and reason.

Mr. TALLMADGE did not know that he should object to such a proposition, when presented; though at present it was not the question before us. But that had never been the policy of this state; the policy of our ancestors, which had been in vogue so long, was to choose a competent man, to entrust this power of mercy in his hands, and to hold him accountable for the manner in which he should exercise it. He stood on the same rock now. If New England had her executive council, be it so. It might work well enough there. But he did not feel the necessity for this radical change in a principle which had stood from '76 down to this hour. And when in order he should move to restore this section to the shape in which it stood in the old constitution—as coming from those whom we had cause to honor.

Mr. STOW moved a substitute for the proposition of Mr. STEPHENS:—

After the word "proper," add, "But the Legislature may, by law, require that notice shall be given to a judge before whom the convict was tried, or to the district-attorney of the county where the conviction was had, or to both such judge and district-attorney, before a pardon shall be granted; and, also, that the Governor shall file his reasons for granting a pardon, and the documentary evidence on which he acted, with the Secretary of State.

Mr. STOW regarded the pardoning power as indispensable. But it was not always an exercise of mercy. It was often a matter of absolute right that a convict should be pardoned. Of this he might produce many illustrations. It was necessary also to prevent excessive punishment being inflicted by courts of justice. Strictly perhaps, it was always a matter of mercy to pardon.—And he suspected the gentleman from New-York spoke hastily, when he said that it never should be exercised as an act of mercy. It was not for frail and erring humanity, whose dependence on the Divine forbearance and mercy was daily recognized, to assert or act on such a principle. He apprehended that it was indispensable as a matter of public policy—and that the publicity proposed to be given to applications for pardon, and the grounds for them, would often defeat the object and endanger the public safety, as for instance in a case of a wide spread conspiracy against society. Where should this power be reposed? He confessed he preferred the Executive, and on the principle that it was more safe to proceed upon experience than upon experiment. It had worked well in his hands—and if errors had been committed it was from misinformation or want of information. That he proposed to remedy, by his amendment.—He disliked the distribution of responsibility among a Governor and council. Leave it with the Governor, and we should always have a responsible man. Divide the responsibility, and it would be nowhere. He had no doubt we should have much better appointments, were the Governor alone to appoint, instead of sharing that power with the senate. As to the inspectors of state prisons acting as an executive council, they were the last men with whom he would lodge this power of pardon. If he wanted to select a man to assist a Spanish priest in improving on torture, he would apply to those who had had the keeping and managing of state prison convicts. As to the legislature, he would give them some slight power over the mode in which the Governor should exercise his power—a discretion which would not probably be exercised except in cases of a high grade of offence. But with this slight modification, he would leave the power where it was, without diminution or alteration. As to that part of this section which authorized the Governor to pardon upon conditions, it was inserted, no doubt, to make that constitutional which was now law, and which had been questioned as unconstitutional.

Mr. MORRIS opposed the amendment. It made delay necessary—and a person applying for a pardon, on the ground of right, was wronged every moment he was detained in prison. But another objection—he spoke from practical observation when he said that when a man had been convicted by a conspiracy, and that could be conclusively shown, the effect of such a notice as this would be perjury upon perjury. Again, this was all unnecessary, for he knew the fact to be that the Executive always took the precautions suggested in this amendment—applying always to the judges and the district attorneys for the testimony and their opinions upon the case. No doubt Executives had erred sometimes; but these errors were on the side of mercy, and for that human nature should not be censured. He trusted the committee would not strike out.

The question was here taken, and Mr. STEPHEN'S amendment negatived.

Mr. W. TAYLOR offered the following, on behalf of Mr. CHATFIELD:—

After the word "proper" insert "but before any such pardon shall be granted, the inspectors of the

state prisons shall inquire into the ease of every convict for whom a pardon shall be asked, and shall communicate to the Governor all the facts and circumstances in relation thereto."

Mr. TAYLOR said his general impression was in favor of leaving the section as it was. But no evil could result from this, as it required no more probably than the Governor would do without it.

Mr. NICHOLAS inquired if gentlemen supposed any public officer ever withheld such information when applied to for it? If not, why designate the officers to whom application should be made? It could have no other effect than to subject them to importunities from the friends of convicts.

Mr. PATTERSON remarked that the keepers of the prisons were to be applied to for this information, if any one. The inspectors knew nothing of these cases; nor in all cases, were persons for whom pardons were asked, confined in the state prison.

The amendment was lost.

Mr. HARRISON offered the following:—

After the word 'proper,' insert:—'But no person convicted of murder, whose sentence of death shall have been commuted into imprisonment for life in a state prison, shall be pardoned afterwards, except on proof of innocence, or of the inanity of the convict at the time the crime was committed, or of such irregularities in the proceedings of the court or mitigating circumstances in the case, to be certified by the judge before whom the conviction was had, as will render the Executive interference necessary. Every such case the Governor may in his discretion, report to the Senate, with a comprehensive statement of facts and circumstances for their determination thereon, and a majority of the Senate may direct the sentence to be reversed or a pardon to be granted to the criminal.'

Mr. HARRISON said he offered this because the prevailing sentiment now was in favor of a commutation of the punishment of death in all cases to imprisonment for life. If this feeling should be acted on by the Executive, he would be assailed very frequently, perhaps immediately after such commutation, with importunities on the part of friends of convicts to release them from imprisonment. He would have the community protected from hasty action on the part of the Executive, which must follow the exercise of this power. Such a provision might be found very useful hereafter.

The amendment was lost.

Mr. TALLMADGE now moved to strike out these words:—

"He may commute sentence of death to imprisonment in a state prison for life. He may grant pardons upon such conditions and with such restrictions and limitations as he may think proper."

Mr. TALLMADGE said this was in part the motion he intimated he should make—intending, if it was successful, to follow it up with a reference to the other new matter in the section.—Thus amended, the section would give the Governor the power of pardon, and would leave all the details to be settled by legislation, as had been done since 1821.

Mr. BROWN hoped the clause would not be struck out.

Mr. WORDEN presumed it was well understood that this clause was put in to explain a doubt about the statute.

Mr. BROWN so understood it; and it was well to have no doubt on this subject of the power of commutation.

The committee refused to strike out.

Mr. STOW then proposed his amendment, as above, and it was negative, 38 to 42.

Mr. CROOKER proposed to strike out the whole section, and insert:—

"The Governor shall have power to grant reprieves and pardons, or may commute the sentence to imprisonment for life or for a term of years, and with such restrictions and limitations as he may think proper; after conviction in all cases except treason, where the penalty is death. And upon convictions for treason, he shall have power to suspend the execution of the sentence until the case shall be reported by him to the legislature at its next session—when the legislature shall either pardon or direct the execution of the sentence, or grant a further reprieve.

Mr. MORRIS enquired if the gentleman intended to strike out impeachments?

Mr. CROOKER replied affirmatively, going on to say that if there had been abuses of the pardoning power, it was from not exercising the power, rather than from an excessive use of it. Such was his experience; and Mr. C. mentioned several cases of obscurity and poverty illustrative of his position. His idea was to have a commission, to whom reports should be made by the judge trying the case if required by the counsel for the defence, which would only be in cases of great doubt. It would relieve the Governor of a vast amount of responsibility; and would place it in the hands of more suitable persons. For the Governor was not always selected for his legal knowledge; and was always the representative of a party. This board, he would if possible so construct that they should be free from all bias. He hoped his amendment would be considered, and not hurriedly disposed of because it was getting near 2 o'clock.

Mr. SIMMONS thought he could see ooze out here an inclination towards the principle that we must come to at last. What was wanted was some kind of criminal court of equity—he called it a Governor and council, whose duty it should be to collect all the facts in each case, and apply the pardoning power according to each; and thus gradually this power, now complained of, would by force of precedent, acquire a character which would meet the moral demands of the human heart. Nothing else would do it.—As to our penitentiary system, he regarded it as a failure. Its tendency was to paralyze and destroy self respect, to break up every spring of moral character, and counteract the effect of our social and other institutions. He wanted to see a system adopted which should compel a separate account to be kept with every person in our prisons, the duration of his imprisonment to be short in proportion to his earnings—so that in fact he should earn his pardon, as matter of right. Our prisons were now state colleges—universities—to educate felons and destroy self-respect—the only spring of moral activity in human nature. He did not know how this could be done, except through a criminal court of equity, and by adapting our penitentiary system to it.

The amendment was negative.

Mr. BROWN suggested that the information to be communicated to the legislature on this subject, by the Executive, should not be in his annual message.

Mr. MORRIS assented to that suggestion and moved to amend so as to require the Governor to communicate the facts annually to the legislature, which was agreed to.

Mr. CROOKER proposed to amend so as to authorize the Governor to commute sentence of death to imprisonment for life "or for a term of years."

Mr. PATTERSON thought the punishment of death should not be commuted for a less period of imprisonment than for life.

Mr. WATERBURY suggested leaving out the words "for life."

Mr. WORDEN thought the clause might then be construed to mean for life.

Mr. BASCOM preferred Mr. CROOKER'S proposition—and thought it should be adopted. Otherwise a convict whose sentence had been commuted to state prison for life, might never be released—as the pardoning power in his case, might be claimed to be exhausted.

Mr. CROOKER'S amendment was lost, 33 in the affirmative.

Mr. ARCHER offered this amendment:

"In case the legislature should abolish capital punishment, the Governor shall not have power to pardon or shorten the term of imprisonment of such persons as shall have been convicted of murder, except with the unanimous consent of both branches of the legislature."

Mr. TAGGART moved to strike out the word "unanimous."

Lost, as was also the original proposition.

Mr. RHOADES offered the following, which was also lost:

After the word "offences," in the second line, insert "except for which the offender may be sentenced to the state prison, and"

Mr. SHEPARD offered the following:

Substitute for the first part of the section down to and including the word "limitations," these words:—"The Governor shall have power to grant reprieves, commutations, and pardons after conviction, except in cases of treason and impeachment, in such manner, on such terms, and under such restrictions as he may think proper."

Pending the question on this motion, the committee rose, and the Convention adjourned to 9 o'clock to-morrow morning.

TUESDAY, JULY 14.

Prayer by the Rev. Mr. HUNTINGTON.

STATE BOARD OF ASSESSORS.

Mr. TOWNSEND offered the following, which was agreed to:—

Resolved, That the committee on the public revenues, &c., be required to consider the propriety of instituting, by constitutional enactment, a State Board of Assessors, with power to equitably adjust the relative apportionment of the real and personal estate in the several counties, with reference to a just and uniform levy of state or national direct taxation.

EXECUTIVE DEPARTMENT.

The Convention again resolved itself into a committee of the whole, on the report of the Fifth standing committee, on the powers and duties of the Executive, Mr. CHATFIELD in the chair.

The pending amendment was the one offered yesterday by Mr. SHEPARD.

Mr. SHEPARD said, when he offered his amendment yesterday, he presumed that the pardoning power was to be kept pretty much as it was now. He supposed the experience of all was conclusive as to the propriety of retaining the pardoning power. He was therefore surprised at the effort made there, to strike directly at the exercise of that important function of the government. The only question then seemed to be, where the pardoning power was to be lodged? Who would best exercise it, with a view to the safety and welfare of the community?—Now, he proposed briefly to show, for the purpose of vindicating the exercise of that power, why it was exercised at all, and why the judgment of a court on a specific offence, was not final. In the administration of criminal justice, under the best system, necessarily much injustice must be done. In the history of the criminal law, it would be found that a great many had been convicted, who were supposed to be guilty, on perjured testimony. Juries were bound to decide according to the evidence; and it was entirely out of the question to suppose that they would, or could, in a great majority of instances, make any allowance for false statements on the part of witnesses. Another class of cases, was that in which mistakes in the evidence itself, or mistakes of identity, had occurred. This was a very large class, which had furnished theorists with powerful arguments against the reliance on

circumstantial evidence alone. Then there was another class, which was almost peculiar to our own country: he meant where the crime which had been committed had created much excitement, and in relation to which the newspapers had bound the individual and the crime so firmly together, that they were inseparable in the public judgment. In such a case, conviction followed as a necessary and inevitable consequence. Now in those classes of cases, the individual convicted might be perfectly innocent. Within the last ten years, twenty such cases had occurred, and he put this statement of facts to the serious consideration of gentlemen who assailed the pardoning power. There was a second class of cases, in which it was advantageous to exercise the franchise of pardon, and that was where the individual was really guilty, but where some high reason existed for his pardon. Such cases were those in which it was necessary to remove the disqualification of a witness; such as where an individual who had been convicted of a crime was pardoned on his disclosing his associates.—It was thus that the secret paths of crime were made public. It was thus in very many instances, that criminals were detected. It was thus that the eye of justice was led to the secret recesses of vice. From this class of cases, however, which he had enumerated, he supposed a perfect exercise of the pardoning power would demand, that in each class there should be the exercise of judgment, by different men or bodies of men. Where injustice had been done by the trial, he supposed the court which tried, could judge best. In the second branch, where the administration of some branch of the government called for the pardon, the Executive would be the best judge; in other cases, the state prison inspectors might be well qualified to decide. It seemed then, that this power, to be exercised perfectly, ought to be lodged in three different hands. That, however, he assumed to be impossible. It must be vested in one or two responsible agents, and there it must remain; and where were we to find responsible agents? He supposed it was well designated in the present constitution; he supposed the Governor, standing as the head of the system, possessed all the information requisite, and stood in

the best possible situation to make up his judgment free from error, or in such a way as would be productive of as little injury to the community as could be secured in any case.—He was forcibly struck with the proposition of his colleague (Mr. STEPHENS.) He approved of the principle of giving notice where it could be applied; but in those cases where a secret pardon is to be granted, notice could not be given. It seemed to him we had better leave it to the Executive, for it would be best deposited in his hands; and he could provide for the notice, if he saw fit, and grant pardons on such conditions as he deemed proper, and with any formalities he might choose to lay down and define. The instances of the unfortunate exercise of this power by the Executive were comparatively very few indeed. He did not know, if the power was lodged anywhere else, that the instances would be so few; for he had shown, it must be exercised by any other person at a greater disadvantage than by the Governor. It had been suggested that the legislature should be left to control this matter; but in this he did not agree. The ear of the Executive should always be open to petitions and applications for pardon. Whenever a man was justly entitled to a pardon, it should be made as speedy a matter as possible; it was never too soon to repair an injury, especially one of that kind which carries desolation to the human heart and to the family circle.

Mr. TAGGART had hoped the gentleman from New York, would have given some reason for his amendment; but instead of that, he had confined his argument to the point whether we should retain the pardoning power, and whether or not it should be vested in the hands of the Governor. From the tone and temper manifested there, he thought there were very few that would be disposed to strike out the pardoning power, or take it away from where it had been hitherto lodged. But he now rose to present one or two other matters in this Convention, which had not yet been presented. He found here a provision, which has been taken from the statute that the Governor may grant pardons with such restrictions and limitations as he might think proper. This, it struck him, was wrong in principle. It was an established maxim of the law of the land that you are so to use your own as not to injure another. That maxim, if it did not already, ought to apply as well to government as to individuals. The power to grant pardons with such restrictions and limitations as he may think proper, is usually understood to apply to cases where the pardon is granted in consideration that the person pardoned shall leave the country in which he has been convicted. Now was this principle right? Was it just to a neighboring state or province or nation that we should send the criminals from our penitentiaries and prisons to commit their depredations on those states or provinces? It seemed to him that it was unjust and we ought to pause and reflect before we admit such a provision in the constitution and give to it a sanction which it had never yet had under the government of this state. He admitted it had been resorted to over the whole country, but notwithstanding, it was wrong, and it ought not to be so fastened on the constitution

as to prohibit a general rule of the legislature hereafter, to abandon this principle. There was another proposition which he desired on an appropriate occasion to offer; it was to provide in case the government should abolish capital punishment, that the pardoning power shall be taken from the Governor without the consent of the legislature. He wished to limit the power of the Governor to pardon unless the legislature should deem it necessary. It was evident that within a very few years, capital punishment, that relic of a past age, will be stricken from the statute book. He did not intend to interfere with it by this Convention, but he wished to leave it in such a manner that the legislature may interfere and provide that if they take away the power to inflict capital punishment, they shall inflict a term of imprisonment without the power of pardon, except on certain conditions and in specified cases. To meet this case, he should offer such an amendment as this: "But the legislature may by law limit and restrict the exercise by the Governor of the pardoning power in cases of murder."—He had been informed that the present Executive had granted but two conditional pardons since his induction into office, and to these he would briefly advert for the purpose of showing their effects. One of the two was conditionally pardoned for making disclosures through which others were convicted of participating in the offences for which he had been convicted.—The condition was that he should leave the state. Not complying with that, he was a second time arrested and a second time was permitted to go away, and he went to Canada; but in the space of one fortnight he came back with a quantity of counterfeit money in his possession with which he supplied the market. With great effort, he was again arrested and convicted, and is now confined at Sing Sing. The other was detected in picking pockets on board the boat which bore him from the prison to the city, and he too is now back again at the prison at Sing Sing. He again repeated his hope that this provision would not be inserted in the constitution, so as to make it a perpetual power.

Mr. HUNT desired to add the words "or as may be prescribed by law," to come after the word "proper;" but the amendment was not then in order.

Mr. O'CONNOR said, though there might be no obscurity in the clause of the constitution of 1821, so far as words were concerned, yet it was probable some addition was requisite as to the extent of the Governor's power. It was known that the Governor had power to grant reprieves after conviction, except in cases of treason and cases of impeachment; and it was known what he might do in those cases. Now doubts arose, it seemed, under the terms used in that constitution, whether he had power to grant commutations or diminutions of punishment, and it certainly was a very excellent idea in the committee to remove, as they could by a word, the doubts which had arisen on that head, because none could deny that the Governor ought to have the power to grant pardons, with that kind of condition; or in other terms, to reduce the amount of punishment. He also ought to have the power to impose conditions, for they might conceive of many considerations, under which it

would be the best policy consistently with justice, that the Governor could pursue. We have been informed that paupers had been transmitted hither at the expense of the towns on which they were chargeable in foreign countries. Now if one of those paupers, not having a settlement or the means to sustain himself, should commit a felony, it would be a proper condition of a pardon that he should transport himself without the United States and never afterwards return within it; and an honorable gentleman who had had the exercise of the pardoning power stated to him that it was not unfrequently resorted to. He therefore felt great pleasure in expressing his approval in the fullest degree of the object and intent of the committee. In relation to the power to commute, he made a few brief suggestions, and in relation to the conditional pardon of expatriation, he suggested that the state of New York should not by this sort of banishment convert her sister states into so many Botany Bays.

Mr. MORRIS presumed it would not be improper in him to state why the committee had reported the article in its present shape. In drawing the different sections, wherever it was intended that the same power should be retained, the committee copied the old constitution and the old law, purposely adopting the language in use, so as to prevent the necessity of construction. The old constitution being known, and its meaning appreciated, they felt that by a change of verbiage, though it might improve the style, would leave the door open for construction. All lawyers well knew that the change of a word in a statute, very frequently, if it did not lead to a different construction, opened the door to litigation and argument; and he might appeal to some of his lay friends, if they had not been compelled to put their hands in their pockets for the purpose of paying the expenses of determining whether the alteration of a word did not alter the law.—Where then they intended to retain the same power as in the old constitution, they kept to the language of that constitution. The committee had also introduced some new matter. There was new matter in the third, fourth, fifth and sixth lines of this fifth section, giving to the Governor power to commute sentence of death to imprisonment in the state prison for life.—That matter the committee had taken from the statute, and from decisions under the statute. The statute also embraced this: "He may grant pardons upon such conditions, and with such restrictions and limitations as he may think proper." Now, under that verbiage of the statute, the Executive and his constitutional advisers had doubts whether the power was conferred on him to commute the sentence of death to imprisonment in the state prison. They referred to the third section of the Revised Statutes, vol. II, pp. 455, where they found the legal provision which authorized the state prison agents, at all times thereafter, to receive into custody, under an order of the Governor, any person who had been convicted of crime, and whose sentence of death had been commuted to imprisonment for life, or a term of years. Here was an order given to a subordinate to receive into custody a man whose sentence of death the Governor might commute; but doubts were entertained whether this gave the power to commute, and

the committee thought it was better to put the question at rest, and this they had attempted to do by the words which the section contained.—They put the term of commutation for life, though the statute fixed a less time. His associate feared it would extend to cases of treason; and he asked why should it not? Why should it be left to the legislature? Why should it be left to a political party, opposition to whose political opinions might be the treason, for which perhaps the man ought to be eulogized rather than punished. They therefore gave to the Governor the power to commute, leaving it to the legislature to pardon subsequently, if they thought proper to do so. These were some of the reasons why these sections were drawn in this manner; first, to keep the construction of the old constitution; second, to embrace what they supposed the law intended, but about which the Executive had doubts; and next, for the other considerations which he had just set forth.

Mr. O'CONOR, in a few observations, was understood to suggest, that the power to commute the punishment of death for treason, should have been more clearly defined, to take it out of the exceptions.

Mr. TALLMADGE impressed on the Convention the importance of the pardoning power, and the necessity there was to devote their best attention to it. He enquired what was its extent and where did it rest? And he asked the committee to pause and consider whether the legislature had or had not a concurrent pardoning power.

Mr. WORDEN said the better opinion during the last session of the legislature in which this subject was discussed, was that all the pardoning power was vested in the Executive—that where they had conferred the exclusive exercise of a specified power by implication, it denied the exercise of that power to any other. The gentleman from Dutchess had referred to this on one or two occasions already, but he begged to inform that gentleman that the question had been settled in the legislature. It was discussed in the Senate last winter, and there the better opinion was that the legislature had no control over it.

Mr. CROOKER: Not "better" opinion.

Mr. WORDEN said "better," because it was his own opinion, but there were conflicting opinions.

Mr. TALLMADGE again appealed to the Convention to leave nothing doubtful in the construction of this section. As the section now stood, he contended that the legislature also retained the pardoning power. The words "The Governor shall have power to grant reprieves," &c., did not prevent the exercise of that power by the legislature, though such would be the effect of introducing the word "the" before the word "power." He, however thought it was better not to insert that word. He also suggested that there should be left no doubt of the Governor's power to commute the punishment of persons convicted of treason, and intimated that the words "in all cases," after the word "commute," in the third line, would make that intelligible, which was now doubtful.

Mr. STETSON suggested the introduction of

the word "only" in the sixth line, so that the passage would read thus:—

"Upon conviction for treason, he shall *only* have power so suspend the execution of the sentence," &c.

Mr. VAN SCHOONHOVEN said the gentleman from Ontario had told them that it had been settled in the legislature that it did not possess the pardoning power—with that he did not agree.

Mr. WORDEN denied that he had said so.

Mr. VAN SCHOONHOVEN:—Well, then, that it was the "better" opinion there.

Mr. WORDEN: Oh, I took that back too.

Mr. VAN SCHOONHOVEN explained the action of the legislature on this subject. By a resolution which he offered, it was brought up with the view of interfering on behalf of the men of Delaware county, who were yesterday alluded to by one of its representatives, (Mr. WATERBURY.) His resolution, which he submitted to the Senate, called upon the circuit judge to report the testimony in the case. A doubt arose at the time; it was referred to the judiciary committee, whose report at the end of the session, left the matter pretty much as it was when it was first introduced. He expressed the opinion that the legislature did possess the pardoning power; but still as doubts existed elsewhere, the question should be settled.

The amendment of Mr. SHEPARD was then rejected.

Subsequently a motion was made to reconsider, on the ground that the question, when put, was not distinctly understood. But after some conversation the motion was negatived.

Mr. TAGGART moved to amend, by striking out the sentence:

"He may grant pardons upon such conditions, and with such restrictions and limitations as he may think proper."

Mr. RUSSELL spoke in favor of the report as it came from the committee.

The amendment was negatived.

Mr. DANA moved an amendment, so as to provide that the Governor should not have power to commute the sentence for treason.

The amendment was lost.

Mr. RUSSELL then offered an amendment, giving the Governor the power to commute sentence of death, in all cases, to imprisonment for life.

Strike out, "He may commute sentence of death to imprisonment in a state prison for life. He may grant pardons upon such conditions, and with such restrictions and limitations as he may think proper"—and insert—"He may grant such pardons upon such conditions, and with such restrictions and limitations as he may think proper; and he may commute sentence of death, in any case, to imprisonment in a state prison for life."

The amendment was lost—32 to 35.

Mr. STETSON now moved his amendment, (indicated above.)

Mr. STOW hoped this amendment would prevail. The Governor and his agents may be guilty of treason, and this power should be vested with the legislature.

Mr. WORDEN also hoped the amendment would be agreed to.

It was agreed to.

Mr. TAGGART offered the following amendment:

After the word proper, insert—"except that no pardon shall be granted upon condition that the convict shall leave the state or the United States."

Mr. STOW opposed this, and Mr. TAGGART replied, when the amendment was negatived.

Mr. TAGGART then moved to amend so that the legislature might restrain, restrict or limit the pardoning power in cases of conviction for murder. Lost.

Mr. STOW moved to amend as follows:

Insert "or commute the sentence" in this clause—"When the legislature shall either pardon, or commute the sentence, or direct the execution," &c.

The amendment was agreed to.

Mr. TALLMADGE moved to strike out the following, which was lost:

"Stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve."

The sixth section was then read as follows:—

§ 6 In case of the impeachment of the Governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the state, the powers and duties shall devolve upon the Lieut. Governor for the residue of the term, or until the Governor absent or impeached shall return or the disability shall cease. But when the Governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue Commander-in-Chief of all the military force of the state.

Mr. TAGGART moved to insert "disability" instead of "inability." Lost.

Mr. T. moved further to amend by inserting after the word "disease," the words "to discharge the duties of his office."

Mr. JORDAN moved to strike out the words "from mental or physical disease." He said inability might arise from other causes than these. The Governor might be convicted of a crime and shut up in prison, and thus be unable to discharge the duties of this office.

Mr. BROWN objected to the word inability. Who was to determine this vague question. If insanity was intended, who was to determine that fact? He alluded to the memorable case in Great Britain in 88, when the king was declared to be insane—which gave rise to so much agitation—and which divided the two parties there—the law making no provision for such a case—for on the one hand insisting that the heir apparent had become king, and till that the sovereignty was in parliament. The result was that they proceeded to do, what we should provide for here, if we retained this word inability—instituted an enquiry and ascertained the fact—He insisted either that this word should not be here, or that provision should be made for ascertaining the fact of inability.

Mr. W. TAYLOR insisted that if this word was struck out, there would be no provision made for the case of a Governor's becoming insane. He preferred, however to adopt the language of the U. S. constitution and to say "inability to discharge the powers and duties of said office."

Mr. WORDEN:—How ascertain that inability?

Mr. W. TAYLOR:—A palpable case would require no formal adjudication.

Mr. WORDEN:—Suppose it is not a palpable case?

Mr. W. TAYLOR:—Then he would continue

in the discharge of his duty. The legislature would make provision however for such cases.

Mr. WORDEN:—There might be a controversy between the Governor and Lieutenant-Governor, and the latter might undertake in high party times to declare the Governor insane.

Mr. W. TAYLOR thought the United States constitution was a good model to follow.

Mr. HARRISON suggested the words "inability to serve."

Mr. SIMMONS thought the word should be retained. The mode of ascertaining the fact might be provided by law. The United States constitution gave to Congress the power to provide for the removal or disability of the President. All possible cases of inability should be provided for.

The question was here taken on striking out "from mental or physical disease," and carried.

Mr. KENNEDY proposed to strike out "or impeached," as unnecessary—the word inability including it.

Mr. JONES suggested that those words should be retained, and the words "or be acquitted," added.

The committee refused to strike out as moved by Mr. K.

Mr. W. TAYLOR moved to add after "inability"—"to discharge the powers and duties of the said office."

Mr. WORDEN would vote for that if the gentleman would add also the provision of the United States constitution for ascertaining the disability—making it the duty of the legislature to provide a mode. Otherwise, there would be no legal body competent to say where the disability arose.

Mr. W. TAYLOR replied that the United States constitution provided that Congress should prescribe the mode of filling the place of President, not for ascertaining the fact of inability. We had here a provision for filling the place of Governor.

Mr. RUGGLES suggested to add to Mr. TAYLOR's amendment "to be declared by joint resolution of the two houses of the legislature."

Mr. W. TAYLOR assented to that.

Mr. NICHOLAS suggested that, in the absence of any provision here for ascertaining the fact of a disability, it became the province of the legislature to provide the mode, as a matter of course. The word should be retained, to cover cases of insanity—for a Governor, in a fit of alienation, might pardon half the convicts in the state prison; and the legislature might not convene in six months.

Mr. STOW suggested this clause:

"The legislature may declare the inability of the Governor, or of the person administering the duties of the office of Governor, by a vote of four-fifths of all the members elected to each house; and for this purpose the Chief Justice of the Supreme Court may convene the legislature."

Mr. W. TAYLOR, upon reflection, preferred not to accept Mr. RUGGLES' addition to his amendment.

Mr. SIMMONS moved to add to Mr. TAYLOR's amendment these words—being substantially the provision of the U. S. Constitution:—

"And the legislature may by law provide for the case of the removal, death, resignation or inability of the

Governor and Lieut. Governor, and of each of them, declaring what officer shall act in both cases, or in either of them."

Mr. MURPHY (while Mr. S. was penning his amendment) moved to strike out—"the Governor absent or impeached, shall return, or"—so that the clause should read, "for the residue of the term, or until the disability shall cease."

This motion was agreed to.

Mr. SIMMONS' proposition now coming up,

Mr. JONES remarked that the case of the Lieut. Governor was provided for in the constitution—the President of the Senate taking his place. The constitution of the U. S. had no such provision in it, and therefore required congress to provide for it.

Mr. STETSON called attention to what he characterized as the serious, important, radical change suggested by Mr. SIMMONS. It was equivalent to the power of impeachment vested in the legislature. They might drive out the legislature for causes less than cause of impeachment.

Mr. SIMMONS urged that if this word inability was retained, we must require the legislature to provide by law, not as the case might arise, but prospectively, for ascertaining this inability. The word should be in, but not unless accompanied with this other provision.

Mr. STETSON replied that the difficulty was that the proposition would give the legislature power, not to supply a vacancy, but to make one.

Mr. SIMMONS thought the gentleman misapprehended entirely his amendment. It did not give the legislature power to act upon cases as they arose—but to provide for determining such questions in future.

Mr. TOWNSEND. Why not decide such questions, as others were—by a commission of lunacy?

Mr. SIMMONS. Because it would be very inconvenient to throw all things that differed as far as heaven and earth, and which are as diverse as the four Beasts in Daniel, into one and the same mill. We want ear marks to things in this country to distinguish one from another, and in matters of government particularly at least to avoid the promiscuous transcendentalism of Germany. [Laughter.]

Mr. SIMMONS' amendment was lost, and Mr. TAYLOR's was agreed to.

Mr. JORDAN then moved to modify the last clause of the section as follows:—

"But when the Governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force, he shall continue commander-in-chief of such military force."

Mr. JORDAN explained that in the absence of the governor, it might be necessary that the person filling his place should have command of the military force left.

Mr. WORDEN supposed the object of this was to give the governor thus absent, the power to call after him the residue of the militia—which the acting governor might prevent.

Mr. JORDAN had in view an entirely different case—a case when a requisition might be made on the state for an additional military force, and when the emergency would not admit of delay for orders from the absent Governor.

Mr. J.'s amendment was lost.

Mr. DANA offered the following substitute for the whole section:—

In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of his office, resignation or absence from the state, (except with the consent of the legislature in time of war at the head of a military force of the state,) the powers and duties of his office shall devolve on the Lieutenant-Governor for the residue of the term, or until the disability cease.

Mr. DANA offered this to express his views of what the section should be—that the Governor, though absent, as provided, should be commander-in-chief.

The amendment was lost.

Mr. STOW now renewed his proposition (before given) modified so as to give two-thirds of the legislature power to decide on a case of inability—and giving the speaker of the assembly power to convene the legislature for that purpose. Mr. S. said he could never consent to leave the word inability there, without providing some tribunal for ascertaining it. It was such a question as this that shook the British throne to its foundations. The safest tribunal he could devise was the legislature, by a two-third vote. He was sorry to take up time by a single remark; but he could not consent to involve the country in the danger of revolution because it might take a little time to make provision for this contingency.

Mr. TAGGART hoped the Convention would not vote down this from habit. It was a proposition that deserved consideration.

Mr. WORDEN said its propriety was obvious. Leave in this word inability, and provide no mode of determining the question of inability, and we left open a door to anarchy and confusion.

Mr. STETSON insisted that it gave the legislature power to expel the Executive, from factious considerations; it destroyed the whole symmetry of the system of impeachment. Why not make it conform more nearly to that system?

Mr. WORDEN replied, that it was more guarded than the mode of impeachment. A majority of one branch might impeach. This required two-thirds of both houses. And it was hardly to be supposed that two-thirds of any legislature would venture to remove a Governor, from factious or party considerations.—Would the gentleman leave this word inability to stand, without any power any where to define and regulate it?

Mr. CAMBRELENG thought there could be no difficulty about this. In case of the lunacy of the Governor, the constitution provided who should be Governor. There was no vacancy—no regency. The Lieut. Governor would act.

Mr. WORDEN: But when and how is the fact of lunacy to be ascertained?

Mr. CAMBRELENG replied that the fact would be notorious. What Lieut. Governor would wait a moment, if the Governor was sent to an asylum? or suppose he was confined in his own house, was not the constitution sufficient? would not the legislature under this word inability, be at liberty to make explanatory clauses? Our constitution provides our regent. The British constitution had no such provision—and

hence Parliament had to act. The Lieut. Governor must act.

Mr. STOW: Suppose the Lieut. Governor himself is insane?

Mr. W. TAYLOR remarked that if the Lieut. Governor, usurpes authority he would be liable to impeachment and would be impeached.

Mr. WORDEN: You would throw on the Lieut. Governor the responsibility of judging of the case in which he shall act, with the peril of an impeachment hanging over his head?

Mr. W. TAYLOR:—Only in a palpable case. Mr. BROWN submitted that these words inability and disability should be struck out, leaving the constitution to stand as it had these 20 years and no difficulty growing out of it. As to this remedy of impeachment, it was too slow a process. It might last as long as that of Warren Hastings, or that of Judge Peck—the one continued 13 years—the other through a whole session of Congress. The cases of inability specified in the old constitution were self-evident. But this general term inability might give rise to great difficulty. He repeated, it should be struck out.

Mr. NICHOLAS again insisted that it would devolve on the legislature, without any special provision here, to specify cause of disability by general statute.

Mr. MANN preferred to strike out the word inability—leaving the old constitution as it stood.

Mr. STOW had no objection to that course, and withdrew his amendment, in order to have a vote on striking out.

Mr. BROWN then moved to strike out all the new matter in this section.

Mr. SIMMONS did not see what would be gained by that. Strike out this word inability, and still the thing would exist in the world, and must be provided for. His proposition to require the legislature to provide prospectively for such cases of inability, before they occurred, and when there could be no party or other disturbing influences bearing on the legislature, was the true course.

Mr. MORRIS said the committee in drawing this section supposed it was the duty of the committee on the powers and duties of the legislature to require the passage of the proper laws in such cases.

Mr. VAN SCHOONHOVEN opposed striking out, insisting that there should be some general term which should include all cases of disability. He argued that so long as there was a rational doubt as to the ability of the Governor, nobody ought to be at liberty to interfere. But in a plain palpable case, this word would enable the Lieutenant Governor to assume the office. Under this proposition, it would be in the power of a party majority to thrust out a Governor, on the slightest prettexts. He preferred to leave the responsibility of assuming the Executive office, in case of the inability of the incumbent, on the Lieutenant Governor.

The committee refused to strike out.

Mr. STOW then renewed his amendment, further modifying it so as to require a majority of three-fourths to declare the Governor incapable. Mr. S. urged that in this shape it

avoided the objections of the gentleman from Clinton, and others—and would also avoid the incongruity and hazard of allowing the Lieutenant Governor to be the sole judge in a case in which he would be interested. The constitution now provided that the legislature by a two-third vote might remove a judge of the supreme court. Why should not three-fourths be allowed to decide upon a case of inability?

Mr. VAN SCHOONHOVEN objected that it would be in the power of the Speaker of the House in advance to decide the question—indeed virtually to impeach the Governor by calling the legislature together.

Mr. RICHMOND replied that any speaker who should call the legislature together without sufficient cause, would only impeach himself. It would be suicide. He could see no possible danger to arise under this proposition, and he regarded some such provision absolutely necessary.

Mr. LOOMIS objected to the amendment; it changed the tribunal that now had jurisdiction in such cases. If the Lieutenant Governor should adopt the office of Governor, the judiciary, upon a *quo warranto*, would determine the question whether he was rightfully exercising the office. Besides, no man who had the slightest regard for his own reputation, unless indeed he designed a civil revolution, would ever usurp the office of Governor. It was scarcely a possible case.

Mr. WORDEN insisted that without some tribunal to determine this question of inability, the government might be thrown into inextricable confusion. Every act done by an Executive who was incompetent could and would be contested in your courts. The presumption would be that the Governor was competent, and the party in every case, setting up the act of the Lieutenant Governor, would be obliged to prove the inability of the Governor to act—unless some provision was made for determining the question. And these questions of incapacity—for instance, the capacity to make a will—were often exceedingly difficult questions.—Surely it was unsafe to leave this matter of the ability of the Governor to sign bills, or patents, or do any other official act—entirely open.—Prompt action too would be necessary in case of the insanity of the Governor. He could not call the legislature together under such circumstances; nor could the judiciary act promptly enough in such a case. A *quo warranto* might hang in the courts for years. He regarded this proposition as eminently wise and conservative, and was astonished that it had not struck sensible men as having force and weight.

Mr. RHOADES suggested that this proposition be withdrawn, and reserved until we came to the article on the powers and duties of the legislature.

Mr. STOW, with all deference to the gentleman's opinion, thought this precisely the time and place to determine how the office of Governor should be filled in cases of inability.—As to proceeding by *quo warranto*, gentlemen seemed to overlook the fact that under that writ questions of fact were determined by a jury.—Was it not quite as safe to leave it to a jury composed of the whole legislature?

Mr. RHOADES was not opposed to some such provision. His objection was that this was not the place for the more general provision that should be made.

Mr. STOW replied briefly, when

The question was put and his amendment lost—28 in the affirmative.

Mr. O'CONOR proposed a clause providing that the president of the senate should take the place of the Lieut. Governor, where the latter was similarly removed—saying that he proposed it in order that he might renew it, should the last proposition be successfully renewed in the house.

The amendment was lost.

The seventh section was then read, as follows:

§ 7. The lieutenant-governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor the lieutenant-governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor until the vacancy shall be filled, or the disability shall cease.

Mr. W. TAYLOR moved to strike out "from mental or physical disease." Carried.

Mr. CROOKER moved to strike out "his duties;" and insert, "the duties of his office." Carried.

Mr. F. F. BACKUS moved to insert, after "Lieut Governor" in the first line—"shall possess the same qualifications of eligibility as are required of the Governor," &c. Carried, 35 to 34.

Mr. O'CONOR moved to strike out all after the words, "casting vote therein." Lost.

The eighth section was then read as follows:

§ 8. The lieutenant-governor shall receive six dollars for every days' attendance as president of the senate; and he shall also receive the like compensation for every twenty miles travel in going to and returning from the place of meeting of the senate in the discharge of his duties.

Mr. NICHOLAS moved to strike out the section.

Mr. BAKER proposed to amend, so as to provide that the Lieut. Governor should receive the same mileage as members of the Senate.

Mr. TILDEN supposed, as we had refused to fix the compensation of the Governor, that this section would be struck out.

Mr. RICHMOND, though opposed to fixing the salary of the Governor, he did not regard that officer as standing on the same ground as other officers. He preferred, before the question of fixing the salaries of other officers, the judiciary, for instance, was determined, to see how large a retinue of judges we should have. Some said thirty, and some fifty, and some seventy. In such a case, he should be for fixing their salaries in the Constitution, rather than leaving it to the legislature, under the influence of a powerful lobby.

Mr. BAKER withdrew his motion to amend, and moved to strike out the section.

The CHAIR stated that there was a substitute for the entire section on the table, offered by Mr. RHOADES, providing that the compensation of the Lieut. Governor should be established by law, and should not be altered during his continuance in office.

This substitute was adopted.

The committee then rose and reported progress.

Mr. CHATFIELD here said, that during his absence one day last week, his friend from Monroe had the kindness to ask leave of ab-

sence for him. He now, to reciprocate the favor, moved that Mr. STRONG have leave of absence for two weeks. [Roars of laughter.]

Leave was granted. Also, to Mr. MUNRO for 6 days.

Adjourned to 9 o'clock to-morrow morning.

WEDNESDAY, JULY 15.

Prayer by the Rev. Mr. HITCHCOCK.

Mr. BOUCK presented a petition of Samuel White and others, on the subject of the debt and finances of the state, which was referred to committee number three.

Mr. BOUCK presented a plan for a judiciary, signed by a judge of the common pleas of Schosharie county. Referred to the judiciary committee.

ELECTIVE FRANCHISE.

Mr. BOUCK, from committee number four, made the following report, with the observation that it was made with the unanimous approbation of the committee, though the members of the committee had not all agreed to the whole of its sections, and reserved to themselves the right to present their views in committee of the whole on the subject.

The Secretary read the report as follows:—

The committee on "the elective franchise—the qualification to vote and hold office," submit for the consideration of the Convention, the following proposed Article:

ARTICLE —.

Art. 2, sec. 1 modified.

§ 1. Every white male citizen of the age of twenty-one years, who shall have been a citizen for sixty days, and an inhabitant of this state one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, shall be entitled to vote at such election, in the election district of which he shall have been an actual resident during the last preceding sixty days, and not elsewhere; for all officers that now are, or hereafter may be, elective by the people.

Art. 2, sec. 2 modified.

§ 2. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, of larceny, or of any infamous crime; and for depriving every person who shall have a bet or wager depending upon the direct or indirect result of any election, from the right to vote at such election.]

§ 3. Laws may be passed providing that after the year one thousand eight hundred and fifty-five, no person shall have the right of suffrage under this constitution, unless he can read the English language.]

R. S. Part I chap. 6, title 4 sec. 21, modified.

§ 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison.]

Art. 2 sec. 3

§ 5. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established.

Art. 2 sec. 4

§ 6. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

§ 7. Every elector of this state shall be eligible to any office under this constitution, except as herein otherwise provided. But no person shall be elected or appointed to a local office who is not an elector in the district, county, city, town or ward for which he may be elected or appointed.]

§ 8. No person holding an office or place of public trust, in, or under the government of the United States, shall be eligible to, or hold, any office, or place of public trust under the constitution or laws of this state.]

The committee further report for the consideration of the Convention, and recommend to be submitted to the people separately, the following additional section:

§ 9. Colored male citizens, possessing the qualifications required by the first section of this article, shall also have the right to vote for all officers, that now are, or hereafter may be, elective by the people.

WM. C. BOUCK, Chairman.

On the motion of Mr. BOUCK, the report was referred to the committee of the whole, and ordered to be printed.

Mr. DORLON, from the same committee, submitted, as a minority report, the following as a substitute for the first section:—

§ 1. Every male citizen, of the age of twenty-one years, who shall have been a citizen for sixty days, and an inhabitant of this state one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, and shall have within the year next preceding such election, paid a tax to the state or county, assessed upon his estate, or can read the English language, shall be entitled to vote at such election, in the election district of which he shall have been an actual resident during the last preceding sixty days, and not elsewhere; for all officers that now are, or hereafter may be, elective by the people.

On the motion of Mr. CHATFIELD, it was referred to the committee of the whole, and ordered to be printed with the report of the majority.

LOCAL OFFICERS.

Mr. ANGEL, from committee number seven, submitted the following report:—

The standing committee No. seven, "On the appointment or election of all officers whose functions are local, and their tenure of office, powers, duties and compensation," respectfully report in part performance of the duties committed to them, the following proposed article, in lieu of part of article four, in the existing constitution.

ARTICLE.

§ 1. Sheriffs, clerks of counties, including the register and clerk of the city and county of New York, coroners, not exceeding four in each county, and District Attorneys, shall be chosen, by the electors of the respective counties, once in every two years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next two years after the termination of their offices. They may be required, by law, to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff—and the governor may remove any such officer except District Attorney within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.

§ 2. District attorneys may be removed from office, at any time within the term for which they shall have been elected, by the county courts of the respective counties of this state, giving to such district attorney a copy of the charges against him, and an opportunity of being heard in his defence.]

§ 3. The board of supervisors shall fix the number of superintendents of the poor, who shall be chosen by the electors, not exceeding three in each county: and where more than one shall be chosen in each county, they shall divide them into classes, so that one shall be chosen each year, after the first election.]

§ 4. A county treasurer shall be annually chosen by the electors of each county. He shall hold his office for one year, unless sooner removed. He may be required by the board of supervisors to give such security as they shall approve, and to renew the same from time to time; and in case of default in giving or renewing such security, when required, his office shall be deemed vacant. The board of supervisors of each county shall have power to remove such treasurer from office, whenever they shall deem such removal necessary for the safety of the county, giving such treasurer a copy of the charges against him, and an opportunity of being heard in his defence; and shall have power to fill all vacancies in the office of county treasurer, by appointment, until the next annual election.]

§ 5. Mayors of cities in the several cities in this state, shall be chosen annually, by the electors entitled to vote for members of the common councils of such cities respectively.

§ 6. All officers now elected by the people shall continue to be elected. [All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, as the legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or appointed by such authorities thereof, as the legislature shall designate for that purpose.] All other officers whose election or appointment is not provided for by this constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may by law direct.

§ 7. The several officers, in this article alluded to, shall possess the powers, and perform the duties now provided by law, and such as the legislature shall, hereafter, from time to time, by law, direct.]

§ 8. The legislature shall regulate by law, the fees or compensation of all county, town or other officers, for whose compensation no other provision is made in this constitution.]

§ 9. The board of supervisors in each county shall fix the annual compensation of the district attorney, which shall not be changed, after his election, during the term for which he shall have been chosen.]

§ 10. Where the duration of any office is not provided by this constitution, it may be declared by law: and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

By order of the committee,

W. G. ANGEL, Ch'n.

Mr. A. said that the committee were unanimous in making the report, but not in all its details—and the individual members of the committee, therefore, reserved to themselves the right to state their own views in committee of the whole. He further stated, that on looking over the list of officers, they found it impracticable to incorporate the titles of all in the constitution, inasmuch as it would make the instrument unnecessarily voluminous. They had omitted any mention of judicial officers, for the reason that the judiciary committee have that subject under consideration, and it was their intention to report so far as related to surrogates, county judges, clerks of courts, &c. The committee had therefore omitted all mention of that class of officers, although their functions and duties were local. There was another class which they had omitted to say anything about—such as weighers, measurers, inspectors, &c.; and there were other officers which they had left the legislature to dispose of as it might deem best. There was another class—such as port-masters, harbor-masters, &c., whose duties affect the public gen-

erally, whom they had however thought it was improper to make elective by the people at large, because such a course would incur the ticket and be very inconvenient—the committee had therefore made a general provision to leave the disposition of them to the legislature. There were likewise health officers, resident physicians, &c., which the committee grouped together under one general head in the report. Then there were turnpike inspectors, peace makers, &c., of which the committee had only noticed the most essential, recommending the election of some that are now appointed otherwise. He was in hopes the report would meet with the approbation of the Convention. He did not expect by any means that it would be entirely proof against the severity of that scrutiny to which he knew it would be subjected; but when the Convention should be in committee upon it, the members of the committee would give the reasons which influenced them in coming to the conclusions they had reported. He would only add now that they had acted according to the best light they could obtain.

The report was then referred to the committee of the whole, and ordered to be printed.

COMMITTEE ON THE ORDER OF BUSINESS.

Mr. L. LOOMIS submitted the following resolution:

Resolved, That a committee of five be appointed to consider the order in which it is expedient to take up in committee, the several reports of the standing committees.

He said, in explanation, that there were some reports more important to the public than others; some would require the earnest attention of the Convention, and it was possible, judging from the past, that they would not have ample time to consider all of them in such a manner as they desired. It was therefore important that they should take up and consider first those of the deepest interest—those respecting which the public voice had most emphatically demanded a change. He supposed without some arrangement, the order of business would be the order in which the reports were presented, and that would by no means conform to the views which he entertained on the subject. In making the motion however, he desired to suggest a deviation from what had become the parliamentary practice of putting the mover of such a resolution at the head of the committee to be raised under it.—He wished to be excused from service on the committee, and of the parliamentary custom alluded to, he would remark that it was a rule which he thought was "better in the breach than the observance."

The resolution was adopted, and the committee appointed, as follows:—Messrs. LOOMIS, PORTER, KENNEDY, W. A. WRIGHT, and TAFFT.

Mr. HARRISON offered the following, which was agreed to:—

Resolved, That it be referred to committee number ten, to enquire whether the definition of "treason against the people of this state," as given in the Revised Statutes, vol. 3, part 4, page 646, or some other to be presented by the committee, ought not to be incorporated into the new Constitution.

EXECUTIVE DEPARTMENT.

The Convention again resolved itself into committee of the whole on the report of standing

committee number five, respecting the duties and powers of the Executive, Mr. CHATFIELD in the chair.

The Secretary read the 9th section as follows :

§ 9. The Governor and Lieutenant Governor, or either of them shall not, ex-officio or otherwise, hold any other office of trust, honor, profit or emolument under the State or United States, or any other State of the Union, or any other foreign State or Government; the acceptance by the person holding the office of Governor or Lieutenant Governor, of any other office of trust, honor, profit or emolument under the State, or the United States, or any other State of the Union, or any foreign State or Government, shall vacate his said office of Governor or Lieutenant Governor.

Mr. BROWN desired to take the sense of the committee on the propriety of retaining this section. This section designed to forbid the Governor and the Lieutenant Governor to hold any other office of trust, honor, profit, or emolument under the state or the United States. In respect to that he thought it was of questionable propriety.

The CHAIRMAN enquired if the gentleman intended to propose an amendment.

Mr. BROWN said he proposed to strike out the whole of it.

Mr. W. TAYLOR requested the Chair to read a provision which was in the report of the Fourth standing committee relative to other offices.

The Secretary read the 8th section of the report alluded to as follows :

§ 8. No person holding any office or place of public trust, in or under the government of the United States, shall be eligible to, or hold any office or place of public trust under the Constitution or laws of this state.

Mr. BROWN said his object in making the motion to strike out was to have the opportunity to renew his motion when they got back into the house. He considered the provision a questionable one considering the structure and nature of our government. The states of this Union were sovereign and independent in themselves, but there might be emergencies, in case of war for instance, when the Governors of frontier states might be called upon to take important parts in such wars. The contingency might be of this character; there might be a war with Great Britain—of which however he did not see any probability, and yet it was proper that we should be prepared—and the Governor might be called upon to take such a part as the Governor of this state took in the late war. The Governor might be called upon by the President of the United States to take charge of the U. S. troops in this state or to negotiate with the authorities of Canada or Great Britain, and the Governor ought not to be prevented from accepting that delegated authority. Such a power was not inconsistent with the constitution under which we have lived for many years without any particular evil having arisen.

Mr. MORRIS trusted the provision would not be stricken out. In his judgment it was a proper provision. Gentlemen holding office under this state, should not be trammelled by the general government, and especially by engagements with other states and foreign governments. He saw a learned friend from New York was laughing, probably because he was in a peculiar position, as well as his friend. "the admiral," (Mr. HOFFMAN.) both being officers

under the general government, [Post-Master of New York, and Naval officer of that port,] and delegates of the people of this state in this Convention. But he should not be deterred from doing his duty from any apprehension of personal ridicule. He was not unconscious of the position in which he stood; and he would tell the committee what his views were on that subject. He held that no obligation to the general government should interfere with the sacred duty due to the people. He thought they should not be subjected to the influence of the general government—that they should not certainly be subjected to the influence of any adjoining state or a foreign power, and that no gentleman holding an office under the state should be placed in such a position. Now a word as to the suggestion of his friend from Orange. They were acting upon principle, and the individual mentioned might properly discharge these duties to the state and to the general government; but he asked, whether, as a principle, it would not be dangerous in the extreme. Might it not be dangerous in the extreme to permit the Governor of the state to be at the head of 100,000 regular hired troops? And would it not be better whenever the national government might find it necessary to send within our limits, a band of 100,000 troops that the militia should be separated from them? Would there not be greater protection for the populace, by the militia against those very regular troops? It struck him a case of that sort might arise when it would be very advantageous to have the commander-in-chief of the militia, when particularly called on to defend our rights, not at the same time the commander of the 100,000 United States troops that might be sent here. He trusted the section would not be stricken out.

Mr. JORDAN was opposed to striking out the section, because he wished to offer an amendment which should read thus:

"Neither the Governor nor Lieut. Governor shall hold any other office of profit or emolument, or military command under this or any other state or foreign government; the acceptance by either of any such office or command, shall vacate his said office of Governor or Lieut. Governor."

It was objected that it would be proper that the Governor should hold such an office as that of Regent of the University. His amendment would steer clear of that objection. There were other objections which he thought were obviated by his amendment.

Mr. PATTERSON said if it should be thought proper to retain any thing of the kind, he preferred the amendment of the gentleman from Columbia. As reported by committee number five, it would conflict with the report of the committee of which Mr. CHATFIELD was chairman.—He thought, however, some modification might be necessary; for if the Governor and Lieutenant Governor were to hold no office of trust, honor or profit, the Lieutenant Governor would not be able to act with the Speaker of the Assembly, Comptroller, and others, as commissioner of the land office—or with the Secretary of State and others, as commissioner of the canal fund. Now it would not answer to adopt the provision proposed by committee number five, and then adopt those reported by Mr. CHATFIELD's committee. The Lieutenant Governor, for many years, had

been one of the commissioners of the canal fund; he was also one of the canal board, as a matter of course, and likewise of the land office. If then they were to retain anything of this, it seemed to him the amendment of the gentleman from Columbia would be preferable; but it would be necessary to make some further amendment even in that.

Mr. SWACKHAMER expressed surprise that gentlemen should act there as though there was but one or two men in this state competent to do its business. A Governor is elected, and it appeared he became all at once the greatest man in the state, and the Lieutenant Governor became the next greatest, and therefore they must hold all the offices. He thought the chairman of the committee, (Mr. MORRIS,) had given an unanswerable argument why this provision should be retained. He held that the Governor should confine himself to the duties of his station; they were quite sufficient without having any others thrown in. In relation to the argument of the gentleman from Essex, Mr. S. feared the Governor would identify himself with any institution of which he might be a trustee, and use an undue influence in its favor. They had in New-York the Sailors' Snug Harbor, the University, and some others, and how often did they come to the legislature, under the patronage of the Executive of the state, and rob the people. "Deliver us from temptation," was his motto. He was not, therefore, desirous of having the Executive in a position in which he might be tempted to promote the interests of one institution at the expense of others, and of the people.

Mr. W. TAYLOR thought the gentleman was mistaken in supposing that any thing was drawn from the treasury for literary institutions of which the Governor is *ex-officio* trustee. He thought the gentleman would find it difficult to point out any one which the Governor had recommended, of which he was trustee. The office of the Governor in those institutions was advisory, but he had never come here and recommended appropriations for their benefit; and the Governor might advantageously retain a position in which he could give salutary advice to those institutions. He would favor the proposition of the gentleman from Columbia so far as to prevent the Governor from receiving any appointment under the general government, whether of trust, honor, or profit. But in the case supposed by the gentleman from Orange (Mr. BROWN), he thought the Governor might be usefully employed, and consistently with the character of Governor. With regard to this state, he thought the Executive should hold no other office of profit or emolument, but a trust or post of honor he would not prohibit.

Mr. RICHMOND understood the gentleman from Onondaga (Mr. W. TAYLOR), to tell them that they had never found the Governor coming there and recommending to favor these seminaries.

Mr. W. TAYLOR interposed to explain. He said the Governor had not made such recommendations as trustee. Generally as Governor, he doubtless did recommend institutions to favor for the good of the state.

Mr. RICHMOND agreed with the gentleman

from Onondaga, that the Governor had not done this as trustee. He certainly would not be so imprudent as to do it. But the recommendation of the Governor, without saying that he was a trustee, would have great weight with the legislature. He would keep back the fact that he was a trustee, lest it should excite suspicion.— If he were a shrewd, calculating man he would keep it back. But suppose the Governor did not make any recommendation of appropriation; still gentlemen made propositions to appropriate thousands of dollars to these higher seminaries of the money belonging to all the people, and which should go to sustain the free and common schools—and Governors had been and might again become members of the legislative body—and if it was referred to him to sanction, could he act upon it as an independent man? When such a measure too was put into his hands to sign as Governor he might do so when he ought to have put his veto on it. No Governor would even venture to reject such a bill. If the veto power were lodged in the Governor, it was necessary that he should be untrammelled to act without being subjected to the influence that would be thrown around him in consequence of being a trustee of one of these institutions. Mr. R. did not charge corruption on the Governor, for he believed they had generally acted as other men would act. But there had been great abuses of the public money carried out through this system. He knew and others knew a president of a certain institution in the western part of the state who was here a whole winter, lobbying for an appropriation out of the deposit fund, to endow that particular professorship of which he was president. He had a salary of some \$200 which he received from that institution, his duties to which he neglected, that he might lobby here to get a bill through apportioning a sum for its endowment.

Mr. WORDEN. And a very proper bill it was too.

Mr. HOFFMAN said it appeared to him that the amendment of the gentleman from Columbia did not reach the object in the most unexceptionable and best manner. Mr. H. held that the Governor and Lieut. Governor should hold no office from any government. No office. A Governor of this state should allow that office alone to be sufficient to satisfy his ambition. It was sufficient to fill his mind with care and to occupy all his solicitude; and he hoped the gentleman from Columbia would amend his amendment while it was in his power, so as to exclude those two officers from holding any other office under any government whatever. Mr. H. himself here held office under the people of the state while he was a public functionary. But if in drawing up the Convention act every federal functionary had been excluded, where would have been the harm? There would have been no injury. No gentleman here would have regarded that as an injury; he would have resigned his place and come here, for it was only once in a long life time that a man could participate in the proceedings of a body like this, and therefore such a restriction would not have excluded any man who was fit to hold a seat there. He repeated then, he hoped the gentleman from Columbia would so amend his amendment as to exclude these of-

ficers from holding any office under the federal or any other government. That could be done by a slight alteration. Some gentlemen however seemed to be exceedingly anxious to exclude the Governor and Lieut. Governor from the administrative offices or boards of the state. Now as soon as they did that, they would defeat the end those gentlemen had in view. If their Governor had always been more intimately related to the finances of the state, they would have been less in debt. If he had been a commissioner of the canal fund, like every other man who had been put into that commission, he would have stood for the interest of the whole state against the interest of localities. If the Governor had been more intimately connected with the finances he would, as the Comptroller had uniformly done, have stood against the claims of localities, and solicitations from literary and charitable institutions. It was their misfortune, not that their Governor had been too intimately connected with the finances of the state, but that he had not been sufficiently connected with them. If the gentleman from Columbia would amend his amendment so as to provide a general disqualification, he should be glad. They could then make the clause in relation to the state just what they pleased. He would submit to the Convention the propriety of making the Lieut. Governor or even the Governor himself a commissioner of the canal fund, and otherwise connect him with the state finances, the distribution of its charities, and its donations to colleges and academies. He would much rather that the Governor, from his station, was compelled to look after the public funds, and guard against improper gifts and charities and donations, than that he should stand with folded arms, casually looking over the ground, without knowing how many evils had grown out of their administration. He would make that part of his duty as Governor, to participate in the administrative boards of the state.

Mr. JORDAN said if he understood the gentleman from Herkimer, that gentleman desired that neither the Governor nor the Lieut. Governor should hold any office of honor, profit, or trust under the general government.

Mr. HOFFMAN:—Under any government.

Mr. JORDAN had no objection to that, and it could be easily provided for by introducing two or three words. In respect to the amendment proposed by another delegate, he could not assent to it. He would let his amendment stand as it was, after making it conform to the views of the gentleman from Herkimer. Mr. J. then sent up his amendment so altered as to permit the Lieutenant Governor *ex officio* to be a commissioner of the land office, a commissioner of the canal fund, and a member of the canal board.

Mr. WARD thought there should be some alteration in relation to the military command of the Governor.

Mr. SIMMONS thought he could see there had got to be a little more reflection on this section, although he was inclined to agree with the gentleman from Herkimer. But it was evident they must distinguish between two things; they must render the Governor incapable of holding any office whatever under any other state or the United States; and then there were a certain

class of offices from which he should be excluded in this state. Mr. S. spoke of the necessity of preserving a general division of Executive, legislative and general duties, but thought the Executive should not be altogether separated from the administrative. He pointed to the Erie canal as one fruit of the labor of DeWitt Clinton, apart from his executive duty. He said what he had heard recently would seem to show that they were coming to see if they could not have a sort of constructive nobility here—a sort of nominal Governor, who was to stand, disconnected with the business and interests of the state, with his arms folded, looking on like a sentinel. There was so much outcry against centralism, that he did not see that there was any thing to be left for the Governor to do; though he had supposed that the people when they elected a Governor, did it on account of his qualifications, and that they thought they ought to have the advantage of them. He wanted to have the Governor's influence and skill brought to bear on the administrative departments, and great utility would be found to follow, for the Governor would become acquainted with all these matters. The connection of the Governor with these things would give a moral weight and power, for there was something besides the mere coercion of law and force necessary to have a government go on well. He regretted to see here the members of this Convention set the example, by way of approving of the exclusion of public men, giving countenance to the idea that Governors and supreme court judges, and other men high in office, should not be patterns of learning. It reminded him of a speech said to have been made recently in Congress, in which a gentleman said he hoped the House would not hold him responsible for being born in Vermont; and that he was opposed to receiving the Smithsonian bequest, for he knew how much it cost him to get rid of the little education he had before he could be purely democratic. Mr. S. hoped they had no such men here.

Mr. RUGGLES understood the amendment disqualified the Governor of this state from taking command of the U. S. troops in time of war. Now he could not but think the committee would act unadvisedly and unwisely in adopting a provision which was to have that effect. It was founded in a jealousy of the Executive, who was chosen by the people for a short period, which he thought was without foundation. Before they adopted such a provision, it might be well to look back to the transactions which took place in the late war with Great Britain—and to bear in mind that we might have another war hereafter. We have a long frontier on the north, and we find the British government fortifying it from end to end.—Ever act of that power indicates an expectation that an occurrence of that kind will take place at some time hereafter, and we therefore ought to act in reference to the possibility of such an event. Nay we ought not to forget that it was not only a possible event, but one that might be regarded as certain, at some future period. How then should we be situated in case of a war of that kind? He always supposed it would be necessary at the commencement of a war, for this state to take care of itself. This is

a border state, and it might be compelled to take care of itself. When the former war occurred, the United States was weak on the frontier; and the state was driven to self protection, though she also at that time was unprepared. If such an event should ever occur again, whatever might be our condition in preparation and resources, a unity of action between this state and the United States government would be highly important; and nothing ought to take place in this convention which should lead to separate and discordant action. He was not prepared to state precisely the causes which during the last war induced the U. S. government to confer the command of its troops upon the Governor of this state. He had expected that other gentlemen in the Convention better acquainted with the military relations then existing between us and the United States, would have opposed the adoption of the provision now before the committee. He recollected however, that there were controversies between the militia and the army officers. It was found expedient on the part of the United States to invest the Governor with a Major General's command, and he ventured to say that no act of the United States government was more heartily approved in the whole course of the war, than that act.—The defence of the city of New-York on the south was immediately strengthened. Measures were taken to give security to the northern frontier, and public confidence was immediately restored in the capacity of the state for self-defence. In the event of another war with England, the militia force to be immediately raised would be very large, not only for the city of New-York, but for the long line of the Canada frontier—and for the purpose of securing the united and concerted action of the state and United States' forces, it will be indispensably necessary to put both under one command. Now, he asked where is the danger of giving this command, as was done during the last war, to our own Governor? Is the power and influence of the United States government less to be feared when our chief magistrate shall have the command of its troops, than when that government commands ours? It seemed to him that there were mistaken views and unfounded jealousies on this subject:—that the adoption of this disqualification might weaken the power of the state in an emergency when its strength would be most needed. He did not rise in the confident expectation of changing the opinions which the committee seemed at present to entertain, but he hoped the provision would not be adopted now in committee. If it should, he still hoped that the members of the Convention might be satisfied of its impropriety on more mature reflection, before they came to pass upon it in the House.

Mr. W. TAYLOR was of opinion that a Governor exercising the command over the army of the United States which might be placed under his command by request of the general government, would be only exercising his functions as Governor of the state of New York. It would be no new commission—no new appointment, to ask the Governor of this state to command, together with the militia, such troops as might be placed under his control. And yet that was the

only objection which had been urged against the prohibition of his receiving an appointment from the United States.

Mr. WARD said the constitution of the United States had made a provision in relation to the militia; it provides that the Congress of the United States shall have the power to organize the militia; also that the Congress of the United States shall have the power to pass laws to call them forth into the service of the United States, reserving to the states the appointment of the officers. The clause of the constitution to which he referred, was in these words:—

"That Congress shall have power to provide for calling for the militia to execute the laws of the Union, suppress insurrection, and repel invasion. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

Now, said Mr. W., the constitution of the United States is the paramount law of the land, and consequently as the Executive of this state, by our constitution is made the commander-in-chief of the militia, he is as such, whenever called into the service of the United States, an officer in the *service of the United States*; and if the troops of the U. States shall be called to act with the militia, he as such commander-in-chief of the militia of this state will have the command of all such officers as are inferior to him in rank, whether they belong to the army of the United States or to the militia of the state from whence he comes.

During the war of 1812, at a period when our liberties were threatened by a powerful armament of the enemy on the seaboard, and by a large and a well appointed army on the northern and western borders of this state, and when the people had lost confidence in the capacity of the senior officers of our regular forces—Generals Wilkinson and Hampton, the whole of the militia in the southern section of the state were ordered to rendezvous on Long Island to protect the city and harbor of New York; and other parts of the militia, from the northern and western sections, were ordered on the frontiers for their protection. At this time Governor Tompkins, who had the entire confidence of the people, not only of this state but of the Union, assumed the command in person. And with a view of relieving his mind from any embarrassment in taking the command of the regular army within the borders of the state, he was appointed a Major-General in the army of the United States. Mr. W. would not say that it was necessary that he should have received a commission in order to have exercised such command, but he could see no objection to it. This is the only time that the Governor of this state ever received such an appointment from the government of the United States, and perhaps it may never occur again. But no one, no not even the wisest among us, can predict as to the certainty of our remaining always at peace.

It is the policy of this government, however, always to remain at peace with all nations; we have no desire to go to war for conquest, and he trusted we never should. But we have powerful and rival nations, both on our northern and south-

ern borders; and as we are now involved in a war with Mexico, in defence of our national honor, so we may be involved in another war, at some distant period, with some more powerful nation, and therefore ought not, by our acts here, to embarrass the Executive of this state in such an event, in the discharge of his military duties.

The amendment proposed by the honorable gentleman from Columbia (Mr. JORDAN,) he apprehended would prevent the Executive from taking the command of the militia in this state, in time of war, whether ordered out by the government of the U. S. or otherwise. He would therefore vote to strike out the amendment under consideration, and if that motion prevails, would give his support to the amendment of the gentleman from Columbia, provided it was modified in the way he proposed; if not, he would vote against any proposition to amend the constitution in this particular. It was questionable whether under either of the proposed amendments, the Lieut. Governor could sit as the presiding officer of the Senate, or whether he could act as a commissioner of the land office, or of the canal fund, or be a member of the canal board. He expressed the opinion that it was not contemplated by this Convention to deprive the Lieut. Governor of the privilege of holding those places. Mr. W. said it was attended with much difficulty to draw an amendment as perfect as it ought to be while acting in the committee of the whole—but it was proper to remark, that if any errors were committed in this way, they should have an opportunity of correcting them in the House. And again he would remind gentlemen that a committee would be raised after they shall have passed through the several amendments to the constitution to arrange them as they should be, and then all inaccuracies can be corrected, giving all the members of the Convention an opportunity on the coming in of that report, to endeavor to make it more perfect.

Mr. TALLMADGE said it was very desirable that they should settle the principle involved, and then they could reach the details. Two great questions were here presented: first, shall the Executive of this state be permitted to hold office under the government of the United States or any other; and second, whether he should hold any other office of honor or profit in this state. These two questions he thought it was important to consider separately. Mr. T. then reviewed them in their order. In respect to the first, he thought it was better that the Governor should not be employed by the United States government. In coming to this conclusion he examined with some minuteness the circumstances attending the case of Governor Tompkins, which had been here alluded to.

Mr. KEMBLE said the question was whether the course taken by Governor Tompkins was necessary, and if so whether such a necessity might not again occur. He hoped, therefore, that nothing would be done to prevent the Governor from performing such a duty hereafter.

Mr. SWACKHAMER did not know that education was incompatible with democracy. He believed democracy was as enlightened and refined as much as education or any other science.

Mr. SIMMONS. It requires much more.

Mr. SWACKHAMER was not to be frightened from his course by such argument. He would make our education as wide-spread and universal as possible—but he left to the gentleman from Essex his exclusive love for the examples of James I, Queen Victoria, and for Peters' Reports.

Mr. STETSON could see force in the point maintained by the gentlemen from Orange and Dutchess (Mr. BROWN and Mr. RUGGLES.) He could see propriety in allowing the Governor to take command from the United States. As in case of an insurrection or outbreak in another state, where the Governor might be called to go with the militia, it would perhaps be proper to allow him to take command of an additional number of United States troops. He went heartily with Mr. JORDAN and Mr. HOFFMAN, who would separate the state officers entirely from any connection with the United States Government, and free our authorities from the influence of the Federal Government.

Mr. SIMMONS inquired if he would not allow the Federal Government to use our prisons to confine its criminals, and the many subordinate agencies she was using in the state?

Mr. STETSON said that question was not now in order. He would meet it when it arose legitimately. These agencies were merely ministerial and judicial, as in the case of the difficulties along our borders during the late Canadian rebellion, in which Judge Conklin had made a decision, which surrendered a point held by him and others previously, in regard to federal authority.

Mr. SIMMONS briefly replied as to the action of the United States Supreme Court which sustained his position.

Mr. TALLMADGE explained briefly the distinction he took between the case of a state officer employed by the United States in a civil capacity, and his employment in a military capacity. The Governor should not take any appointment, as such, as a source of emolument or power from the general government. But in the subordinate position in which we stood to the United States, and in view of their right to call on us for military aid in a great national controversy, there was nothing inconsistent in his performing the duty required of him—he all the while continuing commander in chief of the militia of the state, not under the United States, but the state government.

Mr. RUGGLES did not understand that the Governor had any authority, except under a commission from the United States to control the action of United States troops. They might be put under the command of a superior officer of the state government—but that the United States government was not willing to do during the last war, and probably never would—unless such officer was commissioned by them. When they were under the command of our Governor, we knew that they were under the command of a friend, whose devotion to the public interests the people had shown their confidence in; and it seemed passing strange to him that we should be desirous or willing to bind ourselves that the forces of the state should not be under the command of a state officer.

Mr. NICHOLAS would modify this section so

that the restriction would not apply to this state. A Governor may have served for years as a trustee of literary and benevolent institutions: there was no good reason for compelling the Governor, when elected to this office, to relinquish such trusts, in which by his example, he might still exert an influence beneficial to the community, and such a restriction in his (Mr. N.'s) opinion would be unnecessarily infringing on a man's personal privileges. He would not permit a Governor to receive any office from any other government, as the rights and interests of the state should not be liable to be blended with those of other governments.—The exigency might occur referred to by the gentleman from Dutchess (Mr. RUGGLES); in the event of a war, it would become necessary to send U. S. troops here for the defence of our frontier. Should it then become necessary for the Governor to take charge temporarily of such troops, he might do it by virtue of his office as Governor; he would need no military commission from the United States Government. He would exercise a general direction of the military movements within the state as Governor of the state.

Mr. BASCOM went for striking out the section. History was instructive on this subject—and the signs of the times indicated any thing but that peaceful state of things that some anticipated. We had war enough on our hands already. And it was idle to suppose that the world was to look calmly on what was going forward on this continent. We were in a state of war now—not constitutionally declared, but a state of war nevertheless—and that state of things he feared was sustained by the public sentiment. He hoped we should place no restrictions on ourselves, so that the state could not avail itself of the services of our own Governor, as in 1812, if like circumstances should render it necessary and proper.

Mr. WATERBURY sustained the section.—He thought it far better that the Governor should attend to his civil duties, of which he had enough to attend to without taking the field. It would have been quite as well for the state during the last war had our Governor not been at the head of a military force. But now, when we were near three million of people, the idea that the Governor was to mount the first horse and ride off was preposterous. We had men drilled at West Point on purpose to drill men for war. He had no idea of fixing ourselves to run right into a war, and neglect our home policy. Our Governor was now loaded down enough with civil duties, without being subjected to military service.

The question was here taken and the 9th section struck out.

Mr. JORDAN then offered his substitute for the section as follows:—

Neither the Governor nor Lieutenant-Governor shall hold any office under the Government of the United States, or any foreign Government; or any office of profit or emolument (other than that of Governor or Lieutenant-Governor) under this state. The acceptance of any such office shall vacate his said office of Governor or Lieutenant-Governor.

Mr. SWACKHAMER moved to add, "honor, trust, or emolument."

Mr. MANN hoped not.

Mr. RICHMOND hoped the words would be added. He had no idea of having the Governor a trustee in institutions that were in the habit of coming here for donations of \$30,000 and \$15,000. Being a part of the law making power, he would have the Governor free from all influences which such a connection might have upon him. It was not that he was opposed to education in any sense, or in any of its grades, that he took this ground, for he was in favor of education in all its breadth. But he did not believe that it depended on being backed up by the official influence of every dignity. But these educational funds belonged to the whole people, and should not be frittered away and given to sections.

Mr. PATTERSON suggested that the amendment would exclude the Lieut. Governor from acting as member of the canal board, and as one of the Commissioners of the land office.—This would render necessary the creation of a new batch of officers. Now, Mr. P. was opposed to these officials holding office under any other government than this state; but the latter seemed necessary and proper. As to the objections of the gentleman from Genesee (Mr. RICHMOND), to the Governor being trustee in benevolent and charitable institutions, they were groundless. He hoped, at all events, no gentleman would rise there and protest against the appropriations made to these institutions. Act upon such principles, and your institutions for the deaf and dumb, the blind, and the insane, must go by the board. These appropriations had been all right—every one of them. Nor was there any danger of the legislature appropriating too much money for education, or suffering humanity. It never had been so—it never would be.

Mr. HOFFMAN agreed that it was exceedingly desirable to keep these high Executive officers from being officers in private charities and corporations, that were likely to come here and beg for favors. And if gentlemen would shape their amendments so as to go directly to their end, he would cheerfully give them his vote.—But such was not the course taken. If these were public charities, if it were right to have them, to endow and govern them by the state, then no better person could be selected to act as a governor of them than the Executive—that he might know what good they were doing, and what it cost; and might communicate these results to the legislature. But in relation to colleges and academies, and private charities, under private and local government, the rule was directly the reverse. He should not be a participator in their local government, to come here and recommend persons to them. But the amendment did not reach this end. He had no difference with the gentleman from Essex, in seeking that the Governor's duties should be exclusively executive for this state. He desired to avoid all entangling alliances, and the expenses that grow out of them. In any limitations we fixed on the right of the Governor to serve us, he advised the utmost caution. Perhaps, instead of saying that he should not hold such offices, it would be better to get rid of the effort by declaring that whilst he acts *ex officio*, he should not have special compensation for it. It

his opinion, we should be compelled in the end to make the Governor, the governor of the state prisons, to confer on him the appointing power there, and hold him responsible for every thing done or omitted there. He hoped we should not put the constitution in such form that we could not reach that result. If we did, we should only be obliged to elect another, and pay another salary. In any limitations upon the Governor, we could not be too cautious in separating him from foreign powers, and prohibiting his connection with local charities which came here for favors—so that the most ample use could be made of him to avoid the multiplication of officers, and save expense, where you must have administrative officers.

Mr. MURPHY concurred in the main with the gentleman from Herkimer, and had prepared an amendment, which he proposed to offer in lieu of that offered by his colleague.

Mr. SWACKHAMER withdrew his.

Mr. MURPHY then offered the following:—

“Nor shall they be appointed by virtue of their office or otherwise, to any place in any corporation or in any institution of a local or private character.”

Mr. MURPHY said there were two kinds of offices which the Governor had been called to fill—either places at public boards, or in private charities or corporations. The former came properly within his duties. But when the Governor was put in any of the latter—such as the Sailor's Snug Harbor, or some college or private institution, and not in all, he became in some measure a special officer of these institutions, and might exert a negative influence in favor of some, and to the disadvantage of others. He was not opposed to appropriations to these institutions, if the legislature thought proper to make them. But he did say that he should not have an influence in favor of one locality against another. His proposition would perfect the amendment; and we could then have a vote on this principle of restrictions.

Mr. RHOADES instead of having the Governor excluded from any, would have him trustee in every college in the state. Education was a substantial part of the interest of the state, and he should be acquainted with every institution in the state, and have an interest in them all.—Carrying out the idea of the gentleman from Genesee, the more ignorant the Governor was of these institutions the better would he be prepared to pass upon bills passed for their benefit—and in communicating with the legislature the condition of the state, as he was bound to do. These colleges and public charities were part of the state, and if he was to be kept ignorant of them and their affairs, we might as well not require him to communicate the condition of the state.

Mr. RICHMOND replied that the gentleman's argument assumed that the Governor could know nothing of these institutions unless he was a trustee. This implied that they were secret institutions of which the public could know nothing; and would require the Governor to be trustee of every school district. But the gentleman did not seem to think about common schools.—The colleges and academies must have special care taken of them! This idea was behind the age. The order of the day was to educate the masses. Colleges would take care of them-

selves. He had known their agents here all winter in search of appropriations. Trustees of school districts never did.

Mr. RHOADES said the gentleman did him injustice, in supposing that he characterized these institutions as secret institutions, or that he supposed the Executive should be a trustee ex-officio of every school district. But Mr. R. would have the Governor take care of the interests of common schools, and their prosperous condition now is owing to the exertions of Governors in their behalf. Gov. Clinton did more for them than had been done by all his predecessors before.—They were the foundations of all education.—Those he would protect first. But whilst he did that, he would not break down colleges and academies.

Mr. RICHMOND was aware that common schools had received attention from the Executives. But they had not received their share of the funds belonging to the whole people. The common school scholar receives 45 cents a head, those in academies \$4.50.

The amendment of Mr. MURPHY was carried, 47 to 42.

Mr. W. TAYLOR moved to add after the word “state,” the words “except such as are otherwise provided for in the constitution.”—Agreed to.

Mr. RUGGLES offered the following further amendment.

Nothing in this section contained, shall prevent the Governor from taking command of the troops of the United States in time of war, or in case of invasion or insurrection, under a commission from the United States or otherwise.

Mr. SIMMONS proposed to add “or from executing any other duty required of him by the President of the United States.” He insisted that the adoption of this was the exclusion of the other principle—that the state laws might be made use of to execute the laws of the United States. Our judiciary was employed every day in naturalization, and in arresting fugitive slaves.

Mr. W. TAYLOR inquired whether our officers acted in these cases as state or national officers?

Mr. SIMMONS replied that they acted under a commission from the U. S. He would not say even by implication, that the Governor should not give the notice required of him in case of the death of the Vice President, nor do in a thousand cases that which must be done by the Executive as a commissioner of the U. S. government.

Mr. MORRIS remarked that if the Governor was so essential to the general government, it was very easy for him to resign his place of Governor after receiving his commission and being called out of the state. If we should say that he should not leave the state in the discharge of such duty, then the matter would be somewhat relieved of difficulty. Otherwise, we should provide for vacating his office, and having a Governor at home.

Mr. FORSYTH thought the gentleman overlooked a very important consideration—that the Governor by resigning, vacated his office of commander-in-chief. It might well happen that the purposes of the general government could not be so well served in any way as by combi-

ning the two offices—a combination which would be defeated if the Governor resigned by taking a commission under the U. S. government.

Mr. DANA, to show that the position was not singular that the Governor should not hold other offices under other governments, quoted provisions to that effect from several state constitutions—Tennessee, Ohio, Indiana, Louisiana, Alabama, Michigan and Arkansas.

The amendment of Mr. RUGGLES was then adopted—48 in the affirmative.

Mr. DANFORTH moved to reconsider the vote adopting Mr. MURPHY'S amendment—but not having voted with the majority, Mr. E. SPENCER moved it—and the motion was lost, 33 to 49.

Mr. CROOKER here offered a substitute for the entire section as amended, saying that it embraced every thing in the section now, but in a more compact shape, as follows:—

Neither the Governor or Lieutenant-Governor shall hold any office under any other government, except a military command under the United States in time of war, or in case of invasion or insurrection; nor any office or place in any corporation or institution of a local or private character. and the acceptance by either of any office hereby prohibited to them, shall vacate the office of Governor or Lieut. Governor, so held by him.

Mr. JORDAN assented to this, as better in point of phraseology, and it was adopted.

The section as amended was then carried, 52 to 29.

Section 10 was then read for amendment, as follows:—

§ 10. The governor may in his discretion deliver over to justice any person found in the state, who shall be charged with having committed, without the jurisdiction of the United States, any crime except treason, which by the laws of this state, if committed therein, is punishable by death, or by imprisonment in the state prison. Such delivery can only be made on the requisition of the duly authorized minister or officers of the government within the jurisdiction of which the crime shall be charged to have been committed; and upon such evidence of the guilt of the person so charged as would be necessary to justify his apprehension and commitment for trial, had the crime charged been committed in this state.

Mr. WARD did not know whether it was the intention of the Chairman of the committee No. Five, to press this section further. Mr. W. doubted whether there was a similar provision in any of the state constitutions. His own opinion was that it was repugnant to the constitution of the United States, which gave the power to the President and Senate, which it was here proposed to confer on the Governor of this state. Article 2nd of the Constitution of the United States, section 2, reads thus:

"The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur, and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments."

Under the first branch of this section, the President was clothed with the power which it was now proposed by the section under consideration to give the Executive of this State. It seemed

to him, if this section should be adopted as a part of the constitution of this state, it would be repugnant to, if not an infringement of the constitution of the United States. But it was proper to remark, that this question did not rest alone in the section of the constitution of the United States already referred to. It would be seen by reference to the 1st article and 10th section of the constitution of the United States, that the states were restrained from the exercise of certain powers therein named, among them the very power proposed to be conferred upon the Governor of this state.

This section read as follows:

"No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any other state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, levy any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

The latter part of this section applied particularly to the case under consideration—that is to say that no state shall without the consent of Congress, enter into any agreement or compact with any other state or foreign power. The section under consideration provided that the Governor might in his discretion deliver over to justice, offenders against the laws of foreign governments, upon a requisition from such government. This was certainly an extraordinary power and one which ought not, for the reasons above stated, to be conferred upon the Executive of this state by the constitution. It was the first time that it had been attempted. No such power was to be found in the constitution of 1777. Nor in the several amendments to the state constitution—nor in the constitution of 1821. Nor was there any such power conferred upon the Executive of either of the other states in this Union. It could not be urged that the Governor might exercise this power in cases where no treaty existed between the government of the United States and any foreign power—for no compact or agreement of any sort could be entered into between this state and a foreign government for the delivery up of fugitives from justice or otherwise. The gentleman from Oneida, (Mr. KRAKLAND) drew the attention of the committee to this subject some days since, and he was entitled to thanks for it. That gentleman alluded to the case of Holmes against the Governor of Vermont, which came before the supreme court of the United States, on a writ of habeas corpus—the Governor of Vermont having assumed to have Holmes arrested and imprisoned, for delivery over to the authorities of Canada, for trial for an offence committed in that province. The decision in that case was that this power of arresting and delivering over fugitives from the laws of foreign governments, belonged to the President and to him alone. That decision, it appeared to him controlled this question, and was conclusive against the constitutionality of this provision.

Mr. MORRIS agreed that this was a new fea-

ture in state constitutions; but it was not new to our laws. It was copied from the Revised Statutes, and was not invented by committee number five, as seemed to be supposed. Now, the committee supposed if the Governor could have this power conferred upon him, it should be done by constitutional enactment and not by statute—and they inserted it here to test the judgment of the Convention on the subject. It was too high a power to be dependent upon statute law, and if proper and constitutional, should be part of the fundamental law. The principle on which it was based had been recognised by the General Government, and by England and France in special treaties with this government. But there were governments of Europe with whom we had no such treaties, and the question presented here was precisely this: whether in cases where no such treaties existed, this state had not the power, not for the purpose of aiding in the enforcement of the laws of other countries, but to protect ourselves from the contamination of criminals fleeing from other countries, and taking refuge among us. He and the committee were indifferent as to whether it was retained or not; and only presented it that attention might be called to it, and the question whether it was or was not in conflict with the constitution of the United States, put at rest.

Mr. KIRKLAND regarded this question as definitely settled by the highest judicial tribunal of the land in the case alluded to, of Holmes against the Governor of Vermont. That decision went to this entire length, that the delivery up of persons charged with crime, on the requisitions of foreign governments, was a matter of treaty arrangement between the United States government and such foreign nations—and that, as no state could enter into such compact or treaty, as the power belonged solely to the President, and could only be exercised by him under reciprocal treaties. Such treaties had been made with England, France, and other European countries, and there could be no doubt that the power was wisely vested exclusively in the general government.

Mr. TALLMADGE concurred in the propriety of striking out the section—though he was understood to take the ground that it was competent for the states to make regulations in aid of the general government in carrying out its constitutional powers. In the case alluded to, however, the Governor of Vermont went further and undertook to deliver up the prisoner, without the intervention of the United States authorities.

Mr. WORDEN remarked that government in surrendering up criminals, always acted on the principle of reciprocity—and were it perfectly competent for us to confer such a power on our Executive, it was easy to see that its exercise might conflict seriously with the policy of the general government, towards foreign nations, and would be entirely inexpedient. But he concurred with others, that such a provision as this would be directly in conflict with the federal constitution.

Mr. SIMMONS did not suppose that any gentleman was going to vote for the section as it stood—but if it were altered so as to require the Governor to deliver over criminals to the President of the U. S., on his requisition, it would be a very proper provision. He would allow our state government to be a little auxiliary to the national government, instead of an alien and an enemy.

The section was struck out—a single negative only being heard—Mr. RUSSELL.

The 11th section was then read as follows:

§ 11. Every provision in the constitution and laws in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by other officers or persons towards him, shall be construed to extend to the person administering for the time being the government of the state.

Mr. CROOKER moved to strike out the section, saying that by a slight modification of the 6th section, the necessity for it would be entirely obviated.

After some conversation—the section was struck out.

Section 12, was then read as follows:

§ 12. The governor may, upon the application of the sheriff of any county in the state, order such a military force from any other county or counties of the state, as may be necessary to enable such sheriff to execute process delivered to him.

Mr. CROOKER moved that the committee rise and report progress. Lost.

Mr. MANN moved to strike out the section.

Mr. MORRIS explained that the section was introduced to enable the Governor to call out a military force in aid of the sheriff, without waiting for the preliminary steps now required, by a resort to the power of the county.

Mr. CROOKER opposed the section, and it was struck out.

The 13th section was now read, as follows:

§ 13. The governor may remove from office any sheriff at any time within the period for which such sheriff was elected. He shall first give to such sheriff a copy of the charges against him, and an opportunity of being heard in his defence, before any removal shall be made.

Mr. STETSON remarked that one of the reports made this morning, covered this whole ground.

Mr. JONES moved to strike it out.

Mr. MORRIS urged that the sheriff, being an executive officer, it was eminently proper that the chief executive officer should have this power.

Mr. WATERBURY opposed the motion to strike out, and

The motion to strike out was lost.

The committee then rose and reported progress.

A communication was received from WILLIAM C. BOUCK, president of the N. Y. State Temperance Convention, [now in session,] transmitting a resolution of invitation to the State Convention to attend the annual meeting of that body—which, on motion of Mr. TALLMADGE was accepted.

Adjourned to 9 o'clock to-morrow morning.

THURSDAY, JULY 16.

Prayer by Rev. Mr. KNAPP.

AFTERNOON SESSION.

Mr. BROWN offered the following resolution:—

Resolved, That on and after Monday next, this Convention will hold two sessions each day, the morning session to commence at 9 o'clock, A. M., and the afternoon session at 3½ o'clock.

Mr. CROOKER suggested that the afternoon session should begin at 4 o'clock.

Mr. BROWN accepted the suggestion and amended his resolution accordingly.

The resolution was debated by Messrs. JONES, CROOKER, PATTERSON, BROWN, and CHATFIELD. A motion to postpone the consideration of the resolution for one week was then negatived.

The resolution was then adopted, fixing 9 A. M. and 4 P. M. as the hour of meeting.

DEBT AND TAXATION.

Mr. HAWLEY offered the following, which was agreed to.

Resolved, That the Comptroller be requested to report to the Convention, the respective sums borrowed and loans made by virtue of section number four, and subdivisions numbered one, two, three, four, five and six of section number five of the act "to provide for paying the debt and preserving the credit of the state," passed March 29th, 1842, and to what purposes the several sums thus loaned have respectively been applied. Also, the several sums invested in certain specific funds of the state, authorized by sections numbered eight, nine and ten respectively, and the amount paid into the treasury as avails of the direct tax authorized by section number one of said act. And to what purpose or purposes such funds have been applied.

ORDER OF BUSINESS.

Mr. LOOMIS, from the select committee on that subject, submitted a report recommending the order in which the reports of committees shall be taken up—which was laid on the table to be printed as follows:—

1. Executive Department.
2. Election, &c. of the Legislature.
3. Incorporations, other than banking and municipal.
4. Currency and banking.
5. Canals, internal improvements, public debt, &c.
- 6 The judiciary.
- 7 Powers and duties of the legislature.
- 8 Appointment or election of local officers.
9. Election or appointment of officers whose powers are not local.
10. Powers of counties, towns, &c., except cities and incorporated villages.
11. Organization and powers of cities, &c.
12. The elective franchise.
13. Education, common schools, &c.
14. Creation and division of estates in land.
15. Official oaths and affirmations.
16. The militia and military affairs.
17. Rights and privileges of citizens.
18. Future amendments.

Mr. CHATFIELD said there were two or three subjects, which, in his judgment, were subjects of primary importance in the formation of a constitution, which were here postponed nearly to the end of the series—he alluded particularly to the elective franchise and the qualifications of electors. He should desire to amend in that respect.

Mr. KIRKLAND to give time to consider the

resolution, moved that it be laid on the table and printed, which was agreed to.

EXECUTIVE DEPARTMENT.

The Convention went into committee of the whole on the report of the fifth standing committee, Mr. CHATFIELD in the chair.

The 13th section being under consideration Mr. CROOKER moved to amend by adding "for malfeazance in office" after the words which gave the Governor power to remove sheriffs from office. And on the suggestion of Mr. STOW he added also "or nonfeazance."

The amendment was lost.

The Secretary then read the 14th section, as follows:—

§ 14. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the Governor. If he approve he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter his objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present it shall become a law. If not approved by two-thirds of the members present, and if, at the next ensuing session of the legislature, the same bill shall be again passed by the vote of the majority of all the members elected in each branch of the legislature, such bill shall become a law notwithstanding the objections of the Governor. And upon the final passage of every bill the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall by their adjournment prevent its return; in which case it shall not be a law, unless the Governor shall approve the same within ten days after the adjournment. The omission of the Governor in such case to approve of a bill within ten days after the adjournment, shall have the same effect as if such bill had been returned to the legislature with his objections.

Mr. NICOLL moved to amend by adding in the first line, after the words "every bill," the words "order or resolution, except a resolution for adjournment."

The CHAIRMAN was understood to say that the Governor did not sign all joint resolutions.

Mr. NICOLL explained the reasons which influenced him in offering this amendment. He said it was a well known fact that appropriations of money, books and other property had been voted away by legislative bodies to a great extent, and he wished to place some check upon that mode of legislation.

Mr. JONES said, where concurrent resolutions had the effect and force of law, it was proper that they should have the Governor's signature; but there were resolutions of a different character which did not require such an approval. For instance, there were resolutions occasionally passed, instructing their senators in Congress by the constituent body, with which the Governor had nothing to do.

Mr. NICOLL, to obviate the objections raised would add after the word "resolution," the words "having the force of law."

A conversation ensued, in which Messrs. PAT-

TERSON, WORDEN, JONES, BROWN and HOFFMAN took part.

Mr. WORDEN suggested that the amendment should be so framed as to provide that no money should be appropriated but by authority of law.

Mr. BROWN intimated that he was of opinion that Committee No. Five had trenched on legislative power. He thought the amendments should be applied elsewhere.

Mr. HOFFMAN said perhaps a few words would set this matter clearly before the committee. This matter arose under the different governments, in whose legislative bodies there was ordinarily some rule requiring that a bill shall not be passed or originated in some of the last days of a session. The technical term used was "bill," and it sometimes happened in some of those last days when a bill cannot be originated for the purpose of making some appropriation—instead of asking the unanimous consent to do so—that a resolution was introduced for that purpose. It had always been supposed, and probably with some correctness, that such a joint resolution, signed by the Executive, had the effect of law. It was in this way that the two houses had been able, notwithstanding the rule against bringing in bills during the last days of a session, to make particular appropriations. Now he submitted to the committee, that whenever a joint resolution would have the effect of law to dispose of public property, it should be submitted to the Executive precisely like a bill; and such a resolution ought to be included within the rule. He remembered a few years ago that the Comptroller advertised a railroad for sale, because the company did not pay its two per cent to the sinking fund. Its agents came on here and asked the legislature to grant them relief, but the law required a two-third vote, and hence it was vain to attempt it in that way; but a joint resolution was carried, and the railroad was not sold. By a resolution, in fact, an act of the legislature was suspended; and to him it was clear that such a way of whipping round the constitution and law was very improper. If a resolution could be passed by the two houses without sending it to the Executive, and thus if an act of the legislature could be suspended, this was not a government of law. He therefore advocated the insertion of some provision in the constitution to correct the existing evil.

Mr. MORRIS said the difficulty which his colleague intended to obviate, and which had been so strongly presented by the gentleman from Herkimer, was one which should certainly be provided for; but he asked those gentlemen to reflect on one effect which would be produced by the amendment of his colleague. The gentleman from Herkimer had shown them that a provision requiring a two-third vote, for instance, to create a corporation, a legislature might evade and create by resolution. The learned gentleman from Herkimer would not pretend that that could be done; and yet the argument might be used if they put this amendment into the clause in the veto power, it would be construed as giving power to create a corporation by resolution. Now Mr. M. contended that no law could be created except by bill. In every instance of the

action of the legislature, they spoke of a bill; and wherever their act was to have the force of law, it was by bill, and all bills must be submitted to the Governor for his approval, or for him to assign reasons for his disapproval. He repeated then, that if this amendment was made, it would be construed to authorize the doing that by resolution which should be done by law, and that should never be permitted. They should never permit that to be done in a careless, loose way, which required deliberation and care. He was opposed therefore to the amendment.

Mr. HOFFMAN should agree with the conclusions of the gentleman from New-York, if they could agree on their premises. If legislative bodies did not pass joint resolutions that had the aspect of laws—if they had not already done it—he might be inclined to stand with that gentleman; but the word "bill" had not prevented the legislature passing resolutions, nor did he know that they could there overthrow the system by mere arguments to show that it was improper. He hoped a remedy might be provided and perhaps the proposition of the gentleman from New-York might answer the purpose.

Mr. PATTERSON had no objection to the insertion of a clause to prohibit money being drawn from the treasury without the authority of law, but he was opposed to the continuation of a system which permitted that to be done by resolution. He would offer an amendment at the proper time to meet this view of the case.

Mr. W. TAYLOR thought there should be such a provision as was found in the constitution of the United States, providing that no money should be drawn from the treasury except for appropriations by law; and he suggested an addition to the amendment which the gentleman from Chautauque had intimated he should offer, of the words, "passed by bill in the usual manner." In such a case, the amendment of the gentleman from New-York would be unnecessary.

Mr. NICOLL said the remedy suggested by the gentleman from Onondaga, only went half way, and would not meet the case.

Mr. TALLMADGE regretted to hear of the legislative usage of acting by concurrent resolution. It was a practice that was not to be endured; and he hoped an amendment would be provided to prevent such gross misconduct. What! could the two houses undertake to evade the Executive disapprobation? The Executive had formerly the power to prorogue the legislature in cases of legislative corruption, and one instance of its exercise [understood to be in 1812] was based on the notoriety of corruption in passing acts of incorporation. If they would read the papers of the day, they would find that there was cause in 1821 for sweeping away the council of revision. He thought however that the power of prorogation should be restored, and he should hereafter move a provision to affect that purpose, for it was a high, salutary power, of the abuse of which there was no danger.

Mr. MURPHY thought the amendment was unnecessary. It sought to make provision in two cases: first that a resolution might be passed drawing money from the treasury which ought only to be done by a law; and secondly, that a resolution might have the effect of preventing the execution of laws properly passed. Now it

had been properly asked by the gentleman from Chautauque, what evidence had they of abuse by resolution, and he had not heard an answer. The gentleman from Herkimer had said that Congress had appropriated thousands of dollars for printing by joint resolution; but if that gentleman would examine the matter, he would find that all such resolutions received the approval of the President of the United States, and passed through all the forms of law, although not in the form of a bill. If there had been any abuse, he should go for applying a remedy; but if any officers having the execution of a law should allow them to be annulled by resolution, he would be unworthy of his place.

Mr. TILDEN stated, that a similar provision to the one under consideration, was proposed in the Convention of 1821, but it was withdrawn to be inserted somewhere else. He did not however find that it ever was again offered; it was certain that it was not in the constitution, and money had continued to be drawn from the treasury and property appropriated from the treasury by joint resolution. It would, however, be inconvenient if every joint resolution should be required to be submitted to the Executive—such for instance as contained a mere expression of opinion, or resolutions of instruction or advisement to our representatives in Congress. He hoped therefore, if the amendment were persisted in, that it would be made to apply only to resolutions that had the force of law.

Mr. LOOMIS said there could be no doubt that it had been the practice for many years, for the legislature to pass resolutions which have the effect of law, and thus dispose of the public property. Such was his impression when this debate commenced; but he went to the library, and on taking up one volume of the journals, he found three concurrent resolutions appropriating books and property. He took up the next year's proceedings and there he found four such resolutions; and there was no doubt but it had been the practice of the legislature, to pass resolutions evading that part of the constitution which required the sanction of law.

Mr. MURPHY enquired if the officer entrusted with the execution of them, did not deny their validity.

Mr. LOOMIS replied, certainly not. Besides they were not always directed to the same officers.

Mr. MURPHY called attention to some expressions made by Mr. Jay on the subject in the Convention of 1821.

Mr. LOOMIS continued: There had been some pretty large appropriations made in this way. He thought every one would be in favor of stopping such a system, and therefore that the only question was, whether they should put in an amendment here, or wait until they came to the powers and duties of the legislature. If they did it as here proposed, he feared it would have the effect of sanctioning legislation by resolution instead of by bill. He thought they had better make the prohibition in the subsequent article to pass a law other than in the form of law.

Mr. NICHOLAS joined in requesting the gentleman from New York to withdraw his amendment.

Mr. TALLMADGE stated an instance of \$400 having been appropriated to buy books, from a person named Disturnell, to be distributed amongst members of the legislature. He said the practice of voting themselves gifts in this manner, was an abominable one. It was unworthy of men, unworthy of the legislative body, and unworthy of this great state.

The CHAIRMAN said it was the uniform practice.

Mr. CROOKER thought the amendment could be appropriately made here.

Mr. DANA thought it more properly belonged to the legislative department.

The conversation was continued by Messrs. CROOKER, PATTERSON, TALLMADGE and STETSON.

Mr. NICOLL then withdrew his amendment.

Mr. RHOADES next submitted an amendment, as follows:—

Strike out all after the word "it," at the end of the first sentence, and insert as follows:—"It, after such reconsideration, a majority of all the members elected shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected, it shall become a law, notwithstanding the objections of the Governor.—But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names voting for and against the bill be entered on the journal of each House respectively.

He explained its purport to be, to give to a majority of the members of each branch of the legislature, the passage of bills when vetoed by the Governor, instead of requiring a two-third vote, as now. He disclaimed all intention to destroy the veto power, but he thought it should be restrained. It should be retained to prevent unconstitutional legislation, and legislation that was characterized by haste and improvidence, and likewise such legislation as was contrary to the public interest and sound policy. These were all the classes of legislation to which it should be applied, and a majority of representatives might be left to take care of the rest. He made some remarks on the exercise of this power in the general government, and its introduction into the discussions of an election campaign, and said he desired to get rid of such consequences here.

Mr. W. TAYLOR differed from his colleague. The gentleman from Onondaga had said he did not wish to destroy the veto power, and yet his amendment did in effect destroy it. Legislators once having framed a law, would adhere to their vote, and if the same majority could destroy the veto of the Governor, it would be a breaking down of the constitutional barrier to improper legislation. In relation to the exercise of the veto power alluded to by his colleague, he said he believed it was exercised but some two or three times by General Jackson, and in each case it met with the approbation of the people. General Jackson's successor wisely exercised it—twice only he believed. Mr. Tyler also exercised it several times and on the same questions as called for its exercise by Gen. Jackson, and in those cases they all knew that the people had approved of it. Mr. Tyler also vetoed the harbor bill, or a bill making appropriations for the improvement of rivers, on what he conceived to be constitutional grounds. In New York it had

been exercised but rarely; only on one occasion by the present Governor, and that exercise of it had met with the approbation of the people of the state, so far as they could judge by their popular meetings, their resolutions, and other ways. Strike from the constitution that power and he could assure them they would find hasty, inconsiderate, inexpedient, unconstitutional legislation frequent enough. He desired to preserve the veto power especially to check inexpedient legislation, for men would scarcely ever pass measures that were palpably unconstitutional. He would nevertheless prefer leaving the veto power as it stands in the present constitution, which was adopted in 1821. If the Governor vetoed a bill on the ground of inexpediency or unconstitutionality, it goes back to the representatives of the people, and to the people. This gave time for reflection, and to know the public opinion. If it was a question of expediency merely, the Governor would not be likely to veto such a bill a second time, if the people should send majorities to adopt it. They had better therefore leave it as it was.

Mr. LOOMIS looked upon this motion as involving a very great question. If he had much doubt about the opinions and views of this Convention, he should not feel at liberty now to address them without a better preparation or an intention to speak more at length than he should at this time. He looked on this veto power, as established in this government as one of the very best of its provisions, and one of the highest safeguards against improvident and corrupt legislation. In order to pass a bill into a law, it must first be considered in the Assembly: it must be deliberately read and acted upon there by the representatives of the people. It must afterwards be again read and deliberately acted upon by another body of representatives in the Senate, and if they refuse to pass it, their refusal is an absolute veto on the act of the Assembly, although it might have the unanimous approval of that body; and thus improper legislation was stopped. But then there was the Executive, to whom bills passed by the two houses were referred, that he might see if they were proper to become law. His veto power however, does not prohibit the passage of such laws; he had but a qualified veto; though he represents the entire state, the constitution has deferred to the judgment of the two houses to the extent that it shall not be an absolute veto, but that it shall put them on their guard. This was the best safety against the passage of local laws, and he denied that it had ever been abused. It exists in the constitution of the general government: it has long existed in this state; he believed it existed in the constitution of every state in the Union to a certain degree, more or less stringent; but in all cases of its exercise, it had been used in favor of popular rights, without a single instance to the contrary. One argument used by the gentleman from Onondaga (Mr. RHODES,) was that the veto power had been used as a means of obtaining popularity. But how could it be used for such a purpose unless a majority of the people was opposed to the law vetoed? The Executive by his veto arrayed himself against a majority of the representatives of the people, and if he could obtain popu-

larity by interposing his veto, would the gentleman say that it was a measure which ought to pass? And if it were not, was not that the very best reason for exercising the veto power? If he was satisfied that the judgment of the people was against the law, it was his duty to interpose.—Mr. L. had said that this power had not been abused, and in proof he might remind gentlemen that no bill ever vetoed had been subsequently passed, either in this state or by the general government. In the U. S. Congress, a bill something like—on the subject of a U. S. Bank—had been passed and vetoed two or three times, and with popular success, and thus the country had been saved from the influence of such an institution. All parties had become of opinion that such an institution ought not to exist. Mr. L. concurred with the views of the gentleman from Onondaga (Mr. W. TAYLOR,) and therefore he should not argue this question at length. He considered that where a provision of the constitution had been in full force, as this has, from the foundation of the government, and no public complaint had been made of it, it was safer to leave it where it stands.

Mr. BROWN said if there was any one principle of the government to which the people of Orange county had signified their attachment, it was to this veto power as it existed now—and he felt that he was wanting in duty to them if he should allow the question to be taken without expressing his and their disapprobation of it. He regarded the existence of this power as necessary in every popular government, whose power was properly distributed. It existed in all governments in some form. In Great Britain, it was a positive veto. Here it was qualified—two-thirds of the two branches having the power to pass a bill notwithstanding. Formerly it was reposed in a council of revision. Since 1821 it had been in the hands of the Governor, and he ventured to say that the public sentiment had never condemned it. It was the great conservative power in our government—designed not merely to prevent improvident and hasty legislation, but encroachments of one department upon another. All writers agreed, whether their leaning towards federalism or conservatism, that this power was essential somewhere in every government. The principal cause for the calling of this Convention, was the sense of the importance of new limitations on the legislative power—and because it had exceeded its proper boundaries and to an extent inconsistent with the public interest. But instead of arresting the power, we found one of our committees actually proposing to take away one of the principal barriers between the legislature and the people themselves, by providing that a vetoed bill might be passed by the succeeding legislature by a bare majority. Not content with this, we found a gentleman, entitled to great respect and consideration, as well personally as for his course here, proposing to strip this power of all potency by giving a mere majority the power to re-enact a vetoed bill!—Either proposition he regarded as hazardous to public liberty and the public treasury. Mr. B. denied this power had been improvidently exercised, either by the President of the United States or the Governor of this state. If ever i-

was properly exercised, it was by Gen. Jackson in his remarkable vetoes on the Maysville road bill and the Bank bill. At the time the former bill was vetoed, there were on the tables of Congress, bills appropriating a hundred millions of dollars for works of internal improvements in the states. The interposition of the veto on that occasion saved state power and rights from infringement and the treasury from depletion. And the people ratified the act. So did they ratify his veto of the bill re-chartering the U. S. Bank. There had been no question on which the public judgment had been so uniform and persevering as on this veto. It was the turning point in the election of 1832, in his own county, and at no time before did the people of that county and his own district, ever more strongly express their approbation of any public measure.

Mr. RHOADES said he disclaimed before, and now disclaimed any intention to canvass the propriety or impropriety of Gen. Jackson's course—and he regretted if he had said any thing to call from the friends of Gen. J. or his opponents, a discussion of that point.

Mr. BROWN did not mean to go into that.—He only designed to show that the public judgment had been uniform in favor of this power, and its exercise on proper occasions, and that committee number five had mistaken the public sentiment when they undertook to dilute, he might say, to emasculate it. He might allude to the vetoes on the thing called a fiscal agency, as having met with the same popular approval, whatever might have been the prevalent opinion of the individual who exercised it. And he predicted that no effort would ever be made to renew the bank in any shape. Recently too, in this state, the veto power had been exercised under circumstances which he ventured to say, no man who would lay aside his partialities for the measure itself, would not approve. It was interposed to preserve the public faith and credit—to assure the public creditor that the pledged faith of the state would be maintained—and in his own county, that act was ratified by as decisive and expressive a vote as the veto of the bank bill by Gen. Jackson. Under these circumstances, he did not feel at liberty to omit both the pending amendment and the proposition of the committee itself.

Mr. W. B. WRIGHT said he had voted, the other day, when the question in relation to the qualifications of Governor was under discussion, to strike out the section restricting the people in their choice. Practically, he did not deem the question of much importance, but a principle seemed to him to be involved in it, that he was by his vote either to subscribe to or reject. He did not consider that he had come here to propose restrictions on popular sovereignty, or even delegated power, unless experience or the history and career of representative democracies had fully demonstrated to him the wisdom and necessity of such restrictions. He was in favor of the amendment proposed by the gentleman from Onondaga (Mr. RHOADES) and, in imitation of the gentleman from Orange (Mr. BROWN,) he would say that if the constituency he had the honor to represent, had emphatically expressed their dissent to any part of the ex-

isting constitution more than another, it was to this two-third provision. We are all, said Mr. W., impressed with the belief that a system of guards and checks upon delegated power is of vital importance in a representative government, but those guards and checks should be so arranged, as to be of practical utility, and consistent with the genius, and spirit, and principles of the government itself. No man would contend, in this enlightened age and with seventy years' of experience in self government to liberalize the mind and dispel prejudice, that the Executive should possess a direct, unqualified negative on the acts of the legislature, for this would be, for the time, clothing a single individual, elevated by the popular will, with the powers of a despot. Nor will it be contended, that that universally admitted and usually safe rule, that the majority should govern, should, by any system, be abrogated, unless stern necessity demonstrated the wisdom of the abrogation. Nor should a system of balances and checks clothe a department of the government with a power which from its odious character, or from any other cause, has no practical utility, because rarely exercised, nor is it expected that it will be exerted. Yet the section reported by the committee, practically proposes to do all these things, and it was but another exemplification to his mind of the truth that however enlarged and liberal our views may be, and however democratic ordinarily our feelings and sentiments, there is a magic charm in precedent, and that many will even look upon error with complacency, if it have the dust of antiquity upon it. Suppose, said Mr. W., the system of Executive negation upon legislative action were now broached for the first time, after our experience of seventy years in representative democratic government, who of us would stand forth to defend the principle, even as far as the committee have gone. He ventured to say none. Yet it might be, because this anti-republican principle has had a place in the constitution of the United States, and of several of our sister states, and perhaps has done no essential harm, that a majority of the committee will say, let it stand. He was not, however, one of them. Had it never have been exercised from the foundation of the government, he would place out of the reach of the Executive, what is, in effect, an unqualified negation of legislative action. This he would do, because the principle is inconsistent with the genius and spirit of our institutions,—is in direct opposition to the salutary rule that the majority should govern, and is lodging Omnipotent power in the hands of one man, to restrain the action of a majority of the immediate representatives of the people, who are supposed best to understand the wants and wishes of those whom they represent. I know, said Mr. W., that it has been said that the committee propose but a qualified negative. This is true in words; but all must see that, in effect, it is unqualified. In how many instances in the legislative experience of this state, or of other states, have two-thirds of both houses been obtained for the passage of a bill returned by the Governor? The instances are rare wherein two-thirds have had the firmness to array themselves against the action of the Executive. Whilst parties exist, and

the Governor is the acknowledged leader and head of one or the other of them, his influence can at all times prevent such a result, unless it might be in the case of a charter of a corporation, in which peculiar influences have been successfully applied to the legislature, and then the chances are that similar appliances have been extended to the Executive. Practically, therefore, the negative proposed is an unqualified one. In ninety-nine cases out of a hundred, the power of the despot would be successfully exerted. Yet a proposition to confer directly upon an individual a power thus successfully exercised indirectly, would perhaps be scouted at by the committee. Again, it might well be said, should we adopt the suggestions of committee number five, in relation to this two-third provision, that our action would be inconsistent in another particular. It seems to be the universal sentiment, that too much power is now lodged in the hands of the Executive—that the public security and well-being requires that he should be stripped of a large portion of his patronage; yet whilst you are taking from him the dispensation of office and place, you would still leave in his hands, to be exercised arbitrarily, and with no accountability or practical restraint upon him, save the dread of retirement at the end of his official term, a power above and beyond the legislature—a power to effectually restrain the law-making department of your government a power, in its scope and influence, infinitely above that of conferring place on the sycophants “that dance attendance around the throne.” Whilst you can see, or fancy corruption in the distribution of rewards to favorites, you cannot imagine corruption, or foresee danger, in conferring upon one man—in a free government—a government purely of law—the exercise of a power akin to that which has enabled despots to convert men into serfs in all ages of the world.

The proposition, said Mr. W., requiring a two-third vote to relieve from the effects of a negative of the Executive, is also inconsistent with that safe rule in a representative democracy that the majority should govern, whether exercising elementary sovereignty or delegated power; and in his judgment, in no condition of delegated authority, could this rule be more safely exercised than with the legislature, more especially as it is proposed, by districting the state, to break up even the chance of combination for corrupt purposes. One branch of the legislature comes annually from the body of the people; the other, as is proposed, simultaneously with the Executive; and each member of either branch is elected in his particular district as a component part of the law-making department, and that alone. He is rightly supposed, from his proximity to the constituent body, to understand fully the wants and wishes of that portion which he represents, and he comes to these halls with popular confidence freshly stamped upon him. Whilst each individual is in some sense a representative of the state at large, he is regarded, and so regards himself, as the peculiar representative of the constituency that elects him. It must be apparent, under such circumstances (unless the idea of human integrity is totally abandoned) that no bill could pass both

branches of the legislature, by a majority of all the members elected without peculiar merit.—But were it otherwise, a majority of the people, acting through their representatives, have for the time sanctioned it, and unless in contravention of those great natural, unalienable rights, endowed by the Creator on man, and which no human government can rightly subvert, who will say that in this, as in the exercise of elementary and delegated power in other cases, the majority should not govern? But what would be the effect of the proposition of Committee No. Five. A bill passes both branches of the legislature—it is returned by the Governor with his negative—the popular branch may reconsider and pass it unanimously—in the other branch it may require but one vote to have secured two-thirds, yet it is lost. The law, however salutary, is rejected—the legislative arm is paralyzed by the potency of the One Man power—It is not enough that the majority of one branch of the legislature shall act as a check upon the excesses of the other, but the Executive arm must intervene to save the people from their immediate representatives—in truth to save the people from themselves!

I am aware, said Mr. W., that a principal reason assigned for lodging this dangerous power with the Executive is, that the legislative department may, through excitement, haste, inadvertence or design lend itself to the passage of bad laws. But if a case can be conceived in which a majority of all the members elected to both branches of the legislature shall so far forget their duty and responsibility to their constituents as to trifle with or sacrifice the great interests entrusted to them, and defy and despise the popular condemnation which would be certain speedily to visit them, what security is there that a single individual, not so immediately or so speedily responsible to the people, will not partake of the same temper and feelings? What shall exempt him from the same infirmities? May not corruption or excitement assail, aye, more easily assail, one than twenty or fifty or an hundred? But the proposed amendment of the gentleman from Onondaga (Mr. RHOADES) guards against hasty and inconsiderate legislation. If any evil is to be apprehended from this source, it gives time for excitement to subside, and calm reflection to intervene—it goes further, and asks that the legislature shall deliberately consider the objections of the Executive. The amendment provides that no bill can become a law until it has been presented to the Governor—he may return it with his objections, and then should a majority of all the members elected to both houses solemnly reconsider and approve it, it shall be a law notwithstanding the objections. The same formality and deliberation are required under the amendment as in the section reported by committee number five. The legislature will not only have time, but the benefit and influence of the Governor's objections to allay excitement, correct inadvertence, and stifle culpable design.

It is, said Mr. W., an axiom of free government, that the departments of power—the executive, legislative and judicial—should be kept separate and distinct,—that to mingle these powers, would be attended with danger to the gov.

ernment, inasmuch as in proportion to the mingling of them together, would the security arising from each department being a check upon the other, be weakened. In this light, this negative of the Executive upon the deliberate action of a majority of the legislature, had ever seemed to him an anomaly. He was aware that it had been said that there is a tendency in the legislative department to grasp the powers of the other departments, and to subject them to their control—that the legislature might humble the Executive by diminishing his salary, or break up the courts, by withholding the compensation of the judges. But so far as the Executive is concerned, the committee had already provided against a contingency of this character, in the amendments to the fourth section of the report, which places out of the reach of the legislature the increase or diminution of his compensation during his continuance in office, and he had no doubt that a similar provision would be made in relation to the judges.

The principle, said Mr. W., that a majority of all the members elected to the legislature may pass a bill notwithstanding the objections of the Governor, is not a novel one. It is a prominent feature in ten of the constitutions of our sister states. It was incorporated into the constitution of Kentucky in 1799; into that of Indiana in 1816; into those of Connecticut and Illinois in 1818; into that of Alabama, in 1819; into those of Vermont and Arkansas in 1836; into that of Florida in 1833; into that of New Jersey in 1844; and into that of Missouri in 1820, and re-adopted in 1845. A more liberal rule also prevails in eight of the states: In Tennessee, Ohio, Virginia, Rhode Island, Delaware, Maryland, North Carolina and South Carolina, the Executive has not even a negative upon a majority of the legislature. Virginia repudiates the doctrine of Executive negation in any form, and although a distinguished member of the Convention of 1821 confidently expressed the opinion that she would, on a remodeling of her organic law, embrace the principle, yet a convention assembled in 1830 again repudiated it. So, also, in little Rhode Island is the principle repudiated,—a state which, it has been exceedingly fashionable recently, in certain quarters, to denounce as anti-democratic, and as governed by "Algerines."

I am aware, said Mr. W., that committee No. five can appeal to precedent to justify the insertion of the two-third provision in their report. The error, if error it be, is rendered venerable by age. The power of negation has ever been a prerogative of the King of Great Britain, in its direct, unqualified form. In the early period of our existence as a free people, it was incorporated into the constitution of Massachusetts in the form now proposed by committee No. five—from thence it was engrafted upon the constitution of the Union, and it is now a distinguishing feature of several of the constitutions of the old thirteen states; and yet all of these instruments declare the supreme power to be in the people, and all, if not in terms, do in spirit, disavow the one man power. The principle was also engrafted on our own constitution in 1821; by the instrument then adopted the same power which had been previously exercised by a council, consisting of the Governor, Chancel-

lor and Judges of the Supreme Court, was transferred to the Governor alone, and although he could admire the wisdom which induced the removal of judicial officers from the political arena, he could not equally admire the wisdom which yielded up a majority of the law-making power to the caprice of a single individual.

In framing the fundamental law, said Mr. W. it is right and proper to look to example, when no great principle is at stake; but in this enlightened period in the history of self-government, charged as the Convention were, with the grave duty of preparing and submitting to the adoption of the people, a plan of government which should secure the greatest sum of human freedom consistent with the safety of society, gentleman should be well assured before they become firmly wedded to a principle, that it is not only based in wisdom, but is in consonance with the important end to be attained. He submitted that we should gain but little, by blindly adhering to precedent and disregarding experience. As time rolls on men grow wiser so far as the science of government is concerned. Human rights come to be better understood and their area extended. It is by no means certain that were the illustrious men who framed the constitution of the Union, with our experience and progress in self-government, now called upon to discharge that duty they would recommend, for the popular adoption, a power in the Executive of vetoing the acts of a majority of the legislature. It is well understood that many of those distinguished men were, at the time, inclined to give extraordinary strength to the Executive arm, whilst others feared legislative intrusion upon the rights and powers of the other departments of the government; experience, however, had shown that it required not this shield to the Executive, and that instead of legislative intrusion, the people have had in numberless instances, reason to deprecate Executive encroachment. Besides, the constitution of the United States was adopted as a compromise, not only between the people of the different sections of the Union, but also between the states. The smaller states might reasonably require the interposition of the Executive against the majority of the larger and more populous states. He had alluded to the constitution of the United States, and the circumstances under which it was formed, for the reason that in his opinion, the sanction which that instrument gives to this two-third provision, had more than any other circumstance, led to the adoption of a similar principle by several of the states.

The committee, said Mr. W., who made this report, whilst they retain the two-third provision, introduce an amendment to the existing constitution recognizing in part the principle for which he contended. By their report, although a bill may not be approved by two-thirds of the members present, a subsequent legislature may pass it by a majority. The justness of the principle that a majority shall in any case pass a bill, notwithstanding the objections of the Executive being recognized, why not interpose the principle at the threshold in all cases? Is there such a magical charm in precedent, that the committee dreaded to boldly propose the innovation, and will the same influence deter the

Convention from incorporating it in the organic law? He hoped not. He did not know what would be the action of the majority upon this subject, but for himself, he should never by his vote, consent to invest the Executive with the power of arbitrarily opposing the popular will, as expressed through a majority of the legislature, or in other words of blocking the wheels of legislation when it shall seem to him expedient. He would go as far as any man to purify the legislative halls, by breaking up those great sources of corruption, central official patronage and special legislation; but he could never consent to place an omnipotent, restraining power over a majority of the people's immediate representatives. In any government, the investiture and exercise of the one-man power is dangerous to human liberty; but in a government like ours, founded upon popular sovereignty, it is not only dangerous, but diametrically opposed to its genius and spirit. Aside from principle, there was not that man on earth, upright and pure as he might seem to be, to whom he would entrust power so supreme; upon principle, holding as he did to the sovereignty of numbers, it would not only be improbable, but impossible that he should do it. He could never consent to retain in the fundamental law of the state a principle so repugnant to all notions of popular freedom—so despotic in its character—that even in England, where the prerogatives of the Crown are in most cases respected and exercised, no sovereign has ventured to exert for more than a century. It had been said by gentlemen that in this state the power had never been abused, but there was no security that it would not be. When was our legislature ever converted into an excited, unregulated mob, acting solely from impulse and passion, and without reflection or deliberation? Yet the advocates of this power find the reason for its existence in the supposition that such a state of things may arise. The principle is right, or it is wrong. If right it should be retained; if wrong, expunged. Because of the mischief it may do, he was for expunging it, and he should therefore cord ally vote for the amendment proposed by the gentleman from Onondaga (Mr. RHOADES.)

Mr. STETSON characterized the remarks of the gentleman from Sullivan as exceedingly specious. Mr. S. yielded to the principle that the majority should govern—but how govern? When govern? For what and how long govern? He reminded gentlemen who had spoken of monarchies and eloquently in denunciation of the one-man power, that the worst of all despotisms was that of an oligarchy. And that, he was understood to say would be a government where a majority of the legislature would bind the present and future generations. In rooting out a fancied monarchy, gentlemen would introduce a more odious oligarchy; and that was the specious character of the gentleman's remarks. It was a fallacy to suppose that a majority of the legislature, between the two branches of which there might be collusion, could not be controlled by the sole representative of the whole people, without infringing the principle that a majority should govern. Did the legislature never do wrong? The remark the majority must always

be right, seemed to imply that they never did—for the gentleman would not apply it to our Executive. This was equivalent to the odious monarchical doctrine that the king could do no wrong. He asked the gentleman what there was, in the absence of this power, to prevent a majority of the legislature, composed of politicians and the representatives of localities, from pledging the property of the state, for millions untold and uncounted. Mr. S. would trust it to the will of a majority of the people, but he was not willing to trust it with a temporary depositary of power which had no higher authority than the Governor himself. Members of the legislature were representatives of the people, not the people themselves. So was your Governor the representative of the whole people; and how would they protect themselves against the indiscreet acts of a majority of the legislature? His answer was, by the qualified veto of the old constitution. If it had been heretofore an unqualified veto, because never overruled by two-thirds, it was because it had never been applied wrongfully. To leave it to a majority of the legislature to overturn a veto on one of their own acts, would be to make it nugatory. If the veto power had never been exercised in England—the power to prorogue Parliament—a greater power still—had been exercised frequently. The references to the U. S. constitution, and to congress, were inapplicable here. What might be an objection there, would not be here, because here the people could now directly act on this subject. The object and design of the veto was to interpose between misled legislative power and the people themselves, and for the security of the latter. The moment almost that the Executive vetoed a bill, he as well as the legislature turned to the common source of power, and the people acted as umpire between them. Let not gentlemen put that security beyond all reach by making it entirely one-sided. But what was there calling for this change? What great public mischief to call for it? The allusions to the vetoes of Gen. Jackson had been fully met, and the purposes for which they were made—but he could forbear to ask the question what the reason was why we had no Bank now? Was it from fear of another veto, or because the people had said we should not have one? Mr. S. hoped this amendment would be voted down. He hoped also that the additional new matter, which threw over to another legislature the exercise of the veto power, would also be voted down. There would be more evil engendered out of this new matter than in any other conceivable form. He could foresee that it would be a direct inducement to the course which was now so fruitful of bad measures—to crowd every bill of a doubtful character into the heel of the session, in the hope that it might escape scrutiny, and slip through; or if perchance it should be vetoed, to get up a fight with the Executive before the people—to make the matter an element at an election—in localities—overlooked generally to be sure, but nevertheless potent enough perhaps in localities to affect a general result. Thus, it might become a mere instrument of hostility to the Executive. But why this provision for consecutive legislation from session to session?

What was there in the present constitution to prevent a vetoed bill from being taken up at a succeeding session and passed? No Executive would venture to veto a bill thus passed a second time, if the same bill. If it was a different bill, why should he not have the power of a veto then? He hoped, ardently hoped, that this old landmark of the sovereignty of the people—this recognition of the truth that there resides the majority that should govern, would not be obliterated by the vote of the Convention, but that all amendment would be voted down, and the constitution of 1821 in this particular remain untouched.

Mr. PENNIMAN said he had been mainly anticipated in the remarks he intended to make, particularly in reference to the constitutional provisions of other states, by the gentlemen from Sullivan and Onondaga (Messrs. WRIGHT and RHOADES), and having said this, it was necessary that he should say further, that this was the only provision in regard to which committee number five were not unanimous—the gentleman from Oswego and himself differing from the rest of the committee, he (Mr. P.) agreeing substantially with the gentleman from Onondaga, and the other dissenting member holding to the existing constitution in this respect. Mr. P. was aware that he might have offered his views when this article was presented, as suggested by the gentleman from Ontario (Mr. WORDEN). Perhaps, however, he was right in leaving that duty to the chairman (Mr. MORRIS). But Mr. P. had one remark to make in answer to the gentleman from Ontario, who admonished him of his egotism and his praise of himself—and that was that Mr. P. was profoundly grateful for the kind and gentlemanly manner in which he and the Convention were treated by that gentleman—and wishing to reciprocate such kindness. Mr. P. only wanted the gentleman to review his own printed speech. He wanted the gentleman to understand it—for if ever there was an instance in which the old proverb could apply—physician heal thyself—it was to that gentleman. Mr. P. went on to say that the state of his health barely permitted him to sit there until now, and he should be brief. He was decidedly opposed to the provision of the old constitution, and measurably to the proposition of the committee of which he was one. He was decidedly in favor of the amendment, because he held it to be the only true democratic ground and doctrine that a majority of the people should govern. He held also that a majority of the legislature for the time being were the people virtually, and he was opposed to giving the Governor or any human being on earth, a controlling influence over the majority of the people. This provision of the old constitution made the Governor equal to two-thirds of the people. Mr. P. regretted that his friend from Onondaga had referred to certain measures in the manner he had, for it had raised the ire of certain gentlemen to a high pitch. But he must be permitted to say that there had never been an instance in his recollection, when a prominent measure affecting the general interests of the whole Union, or a state, which could have passed against a veto by a majority of two-thirds.—The war measure of 1812, was not carried by

two-thirds and could not have been. Had it been vetoed, it would have gone by the board. So with the tariff. About the policy of that measure, gentlemen differed no doubt from him. But he spoke of it only as an important measure as well to the government as to the whole country. But that measure could not have been carried by two-thirds, though it had a decided majority in its favor. The use he desired to make of the circumstance was this. All knew that there was a bill pending in Congress to repeal that law. All knew that if Mr. Clay was President no such bill could pass. All knew that a very slight change in this state, or in a neighboring state, would have elected Mr. Clay. And Mr. P. asserted that if Mr. Clay had not written too many letters, Mr. Clay would have been President. The abolitionists of this state alone could have done it. And if it had not been for the humbuggery and huggermuggery of nativism, Mr. Clay would have been elected President.

Mr. RHOADES hoped the gentleman from New Orleans—Orleans he meant—after rebuking him for alluding to Gen. Jackson's vetoes, was not going to canvass the whole campaign of 1844.

The CHAIR :—The gentleman from Orleans is entitled to the floor.

Mr. PENNIMAN understood himself if the gentleman did not understand him. Other gentlemen had alluded to these matters, and had travelled over party ground. But he had no such intention. He simply took facts as they existed, and the only use he made of them was this—that the tariff bill could not be repealed with Mr. Clay in the chair, and that it was as likely he should be then President as any other man, and that without a single alteration in the members of Congress. So in our own state, the facts showed that the bill for the construction of the Erie canal could not have become a law but for the fact that the veto power was not in the hands of the then Governor, but in a council of revision. And all that saved the bill was Vice-President Tompkins attending the council and endeavoring to defeat the bill, and the arguments which he used to persuade Chancellor Kent to go against the bill carried him in favor of it. The vote in the Assembly stood 51 to 40; in the Senate two-thirds for it. After controverting Mr. BROWN's assertion that the amount of bills for internal improvements laying on the table in Congress was one hundred millions, Mr. PENNIMAN said the bills were not for construction only, but partly for mere surveys and partly estimates, when the Maysville road bill was vetoed. Mr. P. went on to controvert another position of that gentleman, to the effect that Gen. Jackson's popularity was owing to his veto of the bank bill—instituting that it was his previously acquired popularity that carried him through that struggle, and that nothing but that swayed down the bank. He cited as an illustration of the influence of Old Hickory the alleged change in the views and course of Mr. Dallas, who he said, from being an ardent bank man in the U. S. senate, was found soon after at Philadelphia sustaining the veto. But to return to the question. True we might cripple the Governor in point of patronage by our action—but of

what avail is this, when you left him with power equivalent to two-thirds of the people? He was in favor of some restriction upon hasty legislation—but he did insist that after a bill had been returned with objections, and those objections had been duly considered and a majority of all elected was found to be in favor of it, it should become a law, the veto notwithstanding. In that respect he preferred the amendment to the section reported by the committee. And he thought it not a little inconsistent in those who objected to this as crippling the power of the Executive, and yet, who objected strongly to any restrictions on the popular will in the selection of a candidate for Governor. With mere party politics he desired not to meddle here—but he must be permitted to allude in conclusion to the course of Gen. Root and Peter R. Livingston in the Convention of 1821. He believed they were as sound and pure democrats, and men of as great sagacity and talent, as this state had ever furnished. They took the same ground that the gentleman from Onondaga now did—and so did a large portion of the democrats in that Convention. But the state of his health admonished him that it was time to bring his remarks to a close.

Mr. PATTERSON proposed simply to call attention to the practical operation of the two antagonist plans here—leaving others to talk about Gen. Jackson or Capt. Tyler as they pleased. As the section stood, it required a majority of two-thirds of those *present* to pass a bill under a veto. The amendment required a majority of all elected to both branches. That was the only question before the committee now. A majority of all elected to the Assembly would be 65; to the Senate 17—and these would be the numbers under the amendment required to pass a vetoed bill. But how was it under the original section? Two-thirds of all present, if the house was as full as it ordinarily was, would be a less number than a majority of all elected.—Examine the journals of the house for ten years past, and it would be found that the number present daily did not average 100. A quorum was 65; two-thirds of that number would be 44. Under the original section therefore, 44 in the house and 12 in the senate would be all that would be necessary to pass a vetoed bill. Two-thirds of those present, at all events, was a very uncertain number. It might be 44, and, if the house was full, it might be 86. He had just opened the journals of the house, at random, and he had opened at a place where the ayes and noes were several times taken, and he found that in but 14 cases were there 100 present, whilst in three times that number of cases there were a less number in the house. Ordinarily therefore it would require more to overrule a veto under the amendment than under the original section. As to this veto power—during his eight years' experience in the legislature, had been entirely different from that of the gentleman from Onondaga (Mr. W. TAYLOR). During these eight years, but two bills had been vetoed, one by Gov. Marcy and one by Gov. Seward. And in these cases, instead of members who originally voted for the bill, voting for it again, the fact was that the bill vetoed by Gov. Seward was laid on the table in the Senate and never acted

on a second time. The bill vetoed by Gov. Marcy was returned to the Assembly, and upon being put on its passage a second time, was rejected by a unanimous vote.

Mr. W. TAYLOR proceeded on the supposition that the requisition of two-thirds would discourage effort to revive a vetoed bill.

Mr. PATTERSON :—Not if two-thirds of those present; so much as to require a majority of all elected. Mr. P. said he should vote for the amendment, not because he was opposed to the veto power—for he was not—but because the amendment was more certain and definite.

Mr. MANN preferred the section of the old constitution—with this difference, that he would make it necessary to have two-thirds of all *elected* to overthrow a veto. He would wait, however, until this amendment was disposed of, before offering such an amendment.

Mr. CLYDE said the gentleman had anticipated him. He moved to amend by striking out all the new matter and changing the old by striking out "present," wherever it occurs, and inserting "elected."

Mr. MANN moved to amend Mr. RHOADES' proposition in like manner.

Mr. STOW denied that it was in accordance with the theory of our government that a majority was to rule uncontrolled and unchecked. On the contrary, the whole theory of our government was that a majority might do wrong. Hence it was that we had two branches of the legislature, one holding for a longer term and representing larger districts than the other? Why did we have a judiciary system at all? Why have judges and a jury? But if it were true that we should not place checks on the people, under any circumstances, still, he submitted that the legislature were not the people, nor as a matter of course their representatives.—They were not in any respect so essentially and directly the representatives of the people as the Governor himself! To pretend to give him a check upon legislation, and yet allow him to be overruled by a mere majority, would be a mockery, and unworthy of serious men. And again his check was essential to prevent the encroachment of the legislative upon the Executive department. He would leave the section substantially as the committee reported it. Though he thought it would make practically very little difference whether it were two-thirds of those present or those elected. And he was willing to arrange it in any way so that the Governor could appeal from the legislature to the people.

Mr. O'CONOR briefly expressed his intention to vote for the amendment, preserving as it did the veto as it was now in all its force and integrity, and adding the certainty in point of number which would be required to overrule the Executive.

Mr. MORRIS conceded that the amendment, striking out present, &c., was proper, and he should vote for it.

Mr. TALLMADGE took the ground that this alteration would make the veto an absolute prohibition, rather than a suggestion that the legislature had made a mistake. This might render odious a necessary power of reconsideration, and ought not to be adopted without strong reasons.

Mr. MANN'S motion prevailed—56 to 45.

The question then recurred on Mr. RHOADES' proposition as amended.

Mr. TALLMADGE called attention to the fact that the proposition now required the vote on the final passage of every bill to be taken by ayes and noes. It should be such bills, referring to those vetoed only.

This suggestion, after some conversation, was carried out, and the amendment made.

Mr. TALLMADGE then moved to strike out

all after the word law, towards the close of the section—giving the Governor ten days after the close of a session to sign bills.

This motion was agreed to.

Mr. RHOADES' amendment, as amended, was then agreed to, and

The article as amended was reported to the Convention.

The article, as amended, was then ordered to be printed, and the Convention

Adjourned to 9 o'clock, to-morrow morning.

FRIDAY, JULY 17.

Prayer by the Rev. J. KNAPP.

The PRESIDENT laid before the Convention a report from the Chancellor in answer to a resolution, furnishing the aggregate amount of funds subject to the order of the court of chancery on the 1st of January. The amount was stated at \$2,921,900 38.

DEBATE IN COMMITTEE OF THE WHOLE.

Mr. MANN offered the following :

Resolved, That when in committee of the whole, no member shall speak more than once to any question, until every member choosing to speak has spoken, or by unanimous consent of the convention.

He said he offered this resolution to give the modest gentlemen an opportunity to be heard. He found that when in committee of the whole a certain number of gentlemen monopolized all the time. They managed some how to get the floor, and others were precluded who might have a word to say, because they were too modest to contend for the floor; and when ultimately they did succeed, they were put down by cries of "question" by those gentlemen who had worn out the time in debate.

A debate ensued in which Messrs. WILLARD, PATTERSON, RUSSELL, MURPHY, CHATFIELD, W. TAYLOR, CLYDE and others took part in relation to the force of the present, and of parliamentary law, to accomplish the object the gentleman had in view.

Mr. MANN then withdrew his resolution.

EXECUTIVE DEPARTMENT.

The Convention took up the report of the committee of the whole on the Article reported by the 5th standing committee. The question was on agreeing to the report of the committee of the whole.

Mr. CHATFIELD moved that it be taken up by sections.

The 1st section was read accordingly as follows:—

§ 1. The executive power shall be vested in a Governor. He shall hold his office for two years; and a Lieutenant Governor shall be chosen at the same time and for the same term.

Mr. YOUNG moved an amendment which was agreed to, so that the section stands thus:—

§ 1. The executive power shall be vested in a Governor, who shall hold his office for two years. A Lieutenant Governor shall be chosen at the same time and for the same term.

Mr. O'CONOR thought the words "at the same time and" in the last line, were unnecessary, as there was a suitable provision in another section.

After a few words of explanation from Mr. CHATFIELD,

The section was agreed to.

The second section was then read, as follows:

§ 2 No person except a citizen of the United States shall be eligible to the office of Governor; nor shall any person be eligible to that office who shall not have been five years a resident within the state; unless he shall have been absent during that time on public business of the United States or of this state.

Mr. HUNTINGTON of Suffolk moved to insert in the 3rd line after the words "eligible to that office" the words "who shall not have attained the age of 30 years."

Mr. MILLER demanded the yeas and nays and they were ordered, and being taken resulted thus—yeas 61, nays 49. So the amendment was carried.

AYES—Messrs. Angel, Ayrault, F. F. Backus, H. Backus, Bouck, Brayton, Bull, D. D. Campbell, Candee, Clark, Clyde, Conely, Crooker, Cuddeback, Dana, Dubois, Forsyth, Gardner, Gebhard, Graham, Greene, Harrison, Hawley, Hoffman, Hunter, A. Huntington, E. Huntington, Hyde, Jordan, Kemble, Kingsley, McNitt, Maxwell, Miller, Morris, Nicholas, Parish, Penniman, Porter, Richmond, Riker, St. John, Salisbury, Sears, Shaw, Sheldon, Simmons, E. Spencer, Stanton, Stow, Strong, Taggart, Tallmadge, J. J. Taylor, Tut-hill, Waterbury, Willard, Wood, A. Wright, Yawger, Young—61.

NAYS—Messrs. Archer, Bascom, Bergen, Bowditch, Brown, Bruce, Brundage, Burr, Cambreleng, R. Campbell, Jr., Chatfield, Cook, Cornell, Danforth, Dodd, Dorlon, Flanders, Harris, Hart, Hotchkiss, Hunt, Hutchinson, Jones, Kernan, Kirkland, Loomis, Mann, Murphy, Nellis, Nicoll, O'Connor, Patterson, Powers, President, Rhoades, Russell, Shepard, Stephens, Stetson, Swackhamer, Taft, W. Taylor, Townse, d, Van Schoonhoven, Warren, White, Witbeck, Worden, Youngs—49.

Mr. HARRISON moved the insertion of the word "native," to follow the words "no person except a," in the first line.

Mr. MANN demanded the yeas and nays and they were taken and resulted thus—yeas 6, nays 106. The yeas were Messrs. Dubois, Gardiner, Gebhard, Harrison, Penniman and Wood. So the amendment was rejected.

Mr. HARRISON desired to offer another amendment as a substitute for the whole section as follows :

No person shall be eligible to the office of Governor unless he shall be 30 years of age, and shall have been 10 years a resident of the United States, and five years a resident of this state, unless he shall have been absent on public business of this state, or the United States. And no person shall be constitutionally eligible to the office of Lieut. Governor who shall not be eligible to the office of Governor.

Mr. TOWNSEND enquired if this amendment was offered in committee of the whole.

Mr. HARRISON said, essentially it was, though not in this precise form.

Mr. HUNT desired to offer an amendment to the section as it stood, and it took precedence. It was to insert after the 30 years' qualification, which had been agreed to, the words "or who shall have passed the age of 70."

Mr. CHATFIELD moved to amend by striking out 70 and inserting 60.

Mr. HUNT accepted the amendment.

The amendment as amended was lost, the vote being 6 in the affirmative and 103 in the negative. The ayes were Messrs. Angel, R. Campbell, Chatfield, Cook, Cornell and Stow.

Mr. CHATFIELD said it was known that all the way through this controversy he had been against a restricted eligibility, but as the convention had begun to establish limitations and checks, he thought they ought to guard against the danger from the other side, of drivelling dotage. Having disposed of those questions he now moved, that there might be no misunderstanding on the subject, the following:—

Every qualified elector of this state shall be eligible to the office of Governor.

Mr. ANGEL moved to insert the words "next preceding his election" after the words "five years" in the third article.

Mr. STETSON thought this qualification of residence might be susceptible of a construction which might not meet the approbation of the committee.

Mr. BRUCE hoped the amendment would prevail, otherwise a man might become a citizen, go away for many years; return, and in twenty-four hours be qualified to and be elected Governor. He could see no objection to the amendment.

Mr. BROWN now rose and asked the Convention to give him the opportunity to record his vote on the questions already taken. It would be a favor which he should be willing to extend to other gentlemen at any time. The ground on which he asked it was, that he had been detained from the Convention, by labor for the Convention.

The PRESIDENT put the question on granting leave.

Mr. SIMMONS asked the gentleman from Orange, if his detention had been occasioned by the business of the Convention.

Mr. BROWN replied that it was

Mr. SIMMONS thought then that no bad precedent would be established and he hoped leave would be given.

Leave was unanimously given accordingly, and Mr. BROWN voted *no* on the three questions taken.

Mr. DANA spoke in favor of the amendment.

The amendment was agreed to.

Mr. ANGEL then moved the insertion of the word "citizen" after the word resident in the third line.

Mr. SHEPARD called for the yeas and nays thereon.

Mr. O'CONOR said this would provide 5 years before and 5 years after naturalization.—It was almost as much of nativeism as could be got in without the name. He thought those who

voted for the 30 years' qualification would vote for this; he hoped they would.

The yeas and nays were ordered.

Mr. MURPHY said he would ask the indulgence of the convention for a few remarks in regard to the amendment of the gentleman from Allegany, (Mr. ANGEL) because it was a new proposition which had not been offered when in committee of the whole, and which had a very important bearing. He hoped it would be rejected, and that those who had sustained the provision requiring the qualification of thirty years of age, would not, as the gentleman from New-York (Mr. O'CONOR) had suggested, also vote for this. Two wrongs did not make a right; and this was too important a matter to be hastily or inconsiderately voted upon. He was opposed to the amendment because its effect would be to require a ten years residence in certain cases before adopted citizens would be eligible.—Thus a foreigner landing in this state with the *bona fide* intention to become a citizen, and actually becoming such after a residence of five years, would, according to our present constitution, and according to the section under consideration as it now stands, be eligible to the office of Governor; but if this amendment be adopted you will require a further residence of an additional five years before he would be eligible.—Now this was making a distinction between native and adopted citizens which he did not wish to see admitted. They had with great unanimity just stricken out the word native and abolished that odious interpolation in the constitution, and he trusted they would adhere to the principle of that vote. He called upon those who had voted with him on his motion for that purpose, because it created two classes of citizens, to come up and vote down the specious amendment of the gentleman from Allegany.

Mr. ANGEL said he had not offered this amendment without due reflection. He thought it would be doing no injustice to the truth were he to say that he had as much regard for foreigners and as much kind feeling towards them as the gentleman from Kings (Mr. MURPHY). He had a due regard for them. He was pleased with their emigrating to this country. They come here often fitted for offices and we give them a due share. They flee from oppression at home, and they find an asylum here. We afford them all the privileges we can, but it must be borne in mind that every foreigner brings with him some lingering feeling from the land of his nativity which may be adverse to his duty here if he were put in this office too speedily. The gentleman from Kings said in substance—he did not recollect the precise words—that it was an oppressive restriction on foreigners to make them wait five years after naturalization before they could become Governor.

Mr. MURPHY denied that he had said any thing of the sort. He had said he was opposed to the amendment because it established a distinction between native and naturalized citizens.

Mr. ANGEL continued. Well, what kind of oppression was that? When they selected a chief magistrate for three millions of people to preside over the Empire State, was it an hardship to say to a man, "because you have not been a citizen 5 years, you cannot be Governor."

Some period should be fixed, and he thought 10 years' residence was short enough—5 before and 5 after acquiring citizenship. The Convention had just passed a vote excluding the word "native," and they had made 30 years a qualification of a native-born citizen—thus establishing a nine years' quarantine for the native born; and he really hoped it would not be considered as indicating an unkind feeling towards foreigners, to require that they should have a 5 years' citizenship. He had no unkind feeling for foreigners at all; but he wished to ask if there was any American feeling there, or whether they would give up every thing to men who had but recently come into the country? He could not make up his mind to say it would be safe to adopt it as it is.

Mr. HARRISON had a few remarks to offer to the Convention, and he regretted that he was not able to offer them in a better form. There were here two distinct propositions which must present themselves to the Convention. The first was, that gentlemen either meant to adopt such distinctive qualifications as should stand forth prominently and be clearly perceptible in the constitution, or they would abandon the ground entirely and throw themselves back on the proposition some time since made by the gentleman from St. Lawrence, which he thought was the only rightful one, if they did not make this restriction. Simply to adopt a 5 years' residence would be, mere trifling and a mockery; for a foreigner might land on our shores and in 5 years he would be eligible to be our Governor. Now, with the gentleman from Allegany (Mr. ANGEL) he asked if they had any American feeling in that body? He was not ashamed to stand up there and contend for those principles that should characterize and distinguish us as Americans. He had no desire to encourage the ambitious views of a foreigner who should come to our shores with aspirations for the chair of the chief magistrate of this state. Many formidable evils might arise from this indulgence of foreigners. Had the people of this state forgotten that we had a large protestant body within our bosom, who were looking with great interest on this question? And could the feelings and opinions of that large and respectable class be disregarded? It must be familiar to every member of the Convention that there had been for some time going on in this country, a controversy that however we might be disposed to look upon it, to a large portion of our people, was an important one indeed. He should not have called the attention of the Convention to this matter, but for the remarkable and extraordinary indifference which he saw here manufactured on this question. He hoped then the Convention would give them reasonable restrictions and reasonable qualifications, or abandon them altogether and adopt the theoretical principles, which he admitted were just in themselves, of the gentleman from St. Lawrence (Mr. RUSSELL,) and the gentleman from Otsego (Mr. CHATFIELD.) That would be right, but this would be a mockery.—There had been much talk in the Convention about reciprocity; but was there any reciprocity in this matter? In what manner were American citizens treated abroad? What right had we to rely on the justice of the British government

when we go abroad? They had been told that that government claimed perpetual allegiance from her subjects, and no American, whatever may have been his service, can hold the most trifling office there. Could we then throw open every office of the state—could we especially throw open the chair of the Executive chief magistrate to foreigners, who anticipate, when they land on our shores, that they shall be eligible to it after 5 years' residence? It was unjust, in every view of the subject, and hence he approved of the proposition of the gentleman from Allegany. Again, on our frontier we have one or two millions of people who may be arrayed in hostility against us. They are the subjects of a foreign power, the most formidable on the globe, and yet we are called upon to place at the head of our army, in time of war, a man who had only been here 5 years, and who could never divest himself of his allegiance to the country whence he came. He trusted the Convention would hesitate before they fixed in the constitution such a provision, which would place them at the disposition of a foreigner, who had not been a resident within the bosom of this country for more than 5 years. In conclusion, he repeated that we ought, from regard to the dignity of our state, to adopt some restriction, which would in itself be respectable, and shield us from the evil that might justly be apprehended; or on the other hand, adopt the reasonable abstract principles which had been laid down by the gentleman from St. Lawrence, which threw it open to all qualified electors.

Mr. SHEPARD was astonished at the feeling manifested there—as much astonished now as he was gratified when the word "native" was stricken out by a vote unparalleled for its unanimity. He was astonished to hear the gentleman enquire if there was any American feeling there, using the term in the most odious and invidious sense in which it could be applied. He trusted in God there was no *such* American feeling there; but he trusted there was that other American feeling which is marked by pride and gratification of belonging to a country embracing almost a whole continent in its circumference—a common country that has been made what it is by the infusion of people from every nation on the face of the earth—a country that owes its very independence and the blessings we here this day enjoy, among which is its capacity to make and frame a free constitution, to the assistance of foreigners. He repeated, he hoped there was none of that American feeling of which he first spoke, because such feeling would cover this country with the shame and disgrace and infamy of being wanting in the first principles of true gratitude. He was sorry also to hear the gentleman from Richmond allude to a large "protestant" body. This was not the place to censure in such terms as ought to be censured any allusion to such a body. In this country he had supposed it was the peculiar and enduring glory of our people that every man was at liberty to bow down morning, noon, and night, as he saw fit, and worship God according to the dictates of his own conscience or his own prejudice, without the interference of any man. The country had been disgraced enough already by this feeling. It had led to the burning of

churches in Philadelphia, and to popular outbreaks in one or two other portions of the country; and now he had hoped it was dead and buried forever. He had hoped that gentlemen of education and standing in the community would have been above bringing it forward on this floor. But the gentleman from Richmond told them further that a foreigner might be placed at the head of our army. And so he might if the people saw fit to put him there. And he would ask if our arms would suffer—if our national power would be tarnished—if our national dignity would fail of a proper vindication, in such a case? Our armies have been led by foreigners. We have had a Lafayette, a Steuben, and a Montgomery, and under such circumstances as conferred glory on the American armies. Then let him call the attention of the gentleman from Richmond to the fact that our armies have been led by Americans—some of them with great glory, but some of them with eternal infamy. Benedict Arnold led our army; and he would ask if we derived more glory than when the command was in the hands of a generous foreigner? While the foreigner was true to the land of his adoption, did not these Arnolds—men born on the soil—forget or disregard all their early associations and the land of their birth, and seek to transfer the allegiance to a foreign potentate? He hoped this debate would not be continued longer. In any public body the utterance of such sentiments as they had heard there was a disgrace to our people; and they disgraced not only those who uttered but those who listened to them. He hoped such sentiments would never again be uttered there, for ever.

Mr. HARRISON enquired if he was at liberty to reply to the gentleman from New York?

The PRESIDENT replied that the gentleman from Richmond had the floor.

Mr. HARRISON then would tell that young gentleman that he was an American. His ancestors and connexions had in various places in this country given demonstrations of their patriotism; and when "whigism" was really a distinctive quality he was a whig. Such reflections as had been indulged in by that young gentleman did not come with great propriety from him, towards one who stood up here to espouse that which he believed to be the true interest of the people of this state. He had no idea that his motives should be aspersed, and his principles, whether as a man or a politician, should thus be called in question. He was a republican and had always been so. He was a friend to republican institutions, and would go as far to support them as that young gentleman. He was a friend also to aliens, and would concede to them every office to which they could reasonably aspire; but he had no idea that a foreigner should come here indulging aspirations towards the chief magistracy from the moment he landed. He had no idea that an ambitious foreigner should come here with the expectation that he should be entrusted with the chief power of the state, both civil and military. If to question the propriety of such a concession was to occasion the indulgence of such language and such insinuations as they had just heard, he must submit to the charge. But he had yet to learn that those prin-

ciples which governed the wise and able men of the Convention of 1821 are to be deemed heretical, and to be considered as no longer republican. That section for which he was now contending was advocated in the Convention of 1821 by such men as Daniel D. Tompkins, General Root and Rufus King, who, though a federalist, was a man of undisputed patriotism. Was it then, he asked, heretical to contend for principles for which such men gave their voices and their votes? And was he for the expression of his opinion to be admonished by a man so much his junior? He would tell that young man that he was not thus to be restrained from the advocacy of those principles which were held by our revolutionary fathers, and have been entertained by the republicans of the country ever since. He had only a few words more to say, and it was only to reiterate an expression he had before used in speaking. For that purpose he begged permission to trespass a moment longer on the indulgence of the committee. He had made allusion to the Protestant interest; but he had no idea of arraying Protestants and Catholics against each other. It was merely from a respectful deference to a large body of citizens that he had spoken—a body that entertains great apprehensions on this ground, whether well or ill founded was not for him to say. And he appealed to the Convention if they should not respect so large and respectable a body, who though they could not be heard here, would, they might depend upon it, if the question were submitted to them, give expression to an opinion which would have some weight elsewhere. In conclusion he would again say, either adopt such distinctive qualifications as would stand out boldly, or abandon them altogether, and insert the proposition that every qualified elector shall be qualified to be Governor.

Mr. MANN said it would be seen that they were getting back to Buncombe speeches on this section of the report of committee number five, and were beginning at just where they had left off, after so many days discussion. He had risen to move the previous question, but he was unwilling to do that as he knew it would cut off the amendments. (Cries—"oh no, no, no," and "question, question.") If they would take the question he would not make the motion.

The yeas and nays were then taken on the amendment, and it was negatived—yeas 36, nays 73.

AYES—Messrs. Angel, Ayrault, F. F. Backus, H. Backus, Bascom, Brayton, Bull, D. D. Campbell, Crooker, Cuddeback, Dana, Dubois, Gardner, Gebhard, Graham, Harrison, Hutchinson, Jordan, Miller, Nicholas, Penniman, Richmond, St. John, Simmons, Smith, E. Spencer, Stow, Strong, Taggart, Tallmadge, Tutill, Waterbury, Willard, Wood, A. Wright, Young—36.

NAYS—Messrs. Archer, Bergen, Bouck, Bowdish, Brown, Bruce, Brundage, Burr, Cambreleng, Candee, Chatfield, Clark, Clyde, Conely, Cook, Cornell, Dodd, Dorlon, Flanders, Forsyth, Greene, Harri-, Hart, Hawley, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hyde, Jones, Kemble, Kernan, Kingsley, Kirkland, Loomis, Mann, McNitt, Maxwell, Morris, Murphy, Nellis, Nicoll, O'Connor, Parish, Patterson, Powers, President, Rhoades, Riker, Russell, Salisbury, Sears, Shaw, Sheldon, Shepard, Stanton, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Tilden, Townsend, Vache, Van Schoonhoven, Warren, White, Witbeck, Worden, Yawger, Youngs—73.

Mr. BASCOM moved to add after the words "unless he shall have been absent during that

time on public business of the U. S., or of this state" the words "or on business of his own."

Mr. STETSON suggested that the branch of the sentence should be stricken out which Mr. BASCOM proposed to amend.

Mr. BASCOM withdrew his motion to enable the gentleman from Clinton to move that amendment.

Mr. STETSON made the motion accordingly and it was agreed to.

Mr. JONES desired to have a vote on a motion which he had moved in committee of the whole. He therefore moved to strike out the words "who shall not have been five years a resident within the state" together with the words "next preceding his election," which had been introduced on the motion of Mr. ANGEL after the words "five years."

After a few words from Mr. DANA and Mr. RUSSELL,

Mr. JORDAN rose to point out the position in which it would leave us if the amendment should prevail. The laws of naturalization are beyond the power of the government of this state. The power to pass such laws was vested in the Congress of the United States, and it might so happen that a law might be passed that a foreigner might be naturalized in sixty days or six hours after he landed from shipboard, and thus he would at once become eligible to the office of Governor. He knew gentlemen would say it would be folly to vote for such a person, and on that point he had no disposition to say anything, for it had already been much talked about. He would however say that he had some respect for state rights and the sovereignty of the state, and as the rule requiring a five years residence before naturalization might be changed by Congress, he thought it would be suicidal to strike out the provision which required a five years residence within the state.

Mr. RUSSELL would not vote for a foreigner unless under extraordinary circumstances, who had not been five years a resident in the state, nor one who was under thirty years of age; and as a general rule he would insist on having a "native;" but while he judged for himself, he would extend the same right to his constituents to judge for themselves. He desired the people to be left unshackled.

Mr. JONES called for the yeas and nays, and they were ordered, and being taken, resulted thus—yeas 44, nays 66, as follows:—

AYES—Messrs. Archer, Bascom, Bergen, Bowditch, Brown, Burr, Cambreleng, R. Campbell, jr., Chatfield, Clark, Cook, Cornell, Danforth, Dodd, Dorlon, Flanders, Harris, Harrison, Hart, Hotchkiss, Hunt, Jones, Kernan, Loomis, Mann, Murphy, Nellis, O'Connor, Patterson, Powers, Russell, Shepard, Stetson, Swackhamer, Taft, W. Taylor, Tilden, Townsend, Vache, Van Schoonhoven, Warren, White, Witbeck, Worden—44.

NOES—Messrs. Angel, Ayrault, F. F. Backus, H. Backus, Bonck, Brayton, Bruce, Brundage, Bull, D. D. Campbell, Candee, Conely, Crooker, Cuddeback, Dana, Dubois, Forsyth, Gardner, Gebhard, Graham, Hawley, Hoffman, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kingsley, Kirkland, McNitt, Maxwell, Miller, Morris, Nicholas, Nicoll, Parish, Penniman, President, Rhoads, Richmond, Riker, St. John, Salisbury, Sears, Shaw, Sheldon, Simmons, Smith, E. Spencer, Stanton, Stow, Strong, Taggart, Tallmadge, J. J. Taylor, Tuthill, Willard, Waterbury, Wood, A. Wright, Yawger, Young, Youngs—66.

The section now stood as follows:—

§ 2. No person, except a citizen of the United States, shall be eligible to the office of Governor; nor shall any person be eligible to that office who shall not have attained the age of 30 years, and who shall not have been five years next preceding his election, a resident within this state.

Mr. CHATFIELD moved to strike out the whole section and insert as follows:—

Every qualified elector of this state shall be eligible to the office of Governor.

Mr. WORDEN expressed his gratification with the amendment of the gentlemen from Otsego, inasmuch as it would bring them to a direct vote on a question which had taken them so much time to discuss. He however asked that gentlemen to qualify its language. He suggested the following as a substitute:—

The qualified electors of the state are hereby declared competent to, and may in the manner prescribed in this article, elect any one of their number Governor of this state.

Mr. CHATFIELD cheerfully accepted the substitute, and called for the yeas and nays thereon, which were ordered.

Mr. CHATFIELD, to obviate some objections which had been raised—(one being an objection by Mr. RHOADES, that Mr. HOFFMAN would be cut off from being a candidate for the Governorship, if this qualification were retained, inasmuch as he had changed his residence from Herkimer county to New-York)—said he would amend by adding the words, "and no person shall become ineligible in consequence of removing from one part of the state to another"—(cries of "oh no, withdraw it".) Mr. C. said if his friend from Herkimer desired to be considered a candidate for Governor, he would press his motion. (Renewed cries of "oh, no.") Mr. C. then withdrew his amendment.

Mr. LOOMIS said this amendment was better adapted to another part of their business than to the present section. He also added that it seemed rather *ad captandum* than to desire to express in the Article the restrictions they intended to impose on that subject. He then proceeded to assert the right of the Convention to impose restrictions for approval by the people. He also pointed out the mode of electing Governors, the people limiting themselves to the candidates nominated by the delegates they have appointed for the purpose of selection, and said the question was between the Convention and the convention to nominate candidates. The qualifications which the constitution might prescribe, he said were analogous to the rules this Convention laid down for its own guidance. In this view of the case he should vote against the proposition.

Mr. WORDEN, on the suggestion of some gentlemen, agreed to substitute the words "in this constitution" for the word "Article."

Mr. SIMMONS opposed the amendment. He opposed it because it was ultraism, and also because it was not true.

Mr. CHATFIELD preferred upon reflection his own amendment to the substitute of the gentleman from Ontario.

Mr. WORDEN then felt compelled by parliamentary courtesy to withdraw his substitute.

Mr. SHEPARD hoped not.

Mr. CHATFIELD then renewed his amendment, which he preferred because it was a dis-

inct affirmative proposition. In the course of some remarks which he made in support of his amendment he alluded to Mr. SIMMONS' denunciation of Mr. WORDEN's proposition as ultraism. He said almost every reform suggested had been combatted on the same ground, but he was sorry the gentleman from Essex had not discovered that these ultra reforms were darling measures of the people. He warned the gentleman from Essex that the men who took this high federal ground were digging their own graves, and that if the gentleman from Essex intended to stand with the people he must act and go with the people.

Mr. STETSON urged that this was a matter of very little importance. So long as we left to the people the higher and greater qualifications of integrity and capacity, it was scarcely worth while to insist on these minor qualifications of age and residence. They were necessarily included in the greater.

Mr. R. CAMPBELL protested against a further consumption of time on this question. Gentlemen were assuming a great deal who supposed that they could instruct the Convention in regard to it. It was high time we stopped talking and went to work.

Mr. JORDAN urged that this question had been distinctly settled this morning—and he knew of no reason why the Convention should change its judgment, unless it was the maledictions of the gentleman from Otsego (Mr. CHATFIELD) warning his political friends how they voted against this amendment, and his opponents that they were digging their graves here if they dared vote against it. Mr. J. said these bugbears had no terrors for him. He had dug his own political grave some 15 years ago, by retiring voluntarily from public life. And he trusted that these maledictions from the would be leader of the responsible majority here, would not frighten members into a change of their recorded and honest sentiments. For one he was willing to place himself before this people on these restrictions of 30 years of age and 5 years residence, and to have it understood that in voting against this amendment he voted for those restrictions.

Mr. TALLMADGE thought the proper motion would be a motion to reconsider, the Convention having decided to retain these qualifications. Now, he went as far in trusting the people as any Jacobin or Radical. But that was not the question. It was whether it would not be expedient and prudent to guard the people themselves against being overawed or dragooned into the support of candidates in turbulent times, by an actual array of military force. At the proper time, he gave notice that he should move to amend, so as provide, in addition to these qualifications of age and residence, that no person shall be eligible who is not a natural born citizen, or who shall not be a citizen at the time of the adoption of this constitution.

Mr. BRUNDAGE said he desired to explain an apparent inconsistency. He had voted against retaining this qualification of age, not so much because he thought it important whether it was retained or not; but because he thought all these matters would be attended to by the people, whether their attention was specially called to

it or not, in the Constitution. At the same time, he had received information from home, which led him to believe that some importance was attached to these restrictions by his constituents; and though his own opinion was different, he felt bound to carry out what he supposed was their wish, and should vote accordingly for this qualification of five years' residence.

Mr. LOOMIS said he should prefer this amendment to the section as it stood, but for the fact that it would exclude electors who had changed their residence five months before an election.

Mr. CHATFIELD suggested that if the word qualified was struck out, it would relieve it of that difficulty.

Mr. LOOMIS thought not. The word qualified was mere surplusage.

Mr. CHATFIELD replied that the temporary loss of one's vote, at a single election, by a change of residence, did not make him any the less an elector.

Mr. LOOMIS thought there might be a doubt about this. But Mr. L. did not regard this amendment as material, except that it seemed to harmonize with the genius of our government. Still the objection, he mentioned, was a serious one.

Mr. W. TAYLOR suggested as a modification, his proposition, offered in committee of the whole—to say, every person who had the qualifications of an elector, save those of county and town residence.

Mr. CHATFIELD preferred to add that no change of residence within this state, should disqualify.

Mr. BRUCE opposed the amendment. He could not vote for it without overturning the vote he had already given. Nor did he believe that the convention were prepared, after having solemnly determined to retain these qualifications, to turn round and obliterate them, under the appeals that had been made to them. He voted against the qualification of age—but, the majority being decided against him, he bowed to the decision with perfect cheerfulness; and he believed the convention ought to adhere to its decision.

Mr. R. CAMPBELL here moved the previous question, but

Under intimations from all quarters that there would be no more debate, waived it, and

Mr. CHATFIELD'S motion to amend was negatived—ayes 43, nays 71, as follows:

AYES—Messrs. Archer, Bascom, Bergen, Bowdish, Brown, Burr, Cambreleng, R. Campbell, jr., Chatfield, Cook, Cornell, Danforth, Dodd, Dorlon, Flanders, Harris, Hart, Hunt, Jones, Kernan, Loomis, Mull, Murphy, Nellis, O'Connor, Patterson, Powers, Russell, Shepard, Stephens, Stetson, Swackhamer, Taft, W. Taylor, Tilden, Townsend, Vache, Van Schoonhoven, Warren, White, Witbeck, Worden, W. B. Wright—43.

NAYS—Messrs. Angel, Ayrault, F. F. Backus, H. Backus, Bouch, Brayton, Bruce, Brundage, Bull, D. D. Campbell, Candee, Clark, Clyde, Conely, Crooker, Cuddeback, Dana, Dubois, Forsyth, Gardner, Gebhard, Graham, Greene, Harrison, Hawley, Hoffman, Hotchkiss, Hunter, A. Huntington, B. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kingsley, Kirkland, McNitt, Maxwell, Miller, Morris, Nicholas, Nicoll, Parish, Penniman, President, Rhoades, Richmond, Riker, Ruggles, St. John, Salisbury, Sears, Shaw, Sheldon, Simmons, Smith, E. Spencer, Stanton, Stow, Strong, Taggart, Tallmadge, J. J. Taylor, Tuthill, Waterbury, Willard, Wood, A. Wright, Yawger, Young, Youngs—71.

Mr. BRUNDAGE offered the following, as a substitute for the section :—

Every citizen who has been a resident of this state for five years next preceding the election, unless absent during that time on public business of this state, or the United States, shall be eligible to the office of Governor.

Mr. RICHMOND remarked that we had already voted on that three times.

The amendment was lost.

Mr. TALLMADGE offered the following substitute :—

No person except a natural born citizen, or a citizen of this state at the time of the adoption of this constitution, shall be eligible to the office of Governor; neither shall any person be eligible to that office who shall not have attained to the age of 30 years, and been five years next preceding, a resident within this state.

This amendment was lost.

Mr. SHEPARD moved to strike out and insert :

"The electors of this state are competent to, and may elect any one of their number to the office of Governor; and no elector shall be rendered ineligible to such office by any change of residence in this state."

Mr. RICHMOND remarked that we had voted on that four times this morning.

Mr. CHATFIELD asked for the ayes and noes on the amendment, and they were ordered.

Mr. TILDEN regarded these proceedings as most egregious trifling. He hoped the vote on this proposition would evince the sense of the convention in regard to it.

Mr. LOOMIS asked if it was in order.

The PRESIDENT ruled that the proposition being substantially that of the gentleman from Otsego, was not in order.

Mr. STOW moved to insert after the word state :—

"But no person shall be deemed to have lost his residence by reason of having been absent during that time on business of this state or of the United States."

The PRESIDENT ruled that this was substantially what had been struck out—and could only be reinserted by a motion to reconsider.

Mr. STOW moved a reconsideration for that purpose—which motion, under the rule, lies over.

The second second was then adopted.

The third section was then read, as follows :—

§ 3 The governor and lieutenant-governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature shall, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenant-governor.

Mr. SIMMONS offered the following.—

Strikes out all after the word legislature, in the 2nd line, and insert—"The persons respectively having a majority of all the votes given respectively for Governor and Lieut. Governor, shall be elected :—but in case no two persons shall have received respectively a majority of votes, the two houses of the legislature at its next annual session, shall forthwith proceed to choose by ballot a Governor and Lieut. Governor, from all the persons voted for by the people; and if no choice is made upon the first ballot, the two houses in joint ballot, shall continue to ballot, until a choice is made, rejecting, after each such successive balloting, all votes given in the next balloting for the two persons receiving respectively the lowest number of votes by the people and not before rejected."

Mr. SIMMONS insisted that the principle of representative government required that the ma-

jority rule should be practically adopted and put in force. The tendency of this plurality principle was to keep up a sort of triangular, if not multiangular state of parties, very much to the public detriment. He had lived 30 years in the state, and a large portion of the time under a minority Governor. If that was democracy—and it would seem from the learned gentleman from Otsego, it had got narrowed down to very narrow limits—true democracy had—the prospect was that we should have something like an infinite divisibility of parties. Here would be the abolitionists, the old and new Hunkers, the Barnburners old and new—the Hartford conventionists too would be divided into two sections—for they did not all agree on that floor—and he should really like to have something of a respectable faction to govern the state, if we must be governed by one. It had been suggested that he had omitted the anti-renters. He begged pardon. But they were too large perhaps to be considered a faction. They would hold the balance of power shortly. Already the state was divided into four or five factions—and instead of that wholesome effect which the existence of two parties was calculated to produce, the tendency was to encourage the getting up of new issues or hobbies under which to divide up and destroy the two parties, and make our elections a mere scramble for office. He might be entirely alone in this vote. But that was of no consequence to him. For notwithstanding the salutary warning of the gentleman from Otsego, he was inclined to think that old Moriah and some other towns in his county, would take care of him. It was like the late Mr. Van Rensselaer of this city, who when asked to head a subscription for a church or some such object, generally told the applicants first to get all they could from others, and then to draw on him for the balance. Such was old Moriah. [A laugh.] Mr. S. was for reform, and he hoped to see the professed friends of true democracy and the majority principle coming to his aid in this amendment. He was for giving the control to the majority—not to a faction or a plurality.

Mr. A. W. YOUNG briefly urged that there had been discussion enough on this article, and that it was time the details had been settled.

Mr. SIMMONS' amendment was lost.

The third section was then adopted.

The fourth section was then read as follows :—

§ 4. The governor shall be commander-in-chief of the *military and naval forces* of the state. He shall have power to convene the legislature, (or the Senate only,) on extraordinary occasions. He shall communicate by message, to the legislature at every session, the condition of the state, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services, a compensation to be established by law, which shall neither be increased nor diminished after his election and during his continuance in office.

Mr. WOOD moved to add,

"But in no case shall he receive more than \$4,000 annually."

The proposition was negatived.

Mr. TALLMADGE moved to strike out "continuance in office, and insert "term of office"—saying that the word continuance might imply

the continuance of a Governor in office for a second or third term.

Mr. STETSON said these words were inserted at his instance, and avowedly for the purpose of avoiding the construction the gentleman

proposed to give to the section.

Mr. T's amendment was lost, and the fourth section was adopted.

Adjourned to 9 o'clock to-morrow morning.

SATURDAY, JULY 18.

Prayer by the Rev. J. KNAPP.

VOLUNTARY RESTRICTION OF DEBATE.

Mr. BURR offered the following resolution:—

Resolved, That for the future the members of this Convention will voluntarily restrict themselves in speaking, so that on any question, no member will occupy more than fifteen minutes.

Mr. B. said his object was indicated by his resolution; and he appealed to the gentlemen composing the Convention, if there was not a propriety, nay a stern necessity, to pursue the course pointed out. The Convention commenced on the 1st of June; this day was the 18th of July; they had therefore spent 48 days, from which, if 6 Sabbaths were deducted, 42 working days remained. Again, deduct the 3 holydays which they had appropriated, and there were 39 days left during which they had been at work. Of that number 20 days were spent in arranging the preliminaries of their business, and 19 were consumed in debating, mostly the celebrated report of committee number five.—They had passed upon that report in committee of the whole, and yesterday they took it up in the house; they spent the whole day upon it and were busily employed till they reached the fourth section, which is now under consideration. There were still seven sections to consider, and whether they were to finish it to-day was problematical. They might not; but he would assume, if they pleased, that it would be disposed of. Now he took it for granted that was not more than one-eighteenth part of what they had to do. He doubted if it was of the average length of the reports that were to come; but allowing it to be so, if they continued to labor until the 1st of October and beyond that, he verily believed they could not go; they had three and two-third days for the consideration of each report. Now he came not here to make speeches. His constituents were not overhauling the daily reports for his doings and his speeches. They did not expect him to come here for that purpose. They knew his inability to shew off in that manner. They knew he made no pretensions to commanding eloquence. But they believed that he possessed some common sense—in a small degree at least. They believed he had some business talent—that he was capable of taking up a paper like the Article before them, of reading its sections, and of examining and understanding them for himself. He believed they were not mistaken. He believed he had that talent. He had listened during the time they had been in session there to a great deal of eloquence. By many speeches he had been edified; by others he had been instructed and delighted; nor would he complain if he were longer to sit and listen to these streams of eloquence, if he believed they had the time to spare. But as he remarked before, it seemed to him an impe-

rious necessity demanded that these debates should be curtailed. He knew not the motives of gentlemen in using the arguments they did; but it was a fact that on any small proposition, however trivial, they had four or five eloquent speeches on each side, pouring on the Convention a flood of argument, to establish what to him looked plain, and what he could understand by simply reading it. Now did the eloquent gentlemen who belonged to the Convention suppose that it was necessary for them to pour on the lay members of the Convention such torrents of argument in order to enlighten their minds, and show them the import and meaning of those sections? If they do, he must be permitted to say they were mistaken. He had become acquainted with a large number of gentlemen who, like himself, were plain farmers, yet he ventured to say not one amongst them needed half the argument that had been used to convince them what was the proper course for them to take on the questions that came before them. Now would not the gentlemen who are in the habit of debating these questions, and over debating them—would they not conform to some rule as intimated by this resolution? If the question were put from the Chair whether they had not had too much debating thus far, he ventured to say there would be one universal response, and that response would be "aye." It was in the mouth of every man, every member of the Convention, that they took up too much time in debating. But he would not enlarge lest he might be accused of taking up more than his share of time.

Mr. NICOLL said the gentleman's resolution was worthy of approval. It was really time that they should do something; but with all due respect, he suggested if the resolution was not impracticable. The gentleman must know that a great many subjects ought to be explained which could not be done in speeches of fifteen minutes. He hoped therefore that the Convention would be satisfied with the object of the mover, and lay the resolution on the table. He hoped the necessary effect would be produced, and that the debate would be curtailed; but he repeated there could not be such a restriction as that which the gentleman proposed. He hoped the gentleman would withdraw his resolution. It was sufficient for the Convention to understand the sentiments of the lay members; and if the gentleman did not withdraw it, he should move to lay it on the table.

Mr. SWACKHAMER suggested that it should be referred to the committee on rules.

Mr. NICOLL concurred in that view and hoped it would go to the committee on rules.

Mr. BURR said perhaps his resolution had answered the purpose; he would, therefore withdraw it.

It was withdrawn accordingly.

ORDER OF BUSINESS.

Mr. LOOMIS offered the following resolution:

Resolved, That it is the duty of the Convention to proceed, without delay, to the consideration of the restrictions proper to be established against special legislation, and the creation of public debt, and the reorganization of the legislature, and judicial departments of the government.

Mr. L. said he felt constrained to call the attention of the Convention to the order of its business. He did so, more especially, in consequence of the uncereemonious manner in which the report of the select committee was yesterday laid on the table, on the motion of the gentleman from Oneida (Mr. KIRKLAND,) after an argument from him without hearing the other side. It appeared to him that the Convention must be satisfied that it was called for the purpose of discussing and settling certain great and important questions—that there were particular and prominent subjects before the people, which induced them to call this Convention together, among which, were those subjects that were likely to come up first for consideration. The length of time that had elapsed was now seven weeks—half the time, perhaps, that ought to be spent on the whole subject—and yet they had not touched any one of those questions which the Convention was called to consider. The powers and duties of the Executive, so far as they have been settled in the debate which they had been going through for the last few weeks, were not subjects agitated and brought to the public attention, and might have been left to the last. The subject which would come up next, if the Convention should fail to establish an order, was one to which the public attention had not been called and yet it was a subject that would be fruitful of debate, more than any other—he alluded to the bill of rights. That was the next in order—(cries of "Oh no, that's a mistake.") Now who ever heard as an inducement to call this Convention, any lack of declaration on that subject? It was not fair, then, when they were called for certain great and important objects, to start their business with those of less importance, to which the public attention has not been called. He thought it was time—and in that opinion he hoped the Convention would concur—to take up those subjects to which public attention had been called. The gentleman from Oneida yesterday in moving to lay the report on the table, after making a speech himself, did it under color that it would take up time to consider it. Take up time to settle the order of business, after taking up three weeks on questions for which the Convention was not called together! He hoped the resolution would be adopted, and then these questions of less importance could be discussed, if they pleased, after they had got through the rest. It was with this view a few days ago he felt constrained—and he did so with the advice of many members here—to offer his resolution to settle the order of business. He had no particular choice as to precedence, except to take up first the great subjects which have agitated the public mind—those subjects on which delegated power has been abused, and in which we have lacked constitutional provisions—and he should not have the slightest feeling if the Convention should establish any other order than

that reported by the special committee. He had felt bound to offer this resolution, that he might submit these remarks on this question, for in calling for the order of business he should not have been at liberty to do so; and he was free to say that his object was to take up this question this morning and dispose of it. They should probably to-day get through the report of the committee of the whole, now before the Convention, and proceed to the next subject, and he deemed it important to settle what shall be the order, and what shall be the next subject. He hoped there would be no serious debate on this question of priority of business. It did not become him, with that view to state the reasons why he had placed them in the order in which they stood in the resolution, but he would do so if it were desired.

Mr. KIRKLAND said the gentleman from Herkimer had announced his intention in offering this resolution to be to hang a speech upon it. Now they could not spare time for these discussions. This resolution did not propose any mode of action. It only says abstractedly that so and so should be done. But it was competent for the members to decide as the questions arose what should be the order of business without prescribing it in advance. He desired to leave things according to their natural course, and the house could pass upon them without much discussion; but if they attempted to prescribe an inflexible rule, the whole day would be consumed in discussing the several propositions. The resolution as it stands, would tend to no practical result; it advises and recommends no particular action, recommending simply an abstract proposition, and he apprehended they could not properly spend their time on propositions that were merely abstract, and leading to no result. He again, as yesterday, moved to lay the resolution on the table.

Mr. WARD desired the gentleman from Oneida to withdraw that motion to enable him to say a word or two.

Mr. KIRKLAND withdrew it accordingly.

Mr. WARD said he had but one word to say. They had no rule, it was well known, respecting the order of business, and therefore the gentleman from Herkimer did right in presenting the resolution which had been laid on the table, to establish what the order should be. How was it in all other legislative bodies? It was that a general order was adopted, upon which every bill as reported was entered, and they were taken up in their order. In this Convention there was no such general order. It was therefore important that some rule should be adopted in regard to it, rather than leave the subject to be taken up at the wish of any one man. He desired then that it should be considered and that this resolution would not be laid on the table. They had no desire to discuss it; none at all; but it was wise and prudent that they should establish some rule.

Mr. TALLMADGE said they could not adopt the order which had been reported, for several of the great committees had not yet reported.—There were other reports already made, that were of more importance than some of those to which the gentleman from Herkimer wished to give preference. He enumerated several ques-

tions of great importance, which required early attention, amongst which was the one embracing the rights of married women, and those peculiar cases of oppression in which witnesses are incarcerated in jail, to appear against felons, while those very felons, by the aid of their friends, have obtained bail, and are running at large. He ventured to say that the Convention would be astonished when the developments were all made on this subject. He renewed the motion to lay on the table.

The motion prevailed to lay on the table—49 voting in the affirmative and 32 in the negative.

Mr. LOOMIS then called for the consideration of the report of the select committee, which was laid on the table yesterday, and on that he called for the yeas and nays. The yeas and nays were ordered, and resulted thus—yeas 47, nays 57, as follows:

AYES—Messrs. Angel, Brundage, Cambreleng, R. Campbell, jr., Clyde, Cornell, Cuddeback, Dana, Danforth, Dorion, Greene, Harrison, Hart, Hoffman, A. Huntington, Hutchinson, Jones, Jordan, Kemble, Kernan, Kingsley, Loomis, Mann, McNitt, Maxwell, Morris, Nellis, Nicoll, Powers, President, Rhoades, Rugles, Russell, Salisbury, Sears, Sheldon, E. Spencer, Stephens, Stetson, Taft, W. Taylor, Tuthill, Ward, White, Witbeck, Wood, Youngs—47.

NOES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Bascom, Bouck, Bowditch, Brayton, Brown, Bruce, Bull, Burr, D. D. Campbell, Candee, Chatfield, Conely, Cook, Crooker, Dubois, Flanders, Gardner, Gebhard, Harris, Hawley, Hotchkiss, E. Huntington, Hyde, Kirkland, Miller, Murphy, Nicholas, O'Connor, Parish, Patterson, Penniman, Richmond, Riker, St. John, Shaver, Shaw, Shepard, Simmons, Smith, Stanton, Stow, Swackhamer, Taggart, Tallmadge, J. J. Taylor, Van Schoonhoven, Warren, Waterbury, Willard, Worden, A. Wright, W. B. Wright, Yawger, Young—57.

So the Convention refused to consider the report.

RESOLUTION DAY.

Mr. BROWN offered the following resolution:—

Resolved, That resolutions except such as shall be reported from standing or select committees, shall be offered on Monday morning of each week, and at no other time.

A conversation ensued on the propriety of adopting this resolution to save the time that was consumed daily in the discussion of resolutions offered on individual responsibility, many of which were of no earthly utility. In the discussion Messrs. BROWN, CHATFIELD, BASCOM, HOFFMAN, SALISBURY and DANFORTH took part. The resolution was then referred to the committee on rules.

The PRESIDENT presented to the Convention a communication from Mr. Wm. Paxton Hallett of New York, respecting the complaint made by Mr. Burtis Skidmore of his official conduct, into which he invited a rigid investigation. It was referred to the committee on the judiciary.

EXECUTIVE DEPARTMENT.

The Convention then resumed the unfinished business of yesterday, being the report of the committee of the whole of the article on the powers and duties of the Executive. The fourth section being under consideration.

Mr. FLANDERS said it had been suggested to him that this section was not comprehensive enough. He quoted from other constitutions to show how this matter was received in other

states, and then moved to amend by adding in the second line, after the words "the Governor shall be commander in chief of the military and naval forces of the state," the words "except when they shall be called into the actual service of the United States"—and after the word "forces" in the second line, the words "and of the militia."

Mr. SALISBURY objected to the amendment on the ground that the section itself had been approved and passed over on Friday.

Mr. PATTERSON objected to the amendment, because he thought the section was better as it stands. When our military and naval forces should be called into the service of the United States was the very time when he wished them to be commanded by our own Governor, which this amendment would prevent.

Mr. WARD supported the amendment. The term admiral of the navy was properly in the constitution of 1777, because being an independent colony at that time, we were entitled to have both our own land and naval forces; but subsequently all such power was conferred on the U. S. government. The Governor is now commander-in-chief of our militia; but a small portion of our militia might be called into the general service and the Governor could not then be their commander-in-chief, that power being vested in the President of the United States.—The amendment, therefore, was necessary to obviate any difficulty that might occur.

Mr. BROWN thought the honorable chairman of the military committee entirely mistaken, and that the section was correct as it stood, as in any such event the Governor must necessarily hold his command in subordination to the President.

Mr. FLANDERS said he had renewed the amendment in deference to the opinion of others, and contrary to his own. He now withdrew the amendment.

Mr. WARD renewed it.

Mr. SIMMONS said it struck him the phraseology of the fourth section was wrong, and would be unconstitutional without the amendment or something equivalent to it. He should prefer to have the word "militia" omitted, but he would rather have it there than lose the whole amendment. What, he inquired, was the meaning of the words "commander-in-chief?" If the organic law of this state declared the Governor to be commander-in-chief of the forces of the state, absolutely and unqualifiedly, without distinction of time, whether of war or peace, then the Governor was so as far as the constitution could make him so; and the only way he could cease to be commander-in-chief and subordinate to the President, in conformity to the United States constitution, was by construction. He thought the language of the constitution should be plain and unambiguous.

Mr. O'CONOR advocated the amendment. By the U. S. constitution, the President is the commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States, and he contended there could not be two commanders-in-chief.

Mr. VAN SCHOONHOVEN thought the section was correct without the amendment. The

Governor would be commander-in-chief in the state, but when the militia were called into the service of the United States they become United States troops, and would be under the command of the President.

Mr. W. TAYLOR and Mr. CONELY continued the discussion.

The amendment was then negatived, and the fourth section was adopted.

The fifth section was then read as follows:—

§ 5. The governor shall have power to grant reprieves and pardons after conviction for all offences except treason and cases of impeachment. He may commute sentence of death to imprisonment in a state prison for life. He may grant pardons upon such conditions and with such restrictions and limitations as he may think proper. Upon convictions for treason, he shall have power to suspend the sentence until the case shall be reported to the legislature at its next meeting. He shall in his annual message communicate to the legislature each such case of reprieve, commutation and pardon granted by him since his next previous annual message, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Mr. SHEPARD moved to amend by inserting the word "commutations" in the first line, after the words "the Governor shall have power to grant reprieves"—and to strike out the words in the 3d, 4th, 5th and 6th lines as follows:—"He may commute sentence of death to imprisonment in a state prison for life. He may grant pardons upon such conditions, and with such restrictions and limitations as he may think proper."

Mr. HOFFMAN thought the amendment as well as the entire section deserved some consideration, inasmuch as he doubted if the Convention really designed to confer on the Governor all the authority without any power on the part of the legislature to interpose to modify it by law.

Mr. O'CONOR suggested a modification of the amendment, viz: to strike out the words—"he may commute sentence of death to imprisonment in a state prison for life. He may grant pardons."

Mr. SHEPARD accepted the modification.

Mr. TILDEN said the practice had been for the Executive to commute sentences, that power being supposed to be derived from the clause giving him authority to grant pardons and reprieves generally. Pardons had also been granted to take effect after the lapse of a specified time from 1 to 4 years. This had the effect of shortening or commuting a sentence, though it was of very doubtful propriety. He desired that all doubts should now be settled; and he agreed with the gentleman from Herkimer, (Mr. HOFFMAN,) that some power should be reserved to the legislature to prescribe rules by which the Executive should grant pardons. This might tend to lessen the multiplicity of applications for Executive clemency, and the duty of the Governor in that respect. He hoped the amendment would prevail.

Mr. CROOKER favored the amendment, for it would effect the object he had sought to accomplish, of giving the Governor power to commute sentences for a term of years. He was however not satisfied to retain in the hands of the Governor alone so onerous a duty and so tremen-

dous a power. He understood the applications for pardon amounted to 600 per annum.

Mr. TILDEN said they were often 800 or 1,000.

Mr. CROOKER said if that was so and they were made upon petition, affidavit, or statement, much time would be occupied in their consideration, and in the correspondence necessarily attendant thereon. He thought the Governor should be greatly relieved from the burden of that duty, or that he should be controlled, or guided or aided therein, by some other tribunal.

Some conversation ensued in relation to the construction of the sentence, in which part was taken by Messrs. TILDEN, STETSON, CROOKER, CHATFIELD, and KIRKLAND. Messrs. VAN SCHOONHOVEN and TAGGART then continued the debate on the amendment.

Mr. CHATFIELD proposed to amend so as to retain the section down to the word limitations, in the 4th line, and then substitute the words "as may be prescribed by law," for the words "as he may think proper."

Mr. HOFFMAN was in favor of the amendment of the gentleman from Otsego. He was not one who believed that the interests of society required the abolition of capital punishment. One objection to the abolition of capital punishment, was the danger that there would be of the murderer again being turned loose on society to endanger the security of life. It had been said, "I would go with you and vote with you, if I could feel assured that the murderer, guilty of blood, shall be confined for life, without the power of commutation." If the amendment to the amendment, submitted by the gentleman from Otsego, were adopted, the Governor would have power to commute for imprisonment for life, leaving power with the legislature to make all other regulations. But if power were given to the Governor to turn loose a convicted murderer, society would have no security, and they must take arms to defend themselves.

Mr. SIMMONS opposed the amendment of the gentleman from Otsego, but was in favor of the amendment of the gentleman from New-York. He said, here they had arrived at a point of some consequence, for the question was whether the legislature should have the supreme control over the pardoning power, or whether it should be vested in the Executive. If the legislature should have the power to direct the Executive in the exercise of the pardoning power, it would, in effect be appropriating the Executive power, and making the Executive, in the language of Mr. Jefferson, a mere directory. And if the exercise of that power were restricted before the commission of the offence, it would tend to destroy its value and weaken the criminal code as a motive for action—and he quoted from Story an argument in favor of vesting the pardoning power in the Executive alone; and said he desired, in the language of that great jurist, to leave that power unfettered and unrestricted in the hands of the Executive.

Mr. MORRIS explained the section and the object of the committee in framing it. He said in reference to that portion of the section which gave the Governor power to grant pardons, under such restrictions and limitations as he may

think proper, that it was a power which could be appreciated in New-York and other large cities, where some very genteel citizens were London pickpockets. It was not to be used to send our criminals to other countries, but for the purpose of sending back criminals that had been disgorged upon us. It was a well known fact that criminals from other countries were sent here. He cited the instance of a German Swiss that murdered a family on Long Island, and who, it was found out, had committed a similar crime in his own country, for which he was pardoned that he might come here. Mr. M. saw nothing hard to understand, or conflicting in this section, as it stood before this word only was put in. Without it, the section authorized the Governor in all cases to commute the punishment of death to imprisonment for life. That included treason. But the only objection was that the Governor himself might commit treason. But in such a case impeachment would precede a conviction for treason, and he would then be no longer Governor.

Mr. STETSON spoke of the emissaries of the Governor.

Mr. MORRIS replied that the emissaries of the Governor might be also emissaries of a majority of the Senate—and the very tribunal proposed here might be incapacitated to act as much as the Governor himself.

Mr. CHATFIELD called to order. The question of treason was not embraced here.

Mr. MORRIS was very glad the gentleman stopped him—else he might have gone on a half an hour longer than he intended. If the same kindness had been extended to others, we should not have had his learned friend's speech, (Mr. Burr.) Mr. M. went on to say that he objected to this amendment because it was not merely an alteration of verbiage but of the meaning of the section. If the Convention desired so to alter the meaning they would vote for it.

Mr. RHOADES sustained Mr. CHATFIELD's amendment. The power of pardon was a dangerous power, and ought to be restrained. So with the power of commutation. If the pending amendments were rejected, he should move to give this power to the Governor, by and with the advice and consent of the chief justice of the supreme court and the Attorney General. He would also have it in the power of the legislature to prescribe the form of application for pardon—for he believed that it would very much diminish the number, if it was known that publicity would be given to them, and to the names of those signing the application.

Mr. CHATFIELD urged the necessity of giving the legislature power to prescribe general restrictions and limitations of the pardoning power—that they might be known and understood. Otherwise juries would exercise that mercy which they doubted the power of the Governor to exercise.

Mr. SIMMONS asked what the difference would be between such regulations and the criminal code itself? The very nature and essence of the pardoning power, consisted in the imperfection of any human regulations, on account of their generality, to meet special and unforeseen cases.

Mr. CHATFIELD'S amendment was lost 36 to 57.

Mr. TAGGART moved to amend by adding after the word proper.—

"But the legislature may by law limit, regulate or prohibit the exercise by the Governor of the power to grant pardons after convictions for murder, or to grant conditional pardons."

This was lost, and Mr. SHEPARD's amendment adopted.

Mr. CHATFIELD moved to strike out the words "of the criminal," and insert "thereof." Agreed to.

Mr. RHOADES moved to insert after the word proper:—

"But commutation of the sentence of death to imprisonment in the state prison, shall be made by the Governor, by and with the advice and consent of the Chief Justice of the Supreme Court and the Attorney General of this state; and in such cases the power of pardon shall not be exercised by the Governor except with the advice and consent of the Chief Justice and Attorney General."

This amendment was lost.

Mr. CLYDE proposed to transpose the word "only," so that it should follow treason.

Mr. TILDEN thought the word unnecessary.

Mr. CLYDE's motion was lost.

Mr. TALLMADGE moved to strike out the word "only." Carried—47 to 21.

Mr. STOW moved to insert after the word proper—

"But the legislature may by law require that notice shall be given to the district attorney of the county where the trial was had, or to the judge before whom the cause was tried, or to both said district attorney and judge, before a pardon shall be granted; and the legislature may require the Governor to communicate to them the reasons for which a pardon was granted."

Mr. PATTERSON thought the latter part of the amendment unnecessary. The section already provided for that.

Mr. STOW replied that his amendment was designed to authorize a call for the reasons in detail in particular cases—besides compelling in all cases notice to public officers of the pendency of such applications.

Mr. HOFFMAN said, if the amendment of the gentleman from Otsego had prevailed, then there would have been force and propriety in the amendment. But as the Convention had settled that the terms, limitations and conditions on which the pardoning power should be exercised, should rest exclusively with the Executive, why should the legislature call on him for his reasons? After he had exercised the power of what use would it be to call on him, except to get up a newspaper discussion about it?

Mr. NICOLL urged that it would be a restraint on the Executive, to know that the facts on which he based his action, in all cases might be called for and published.

Mr. PATTERSON moved to strike out the latter part of the amendment. It imposed too much on the Executive, and it might be impolitic for the Executive to communicate all the reasons on which he might have acted.

Mr. STOW had left it discretionary with the legislature to call for this information—and it was not to be supposed that they would make calls on the Executive in a doubtful case, without the usual reservation, "if not inconsistent with the public interest." His object was to

hold the Executive to his accountability in these matters, which could not be, so long as the motive of his action was locked up in his own breast.

Mr. VAN SCHOONHOVEN thought it singular that those who went for giving the Governor the unlimited power of pardon, should distrust him so far as to desire this check on him, if that could be called a check which no one pretended could be of any avail, as it could only come into use when all the mischief, if any, was done.

Mr. STOW replied that this information might lead to an impeachment. But there was still another tribunal—that of public opinion—which gentlemen seemed to overlook.

Mr. CHATFIELD asked if the gentleman would compel the Governor to furnish evidence against himself?

Mr. STOW replied that when a governor had no motive for his action but a bad one, he would of course decline to communicate them. And if he could not answer a call without impeaching himself, let him decline to answer. That would accomplish every object that could be attained by an answer.

Mr. STEPHENS remarked that the principle of the amendment was the same as that of his proposition made in committee of the whole, and voted down. But he trusted this would receive a more favorable consideration. If the legislature could not act upon the information given by the Governor, so far as to reverse a pardon, they could at least hold him responsible at the bar of public opinion.

Mr. VAN SCHOONHOVEN asked whether the legislature had ever called for reasons for an Executive act, with a view of condemning them?

Mr. STEPHENS replied that the constitution now required the Governor to communicate to the legislature the reasons for a veto—not so much with a view to correcting or censuring the Governor, by overthrowing his objections, as with a view to hold him to his accountability for his acts. And the effect was to restrain the Executive from an arbitrary exercise of his veto power. So this provision, whilst it made the Governor responsible at the bar of public opinion, would also induce on his part, extreme caution in the exercise of this power of pardon.

Mr. SIMMONS thought the section was entirely unnecessary. Without it the legislature would have full power to regulate the manner of proceeding, by applicants and by the Executive, in granting pardons.

Mr. BRUNDAGE thought we were absolutely wasting time that would be wanted by and by, when we came to business that was really important. We had a rule which prohibited a member speaking more than twice to the same question, and yet this rule had been most shamefully violated. He trusted the rule would be strictly enforced hereafter.

The Convention refused to strike out the last clause, and Mr. Stow's amendment was negatived—ayes 29, noes 71, as follows:—

AYES—Messrs. H Backus, Bouck, Brayton, Bull, Candee, Conely, Flanders, Gardner, Harris, Jordan, Kemble, Miller, Murphy, Nicoll, Parish, Powers, Rhoades, Salisbury, Shaver, Sheldon, Stephens, Stow, Strong, Taggart, Tallmadge, Ward, Waterbury, Worden, A. Wright, Young—29.

NOES—Messrs. Angel, Archer, Ayrault, F. F. Back-

us, Bascom, Bowditch, Brown, Brundage, Burr, Cambreleng, D. D. Campbell, Chatfield, Clark, Clyde, Cook, Cornell, Crooker, Cuddeback, Dana, Danforth, Dorlon, Dubois, Gebhard, Graham, Greene, Harrison, Hart, Hawley, Hoffman, Hotchkiss, A. Huntington, Hutchinson, Hyde, Jones, Kernan, Kingsley, Mann, McNitt, Maxwell, Morris, Nellis, Nicholas, O'Connor, Patterson, the President, Kiker, Russell, St. John, Sears, Shaw, Shepard, Simmons, Smith, E. Spencer, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Tilden, Tutthill, Vache, Van Schoonhoven, Warren, White, Willard, Wood, W. B. Wright, Yawger, Youngs—71.

Mr. HART now moved a reconsideration of Mr. CHATFIELD's amendment, and the motion lies over under the rule.

Mr. HAWLEY moved to add, after the word proper:—

"But no pardon reprieve or commutation shall be granted, unless notice of the intended application for such pardon, reprieve, or commutation shall have been published in the state paper, and in one or more of the newspapers published in the county in which the offence shall have been committed, at least six weeks successively, prior to such application."

Mr. TAGGART said the Convention had just voted down a better amendment—and as we seemed disposed to go back to absolutism, the simpler the mode in which it was done the better. Why have any restrictions? Why not strike them all out? Then we should want but one more section to make the constitution complete—a section giving the Governor the whole power of the government.

Mr. HAWLEY'S amendment was rejected.

Mr. DANA moved to strike out all down to and including the word proper, and insert:

"The Governor shall have power according to the provisions of law to grant reprieves and pardons after conviction, for all offences except those punishable with death, and cases of impeachment. He may commute sentence of death to imprisonment for life."

The amendment was lost.

Mr. VACHE proposed to change the phraseology of the section—first by striking out "for all offences except treason and cases of impeachment," and inserting—"except in cases of treason or of impeachment."

Mr. JORDAN suggested that it would be better still to say—"all offences except treason and such as are the subjects of impeachment."

Mr. A. W. YOUNG moved to amend Mr. VACHE's amendment by substituting "and" for "or." Lost, as was the amendment itself.

Mr. VACHE moved to strike out "or," where it occurs in the clause "shall either pardon, or commute the sentence, or direct," &c.—Agreed to.

Mr. VACHE then moved to strike out all after the words "pardon granted" in the twelfth line. Lost.

Mr. CROOKER moved to strike out all down to and including the word proper, and insert

"The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offences punishable with death, except treason."

Mr. C. stated that his object was to restrain Executive power in this respect—intending when we came to the article on the legislative power, to vest the residue of this power there.

The amendment was lost, ayes 10, noes 84. The ayes were—

Messrs. Archer, Burr, Crooker, Dana, Gebhard, Harris, Hawley, Swackhamer, Taggart, W. B. Wright.

The Convention then adjourned to 9 o'clock on Monday morning.

MONDAY, JULY 20.

Prayer by the Rev. Dr. KENNEDY.

Mr. BOUCK presented a petition relating to the enlargement of the Erie canal, its completion, the application of its revenues, &c. Referred to the third standing committee.

EXECUTIVE DEPARTMENT.

Mr. STETSON moved that the intervening order of business, except reports of committees, be laid on the table, for the purpose of proceeding to the unfinished business. On this motion 46 voted in the affirmative and 7 in the negative—no quorum voting. On a second vote, there were 56 in the affirmative and 13 in the negative; so the motion was agreed to.

When the Convention adjourned on Saturday, the 6th section was under consideration.

Mr. CHATFIELD called for the question on his motion to reconsider the vote by which the Convention, on Saturday, refused to strike out the words "as he may think proper," and insert "as may be provided by law," on which he called for the yeas and nays, and they were ordered, and resulted yeas 42, nays 40, as follows:

AYES—Messrs. Angel, Archer, Bascom, Chamberlain, Chatfield, Conely, Cornell, Crooker, Cuddeback, Dana, Danforth, Flanders, Gebhard, Hart, Hawley, Hotchkiss, Hutchinson, Jones, Maxwell, Nellis, Nicoll, Patterson, President, Richmond, St. John, Salisbury, Shaver, W. H. Spencer, Stephens, Strong, Swackhamer, Taft, Taggart, Tallmadge, W. Taylor, Townsend, Waterbury, Willard, Witbeck, W. B. Wright, Yawger, Youngs—42.

NOES—Messrs. Ayrault, H. Backus, Bouck, Brayton, Brundage, Bull, Burr, Cambreleng, R. Campbell, jr., Candee, Clark, Greene, A. Huntington, Hyde, Kernan, Kingsley, Kirkland, Mann, McNitt, Miller, Morris, Murphy, Nicholas, O'Connor, Parish, Penniman, Riker, Russell, Sears, Shaw, Sheldon, Shepard, Simmons, Smith, Stetson, Stow, J. J. Taylor, Tutthill, Wood, Young—40.

Mr. HOFFMAN, while he was opposed to the pardoning power being taken from the Executive, was nevertheless in favor of the legislature having power to regulate the time and manner and circumstances under which the power should be exercised by the Governor. He would no sooner give the power to pardon to the legislature, than he would overthrow the judgments of the courts. As the constitution now stands, the legislature has exercised the power to regulate the Executive discretion on this subject. He related the circumstances of a case in which a pardon was granted on forged papers, and if such cases could occur, he asked if it was not proper that the legislature should have power to provide some regulations?

Mr. RUSSELL enquired if the legislature could not now pass a law, declaring the fabrication of such papers to be forgery?

Mr. HOFFMAN said undoubtedly that could be done under the constitution of 1821; but when they took all the provisions and incorporated them into the constitution, it became an exclusive power, and the legislature could do no more; and to obviate this state of things the gentleman from Otsego had made his motion.

Mr. SIMMONS was satisfied that his object was the same as that of the gentleman from Herkimer. He was unwilling by any mistaken phraseology, to confer upon the legislature the pardoning power which is now vested in the Executive; and yet the amendment would have that

effect. He desired the Governor to have the power in such a manner that it could not be taken away from him, nor modified, except as to the manner and form of its exercise. Now what was the pardoning power? It was the power to dispense with the laws. It was a high power. It was the same as the veto power in legislation—for by this provision they armed the Executive with the power to negative the action of the judiciary. It must therefore, in its very nature, be exclusive and absolute. How then could the legislature regulate it by law? If the legislature might prescribe the conditions, limitations and restrictions by which he should exercise it, there would be a superior power over the Governor. At the same time he was willing to reserve to the legislature the regulation of the manner of exercising it, if that could be done without injury to the substance. How then could that be done? The legislature might provide by a general law that every person applying for a pardon shall give such and such a notice and apply in such and such a manner; they might prescribe the manner in which the necessary information shall be provided. They had certainly the power to require circuit judges, who tried the criminal, to make a report of all the evidence to the Governor, and the petitioners to show the reasons why the pardon should be granted within a certain time, and after due notice had been given. He would not object to the exercise of this power by the legislature, but he would not consent that the pardoning power itself should be infringed or taken away by the legislature.

Mr. STETSON recapitulated the positions heretofore assumed and contended, that the amendment of the gentleman from Otsego, would transfer the pardoning power from the Governor to the legislature, to which he was opposed.

Mr. NICHOLAS said the amendment would be practically subversive of our criminal code, and would render the criminal law a mere nullity. It would authorize the legislature to enact a law, which shall authorize the Governor in such and such cases, to make an abatement of the sentence of a court, and thus they would hold up before malefactors, a new scale of punishments, and destroy the efficacy of the certainty of punishments. He contended that the power should be vested alone in the Executive. He therefore hoped the amendment would be rejected.

Mr. CHATFIELD replied. He contended that one of the objects for the calling of the Convention was not only to limit the delegated power of the legislature, but also to limit the executive patronage and power. He said the gentleman from Essex was unhappy in his comparison, when he treated the pardoning as equivalent to the veto power; but the gentleman from Herkimer, (Mr. HOFFMAN) had put the question in a clear light. He only proposed that the legislature should have the power to prescribe the manner and mode and form, and to avoid misconstruction, he would change the phraseology of his amendment, and substitute

"as shall have been provided by law," for "as may be provided by law." This would obviate the objection that might be entertained, to legislation for a particular case, and would require the legislation to be general.

Mr. MORRIS contended that it was necessary the pardoning power should be firm. Even if the Governor pardoned corruptly or ignorantly, the pardon should be maintained, though the Governor might be impeached.

Mr. WORDEN entered into some explanations with Mr. MORRIS, to show that, as the law now stood, the pardon could be brought into question; and such a case was now pending in the Court of Errors, arising out of a pardon by Gov. Wright.

Mr. SHEPARD was opposed to the amendment of the gentleman from Otsego, because it did in terms strip the Governor of the pardoning power, by giving to the legislature power to impose any conditions, limitations and restrictions that they might see fit. The legislature might, among other things, provide that the Executive should not exercise this power until a committee of the legislature had examined the case. Now if it was designed to strip the Executive of this power, he would prefer that it should be done in a bold, manly manner, and not by indirection.

Mr. RUSSELL sustained the position taken by the gentleman from New-York (Mr. SHEPARD).

Mr. W. TAYLOR said the amendment covered too much ground, and gave too great a latitude. When he had the opportunity, he should move to amend so as to provide that the pardoning power should be exercised, "subject to such regulations as may be provided by law relative to the manner of applying for pardons."

Mr. MURPHY rose to move the previous question; but gave way to

Mr. STOW, to make some explanations.

Mr. M. then reluctantly renewed the motion for the previous question; and called for the yeas and nays thereon.

Mr. JONES raised a question as to the operation of the previous question.

The PRESIDENT decided that it applied only to the section under consideration, and not to the entire article.

Mr. SHEPARD enquired if the previous question would cut off those amendments which had already been passed.

The PRESIDENT replied in the negative.

The question was then taken; and as 32 only voted, several gentlemen contended that the motion was lost, being less than a majority of a quorum.

Mr. MURPHY insisted upon having the yeas and nays, which he had previously demanded.

The PRESIDENT put the question on ordering the yeas and nays, and they were ordered; and being taken, resulted, yeas 55, nays 36—so there was a second.

The main question was ordered to be now put, and the question then recurred on the amendment of the gentleman from Otsego, as modified by him, and it was negatived—yeas 38, nays 55, as follows:—

AYES—Messrs. Angel, Archer, Bascom, Burr, Chamberlain, Chaffield, Conely, Cornell, Crooker, Cudde-

back, Dana, Danforth, Flanders, Gebhard, Harris, Hart, Hawley, Hoffman, Hotchkiss, Jones, Maxwell, Nellis, Patterson, St. John, Salisbury, Shaver, W. H. Spencer, Strong, Swackhamer, Taft, Taggart, Tallmadge, Tilden, Van Schoonhoven, Waterbury, W. B. Wright, Yawger, Youngs—38.

NOES—Messrs. Ayrault, H. Backus, Bouck, Brayton, Brown, Brundage, Bull, Cambreleng, R. Campbell, jr., Clark, Dorlon, Greene, A. Huntington, Hutchinson, Hyde, Jordan, Kernan, Kingsley, Kirkland, Mann, McNitt, Miller, Morris, Murphy, Nicholas, Nicoll, O'Connor, Parish, Penniman, Perkins, President, Richmond, Riker, Russell, Sears, Shaw, Sheldon, Shepard, Simmons, Smith, E. Spencer, Stanton, Stephens, Stetson, Stow, J. J. Taylor, W. Taylor, Townsend, Tuthill, Vache, Willard, Wood, Worden, Young—65.

Mr. W. TAYLOR then moved the amendment he had before indicated by substituting the words "subject to such regulations as may be provided by law relative to the manner of applying for pardons," which was adopted by a majority of 57 to 24.

Mr. TALLMADGE then moved to insert the word "the" before the word "power" in the first line.

Mr. VAN SCHOONHOVEN enquired what the object of the amendment was.

Mr. TALLMADGE replied it was to prevent a joint exercise of the power.

Mr. VAN SCHOONHOVEN intimated that he doubted if even that amendment would take away the power from the Legislature.

The amendment was agreed to.

Mr. STOW desired to move a reconsideration of the last vote but one, but he was informed it was not in order.

The section was then agreed to.

The sixth section was next read and it was adopted, after rejecting amendments offered by Mr. CROOKER and Mr. SWACKHAMER—the one to make the Lieutenant-Governor actually Governor in case the Governor should be absent, or resign, and to strike out the provision which merely devolves the duty of the Governor on the Lieutenant Governor in such circumstances—the other to add the word "Naval" in the line which provided that the Lieutenant Governor should be commander-in-chief of the military forces in the absence of the Governor, in time of war.

The seventh section was next read.

Mr. O'CONOR moved to strike out from the 1st and 2nd lines, the words which provided that the Lieutenant Governor should "possess the same qualifications of eligibility for office as the Governor," and he called for the yeas and nays, which were ordered.

The motion was rejected—yeas 34, nays 59, as follows:—

AYES—Messrs. Archer, Bascom, Brown, Cambreleng, D. Campbell, jr., Chaffield, Conely, Danforth, Dorlon, Flanders, Harris, Hart, Jones, Kernan, Mann, Murphy, Nellis, O'Connor, Paterson, Perkins, Russell, Shepard, Stephens, Swackhamer, W. Taylor, Townsend, Vache, Van Schoonhoven, Witbeck, Worden, W. B. Wright—34.

NOES—Messrs. Angel, Ayrault, H. Backus, Bouck, Brayton, Bull, Candee, Chamberlain, Clark, Crooker, Cuddeback, Dana, Gebhard, Greene, Hawley, Hoffman, Hotchkiss, A. Huntington, Hutchinson, Hyde, Jordan, Kingsley, Kirkland, McNitt, Maxwell, Miller, Morris, Nicholas, Nicoll, Parish, Penniman, President, Richmond, Riker, St. John, Salisbury, Sears, Shaver, Shaw, Sheldon, Simmons, Smith, E. Spencer, W. H. Spencer, Stanton, Stetson, Stow, Strong, Taft, Taggart, Tallmadge, J. J. Taylor, Tuthill, Waterbury, Willard, Wood, Yawger, Young, Youngs—69.

The section was then agreed to

The 8th section was adopted without any proposed amendment.

The 9th section was read.

Mr. MURPHY moved to amend that portion of it which provides that the Governor shall not hold "any office or place in any corporation or institution of a local or private character," so as to prevent him holding those offices *ex officio* merely. He said he did not mean to disqualify the Governor, if he were a church warden when he came here.

Mr. KIRKLAND showed that the section required amendment, otherwise the Governor would not be able to attend to his own affairs, or be a member of any religious corporation.

Mr. PATTERSON said it would prevent the Governor being a member of the Board of Trustees of Union College.

Mr. STOW said the Governor was made a member of the Board of Trustees of Union College by its charter, and it was unconstitutional to take away that right unless it were reserved. He quoted the Dartmouth College case in support of the position.

Mr. MURPHY replied, and contended that this provision of the charter would be prospective and not retroactive in its operation. He also contended that the gentleman from Erie had misapprehended the Dartmouth case which he had quoted.

Mr. JORDAN said this section was well considered in committee of the whole, and there adopted in its present form; but if the amendment of the gentleman from Kings was adopted it would bring them back to the position from which they set out.

Mr. SIMMONS replied to the remarks of several gentlemen, and in opposition to these restrictions. He thought it was rather too late a period for them to deform the pages of the constitution by such provisions, expressive of distrust of the Governor of the state, who was elected only for two years.

The amendment was negatived.

Mr. CHATFIELD moved to strike out the words "or place," which was agreed to.

Mr. W. TAYLOR moved to strike out the whole restriction, which was in these words, "nor any office in any corporation or institution of a local or private character." If these words remained, he said the Governor would not even be allowed to be a trustee of a religious society, a deacon, or a ruling elder of a church, to which he did not suppose there could be any objection. On his amendment he called for the yeas and nays.

The debate was continued by Messrs. STEPHENS, SWACKHAMER, RICHMOND, A. W. YOUNG, and W. TAYLOR.

The amendment was then agreed to, yeas 47, noes 43, as follows:

AYES—Messrs. Ayrault, Bascom, Bouck, Brayton, Bull, Cambreleng, R. Campbell, jr., Candee, Conely, Danforth, Dorlon, Greene, Harris, Hart, Hawley, Hotchkiss, Jones, Jordan, Kingsley, Kirkland, McNitt, Maxwell, Miller, Nicholas, Nicoll, O'Connor, Parish, Patterson, Perkins, President, Riker, Fussell, Salisbury, Shaver, Sheldon, Simmons, Smith, E. Spencer, Stephens, Stow, J. J. Taylor, W. Taylor, Witbeck, Worden, W. B. Wright, Young, Youngs—47.

NOES—Messrs. Angel, H. Backus, Brown Brundage, Burr, Chatfield, Clark, Cook, Cornell, Crooker, Cud-

deback, Dana, Flanders, Gebhard, Hoffman, A. Huntington, Hutchinson, Kernan, Mann, Morris, Murphy, Nellis, Penniman, Richmond, St. John, Sears, Shaw, Shepard, W. H. Spencer, Stanton, Stetson, Strong, Swackhamer, Taggart, Tallmadge, Townsend, Tuthill, Vache, Van Schoonhoven, Warren, Waterbury, Wood, Yawger—43.

Mr. WORDEN proposed some verbal amendments which were agreed to.

Mr. RICHMOND then moved to strike out the whole section, for all that was good in it had been taken away.

Mr. O'CONOR said the section was a bad one, and he trusted it would be stricken out. He thought no such restrictions should be imposed unless some justification for them could be found in the recollection of some evil which had arisen—and he thought they would be found very inconvenient in practice.

Mr. R. CAMPBELL spoke briefly in favor of the ninth section—as necessary to secure all the time and services of the Governor to the state, and at the same time to prevent any conflict between the duties he might owe to the state and the U. S.

Mr. STETSON agreed that a very valuable part of the section had been lost; at the same time he hoped that what was left of the section would be retained. In order to save it if possible, he moved a reconsideration.

The motion lies over under the rule.

Mr. RICHMOND was indifferent whether the section were retained or not—the most valuable portion of it being struck out.

Mr. SIMMONS the more he reflected on this subject was the more convinced that it would be unwise to prohibit the Governor from executing duties required of him by the general government, on pain of forfeiting his office. He cited officers of the state government that were used by the United States government, and without inconvenience to any body. The state judiciary were employed often in duties growing out of the naturalization laws of Congress. He alluded also to the West Point Academy, and asked what objection there could be to allowing the Governor to act as an examiner in that institution. He hoped the section would not be retained.

Mr. BASCOM remarked that Governors had been made boundary commissioners by the United States government. And why should we be so anxious to prohibit that? He hoped the section would be struck out.

Mr. STOW also hoped it would not be retained—as the whole subject involved in it belonged properly to another Article.

The question was here taken on the section, and it was lost by a tie vote—ayes 46, noes 46, as follows:—

AYES—Messrs. Angel, Archer, Ayrault, Brayton, Brown, Brundage, Burr, Cambreleng, R. Campbell, jr., Chatfield, Cook, Cornell, Cuddeback, Flanders, Gebhard, Hart, Hoffman, A. Huntington, Jordan, Kernan, Mann, Miller, Morris, Nellis, Nicholas, Nicoll, Penniman, Russell, St. John, Shaw, Sheldon, Shepard, Stanton, Stetson, Strong, Taft, Tallmadge, J. J. Taylor, W. Taylor, Tuthill, Van Schoonhoven, Waterbury, Wood, Yawger, Young, Youngs—46.

NOES—Messrs. H. Backus, Bascom, Bouck, Bull, Chamberlain, Clark, Conely, Crooker, Dana, Danforth, Dorlon, Greene, Harris, Hawley, Hotchkiss, Hutchinson, Hyde, Jones, Kingsley, Kirkland, McNitt, Maxwell, Murphy, O'Connor, Parish, Patterson, President, Richmond, Riker, Salisbury, Sears, Shaver, Simmons,

Smith, E. Spencer, W. H. Spencer, Stephens, Stow, Swackhamer, Taggart, Townsend, Vache, Warren, Willard, Worden, W. B. Wright—46.

Mr. STETSON moved a reconsideration, and the motion lies over.

The tenth section was then read.

Mr. NICOLL moved to strike it out—and

The motion prevailed, 44 to 36.

The eleventh section was then read.

Mr. NICHOLAS moved to amend the section so as to require two thirds of those *present* to reverse a veto—as provided in the present constitution.

Mr. CHATFIELD preferred to amend so as to require a *majority* of all the members elected to overturn a veto. Such a number he regarded as a fair reflection of the popular will—and no one man should stand between that will and the acts of the legislature carrying it out. Some of the states gave no veto power to their governor. In Iowa the majority principle prevailed, and in some the two third principle. He would strip the Executive of this power, so long as he was a co-ordinate branch of the legislature. He would not make him a mere clerk to sign bills, without any discretionary power over them. But ordinarily the power to arrest the passage of a bill, unless repassed by a majority of those elected to the two houses, was power enough for one man. To say that it should require two thirds of all elected to pass a bill against a veto, would be to give the Executive all power over the legislation of the state—for the influence of any administration in the legislature—the desire there to harmonize with the Executive—was of itself equal to at least one third of the house. As a general rule he was opposed to this one-man power—which he regarded as monarchical in its spirit and affect.

Mr. MANN sustained the section as it stood—requiring two-thirds of all elected to overturn a veto. And he asked what would the veto power be worth, if a mere majority could reverse it, if, as was probable, we had no two-third votes on the passage of laws, but required a majority of all elected to pass a bill?

Mr. HARRIS said the Convention would be a witness that he had rarely forced himself upon its attention during the session. He felt however, that he could not discharge his duty, by merely giving a silent vote on this proposition—for it was one of the few questions that had been presented thus far to which he attached much importance. If he understood popular sentiment in regard to the necessity for this Convention, one important object was the curtailment of Executive power and patronage. And he confessed, he was not a little surprised to see those who occupied a progressive position, taking ground against restrictions on the veto power. He confessed, he anticipated that the majority principle would be incorporated in the new constitution by an almost unanimous vote. He might perhaps have known better, had he reflected that there were those here who were committed to the political creed promulgated at Baltimore two years ago—an essential part of which was the two-third principle. On that ground alone could he account for the position of certain gentlemen here on this question. To preserve free government in its integrity and

simplicity, it was sometimes necessary to revert to first principles. And in such a body as this, assembled for the purpose of reviewing the organic law, a recurrence to cardinal principles, a glance at the past, a contemplation of what had been done since we started, and what progress we had made in government, was peculiarly proper and necessary, with reference to future changes. This was a question much agitated in the Convention which framed the U. S. constitution. Some of the wisest statesmen of that day proposed that there should be no such negative power vested in the President. But a majority of that body determined otherwise, and on the ground mainly that without it the Executive, compared with the legislative power, would be too weak. But experience had shown that this was a mistake. The veto power had grown to be a most formidable and overshadowing power, whose encroachments threatened fearful consequences. The gradual encroachment of this power were to be seen in our own history. A recurrence to the circumstances under which Gen. Washington first exercised this power, as detailed by Jefferson, would show this. Before Gen. Washington ventured to exercise this extraordinary power, he required of Mr. Jefferson, of Mr. Madison and of Mr. Randolph, written opinions as to the constitutionality of the act. Washington exercised the power but once in his eight years, and for twelve years thereafter it was not exercised at all except in two instances, and then on constitutional grounds only. Madison exercised the power six times, and always on the same grounds. It was left for John Tyler to veto a bill on the ground of expediency—or because his opinion did not coincide with that of the majority of the representatives of the people of the U. S. This was the extreme to which this power had been carried in the U. S. government—and the result was an admonition to us to see to it that we did not give too wide a scope to it. He had looked through the constitutions of the twenty-nine states of this Union, to see how in other states this power had been vested.—He found that in nine of these constitutions there was no veto power at all. In ten others, the majority principle had been adopted. In five others, including our own, the two-third principle was recognized—but whether two-thirds of those present or of those elected, was not perhaps certain. In Louisiana alone was the principle of two-thirds of all elected unequivocally required. But the history of other countries was not without instruction on this point. This veto power was a characteristic of the Roman government. It was instituted to protect the people against the decrees of a Roman senate, an aristocratic body with which the masses had little affinity. The power was exercised through Tribunes elected by the people. That principle for a time worked well; but it afterwards became the subject of intolerable abuse. All were aware of the fact that Augustus, as a preparatory step caused himself to be elected Tribune—and thus having possessed himself of the veto power, the power over the treasury and the militia, the liberties of Rome fell an easy prey to his ambition. The constituent assembly of France in 1789, in reorganizing the government, vested

in the King, the veto power and the first exercise of it by Louis XVI cost him his life. The same thing contributed largely to the destruction of the Polish republic. Any member of the Polish Diet, had an absolute veto on any law. The Emperor of Russia, availing himself of this inviting opportunity to acquire such an influence with members of the diet, that he could veto any bill of the Polish government. In consequence of this, that government became involved in dire misfortunes, and the result was eventually the dismemberment of that country. So on the other hand, nothing save the principle of the Norwegian government which permitted three successive diets, by a majority vote, to overcome the veto of the King, had enabled that people to get rid of their titled nobility.— Could there be any danger in allowing the free execution of the will of the people, through the legislature, coming together as it did fresh from all parts of the state, and representing its varied interests and wishes? Especially could there be danger in allowing the majority for the time being to express the popular will, with the certainty that if error were committed a succeeding legislature would correct it? Mr. H. would allow the Executive to send back bills which might have been hastily passed in his judgment, or the constitutionality of which he might regard as doubtful, for review and reconsideration—but if after a mature consideration of the Governor's suggestions, a majority should deliberately re-enact the bill, by a majority vote, he maintained that it would be inconsistent with the fundamental principles of our government, to allow a single individual to thwart the will of the people thus expressed. But what was there in the position that the Executive would have no motive to act corruptly and obstinately to thwart the will of the people? If there was anything in the argument it proved too much. For if this was true of the Governor, how much more true was it of the immediate representatives of the people? What motive or inducement could they have to thwart that will? And how much safer was it to trust a majority of the people's representatives, acting under their responsibilities, than to allow a single individual to fatalize the will of a majority of such representatives! He had no objection to the Governor's exercising a supervisory power over legislation; but having done that—having declared his opinion as to the expediency or constitutionality of a law—and the legislature having passed the bill again, notwithstanding these objections—the latter should be allowed to take the responsibility of the measure, and to stand upon it before the common constituency of both. He urged that there could be no safer rule to adopt, than to place the power of registration in the hands of a majority of the people's representatives.

Mr. CAMBRELENG remarked, that it was wholly immaterial which of these two amendments were adopted—as a majority of all elected, would practically be as effective as two-thirds of all present. He should probably vote with the gentleman from Albany; and he only rose to show how completely that gentleman's argument went against his own position. The object of the veto power, in all governments, was to have a check on absolute power. Supreme

legislative power was vested by the constitution in the legislature. There was no limitation to it. The veto power was designed for the protection of the people against the abuse of that power; and it would be strange indeed, if, after the experience of seventy years, this safeguard against the encroachments of absolute power were now to be discarded entirely, or robbed of its vitality. It was an old maxim, that in Republics, the legislature was the tyrant; and it was only on that ground that the veto could be defended. It was one of the greatest popular safeguards in our constitution, and in his judgment its results had been beneficent. In Rome, and in Poland, and in every instance which had been cited, it was designed as a check on absolute power. It was on that ground that he voted for it, with the amendment of the gentleman from Otsego—which he thought fully as strong as that of the gentleman from Ontario.

Mr. W. TAYLOR opposed the amendment of the gentleman from Otsego. He did not believe it would prove to be any check upon improvident and unconstitutional legislation. He alluded to a recent case in Connecticut—where he said a railroad company, its stock owned chiefly out of that state, besieged the legislature for power to bridge the Connecticut river. The Governor deemed it both unconstitutional and inexpedient, as destructive of the rights and interests of citizens above the bridge, and he vetoed it. But the same majority which passed the bill, under the influence of an overwhelming lobby, re-passed the bill and it was soon a law. And the result was seen in threats of mob-violence, and great local excitement—and the probability was that no bridge could be built there, or if built, that it would be torn down. This was the result of the majority principle. He would have a veto, if any that should be effectual, leaving the Governor responsible to the people for his acts—and there could be no doubt that if he exercised the power corruptly or improperly, the people would correct the error the moment they had an opportunity.

A communication was here announced from the New-York City Convention to revise the city charter, in relation to the appointment of judicial officers in that city—which was referred to the judiciary committee.

The Convention then took a recess until 4 o'clock, P. M.

AFTERNOON SESSION.

The Convention resumed the consideration of the amendment of Mr. NICHOLAS, to the section in regard to the veto power.

Mr. SIMMONS rose under the impression that the question was on Mr. CHATFIELD'S amendment.

Mr. HARRIS also was under that impression—but under a suggestion from the CHAIR that the question was on the proposition of Mr. NICHOLAS to restore the old constitution, he moved to amend so as to require a majority of all elected to re-pass a bill against a veto.

Mr. SIMMONS preferred the old constitution to that—though he was not satisfied with it.—He insisted that the true course was to say that in case a bill was re-passed by a majority of all elected it should be sent again to the Governor,

and if he should still object to the bill as unconstitutional and should send it back again with such a message, then that it should require three-fourths of all elected to pass it. In such a case he would have the veto absolute—for the constitution was the supreme law, binding on Governor and legislature, and no mere naked majority should have power to compel an Executive to execute a law which he deemed at war with the constitution which he was sworn to support.—He agreed with Gen. Jackson, that no man was bound to put a law in force which he believed was in conflict with the supreme law of the land. This veto power was essentially a power of self-defence. Without it there would be nothing to prevent one branch of the government from overturning the other—and the Executive, in the language of Mr. Jefferson, instead of being a co-ordinate branch of the legislature, would become a mere recorder of bills. Mr. S. repeated, he would give the Governor an absolute veto on bills which he thought unconstitutional. The other question, whether he should have a veto on bills on the ground of their inexpediency, depended on several contingencies. If the members of the two houses were elected in single districts, instead of a sort of general ticket system, then there could be no doubt that the legislature would be a truer representation of the popular will than the Executive, and in matters of expediency, a majority of them should control. But if we could not get that, then perhaps we had better retain it as it is. But in questions of constitutionality, the Executive should have the power that the judiciary had to veto laws. Otherwise, the legislature could at any moment lay the axe at the root of the Executive power, and destroy the harmony and balance of power in the government. We came very near putting the pardoning power into the hands of the legislature. He hoped we should not be frightened by the idea that this veto power was despotic and arbitrary, from arming the Executive with the necessary power of self-defence against unconstitutional encroachment—leaving matters of expediency where they belonged—with a majority of the representatives of the people.

Mr. PATTERSON remarked that the question here was a very simple one. It came home to the understandings of all. It was simply whether we would require two-thirds of all elected, or two-thirds of those present, to pass a bill against a veto. As to the idea of the gentleman from Essex, that three-fourths of all elected should be required to pass a bill vetoed on the ground of unconstitutionality, he would ask that gentleman, as a lawyer, whether he supposed that an unconstitutional law, even though passed by a unanimous vote in both houses, would be a binding law?

Mr. SIMMONS:—It would be, until declared unconstitutional.

Mr. PATTERSON replied, that this was true in law; but the moral force of such a law would be as impotent before as after any such declaration. But that gentleman in his anxiety to prevent the legislature from overriding the Executive, would shut down the gate on all legislation, except with the consent of one man! He would make one man's opinion and will equal to those of one hundred and eight of the immediate

representatives of the people! Mr. P. was opposed to the one-man power to that extent. It would be virtually placing the exclusive power of legislation in the hands of one individual, to require a majority of two-thirds of all elected, to pass a bill against a veto. The only state constitution which conferred this absolute veto on the Executive, was that of Louisiana. In Ohio, the Governor had no veto power whatever—the judiciary settling all questions of constitutionality. He would retain the power, however, in a qualified form. He would have the Governor interpose to prevent hasty and inconsiderate legislation; but if, upon a reconsideration, a majority of all elected should differ with the Executive, and re-pass the bill, it ought to become a law notwithstanding. And he preferred to say, a majority of all elected, to two-thirds of those present. The latter was a very uncertain number. It might be any where between forty-four and eighty-six. And practically, a majority of all elected (sixty-five) would be as great a number as two-thirds of those present. But to say two-thirds of all elected would be to put the entire power of legislation into the hands of the Executive, and would be anti-democratic and dangerous. The amendment of the gentleman from Otsego was, in his judgment, the proper one.

Mr. HOFFMAN remarked that this subject of the veto power was so fully debated in 1821, that he had not hitherto had the courage to attempt any thing like a re-discussion of it. He did not know that he should be able to bring himself now to any review of its extended merits. But there were some things that he desired to call attention to. This veto power was purely a negative power—not as some gentlemen who spoke of the one-man power seemed to imagine, an affirmative power, or the power to originate measures—but a power merely to hinder a measure from being carried out—to retain things as they were—a state of things which had been tried, which all knew the value of and could judge of thoroughly. The one-man power, in an affirmative shape, a power to make laws, to suspend them, to appropriate money, and to affect thus the rights of property or labor, would find no advocate here. It was to such a power that he understood those to object who spoke of the one-man power. But they spoke of what was not before us—of what was not in agitation. What was this veto power, when exercised? What was it practically? Was it a restraint on the rights of the people? A check upon the execution of the sober judgment of a majority of the people? No. It was no such thing. Practically it had been in every instance for the last half century, a power in direct vindication of the rights of the masses—in direct support of the public liberty and individual rights. It was a power against monopoly, against privilege—and this was the reason why it had been popular; and why it would ever be, so long as humanity had the power to discern and the nerve to sustain their own rights. This had been true of every veto put forth in the United States, whether based on the grounds of constitutionality or expediency. It was a mistake to suppose that Gen. Jackson's popularity gave popularity to the veto. It was not so. It was

because the veto stood by the rights of the masses against monopoly, against privilege, against expenditure and debt. It was the veto itself that was popular, and the popularity of the officer using it for the defence of the masses was increased by it. He occupied a seat in congress when the veto on the Maysville road bill came in, and he knew what was going on and what was intended. Day after day and week after week, the committee on internal improvements, like an installed monarch, was coming in with new schemes and projects. Estimates were piled one on another, until not even 100 millions would satisfy them—and estimates there were like estimates here—never reaching half the actual cost. This was seen by the constituent body throughout the Union. And when the veto came, it was understood to be the strong arm—the voice of the multitude themselves in vindication of their rights. It was seen and known by all, that if this vast system was carried out, with its attendant army of surveyors and engineers, offering the largest rewards to locality, giving the public treasury over to the cupidity of districts—that a government armed with the iron power of unlimited taxation direct and indirect, if it was going into this system, must sweep away the rights of property, and become the grand pensioner and purchaser of votes. The veto met and scattered these dangers. This one man power, holding the veto for the people of the Union, scattered all these splendid schemes of internal improvement, and the train of evils which must have resulted from them. Were we to be alarmed at the exercise of this power, when we saw that it was the only power that ever had the moral courage, patriotism and virtue, to deny splendid offers of empire, in the shape of patronage and influence, and to stand by the constitution and private rights. He asked whether this veto had done any mischief in this state? Had it despoiled the widow or the orphan? Had it taxed the rich or the poor? Had it undermined the security of property or labor? It had been in the constitution for three quarters of a century. Had it done any mischief to you, your fathers or your children? Gentlemen might not approve of it. But could they lay their hands on any robbery or fraud it had perpetrated—any popularity it had sought to purchase—any locality it had attempted to control—any pensioned followers it had sought to conciliate? No. The veto, when exercised, had in the main stood by the rights of man and the character of the state. Mr. H. alluded here to the veto, two sessions since, where, he said, a majority of a quorum supposed there was a surplus of canal funds on hand, which the public interests required should be appropriated for internal improvements, and passed a bill for that purpose. This employment of the money might have done good—and whether it would have done good or not, it might have pensioned dependants, rallied followers or purchased popularity. The Governor vetoed the bill. And what would have been the result, had the Governor been stripped, as was proposed here, of the power of maintaining the credit of the state? Mr. H. averred that notwithstanding the great influx of tolls this spring and last fall, if that favorite bill of the

majority of the house had passed, your Comptroller, since this body had been in session, would have been compelled to resort to the bankrupt expedient of borrowing over \$200,000 to pay the \$300,000, principal and interest, of the public debt falling due, to save the credit of the state from virtual repudiation. And this veto was based, not on constitutional grounds, but on principles just as high and holy—the preservation of the public faith. Why then should we be alarmed at leaving this power as strong as we found it? Why fritter away what had proved serviceable here and elsewhere? The only reason for it was the supposition that the members of the two houses were exclusively the representatives of the people. It was no such thing. Members of the Senate represented districts—of the house, counties. It was the Governor and the Governor alone who represented the entire people of the state. And whose judgment should prevail in a matter of dispute?—Certainly not that of localities, districts, counties; but the judgment of the people of the state. And who more directly represented the people of the state than the Governor? Who more likely to speak the voice of the people? Who could be said to act more emphatically for the people, not affirmatively but negatively, to protect them against the consequences of indiscretion or folly? Mr. H. had no unusual distrust of the legislature or of the Governor—nor any unusual confidence in either. Confidence in matters of this kind was of slow growth, and in the repeated changes and mutations of party, a man must be peculiarly fortunate who gets any great share of the article to carry with him. He had no expectation that any administration here would, by its standing with him, overpower the judgment he might form of any measure. We must, therefore, view this legislative power as it was developed by history. And what had been the course of usurpation in all governments? Wherever the legislative power was not checked and restrained, each and every of its usurpations had added new strength to the Executive, until legislation had become swallowed up in the grave it had dug for itself. That was the history of every nation of antiquity. It was the history that came from the grave of every nation recently buried. Popular governments invariably began by a single house. The first step in improvement was to get up a second house, and to give each a negative on the other. Gentlemen had spoken of the Executive with the veto, as a novelty invented of late years. It had grown up with human experience. It must have grown to have made free governments almost anything. The gentleman from Albany said it had its existence at Rome, and that for a time it worked well. Mr. H. would add, that it was no longer able to resist usurpation; usurpation swept over the Roman empire; taxation went into the provinces, eviscerating the people of their substances, until the Goths and Vandals came, who instead of acquiring an empire, found it a mere shell. The Cæsars succeeded to the empire, and it was at last sold at auction. Such might be the fate of other countries, with the veto power annihilated. This power had grown up with free government. It

was designed to secure the mass against licentiousness in legislation. Human experience had settled the question of its necessity—and he was for retaining it at least in as strong a form as we found it. The people had found no fault with it. But what had they said of legislation? He had heard of the expression often from men of every class—at the close of a legislative session—of thanks to God that the legislature had adjourned without doing any more mischief.—This meant something; and the feeling it exhibited could not last long without the legislature being forbidden to meet at all. And why were we so anxious to limit the length of the legislative sessions? Why this talk of having biennial sessions and of stopping the pay of members, after a certain period? But had there been any question among the constitutional body as to this veto power? Mr. H. went on, in illustration of the course which legislative encroachment always took, to admit to the abandonment of specific appropriations by the legislature—saying that as early as 1830, the legislature, by general law, conferred so much power on the Executive officers that they could have got on here for fifty years without the legislature, and might in that time have incurred a debt of fifty millions. The danger was not from the veto. The difficulty was to bring the veto to bear upon these abuses. It was this course of legislation that had called us together—a course which the veto power had not prevented. It would be difficult to stimulate it fully to the exercise of that duty; but he hoped the effort would be made to teach the Governor himself that it was his duty to veto such legislation as this to which he had alluded. As to the question before the committee, he should be content with the veto as it stood, though he should not oppose the strengthening of it, as proposed by the committee of the whole, nor should not urge it. The power had worked no injury as it stood, and perhaps it had better be retained there.

Mr. NICHOLAS said he would not occupy much time with this subject, it having been fully discussed on a former occasion. The importance of the veto power has not been questioned, even by those who desire that it should be curtailed. A qualified negative on the legislative power, although it has been liable to abuse, has heretofore been considered an indispensable Executive prerogative. It is an important guard against unconstitutional, corrupt and improvident legislation, and it is also necessary to protect the judicial and executive departments against legislative encroachments. The veto power, as it exists in the Constitution, has been found to be quite strong enough—sufficiently stringent or all exigencies requiring its interposition; and when a power has attained this point, it should never be made stronger. And should it be strengthened, as by this section, adopted when in committee of the whole, it may be practically less effective than it now is. For if a Governor, happening to be a sensitive, timid man, feels that his veto must be (as it would be with this accession of strength) fatal to a bill, he would sometimes be deterred from exercising this power, when the public interests required it. He (Mr. N.) offered this amendment, re-

storing the provision of the present Constitution, as a medium between the extremes now proposed to us—a stronger veto, as provided for by this section, which he wished to amend, and a diminution of the power by the amendment which the gentleman from Otsego informs us he intends to offer. He hoped the Convention would, by adopting this amendment, retain the veto power as it now exists, and thereby avoid all extremes.

Mr. WORDEN followed. He agreed with the gentleman from Herkimer, that this subject of the veto power had been so often discussed that he who elaborates upon it, owes an apology to the House. Nor should he do so now, had that gentleman confined himself to the issue. For those who had met to reform a Constitution on principle, his illustrations were most unfortunate; for his remarks were only calculated to call up old party prejudices. It might be that the vetoes of Gen. Jackson were judicious and well considered; but that gentleman must have known that a large party on this floor differed from him. But Mr. W. apprehended the object of the gentleman was not so much to defend the veto power, as for another and ulterior purpose. He desired rather to make an assault upon the legislative power, and bring it into contempt before this body and the people. He had this ulterior object in view, to operate upon that other question which would come up hereafter. Mr. W. agreed with that gentleman, that there had been much of improvident legislation heretofore. He agreed with him that there had been much of improvident, he would not say of corrupt, legislation in Congress. He recollected that the gentleman and his political associates were in a majority in the Congress to which allusion had been made, and could control the action of that body. It would therefore be uncourteous in him (Mr. W.) to charge that their legislation had been corrupt. Mr. W. thought the charge came most ungraciously from that gentleman; and had it not been for his settled attempt to prejudice the public mind against the legislative power, Mr. W. apprehended he would not have placed himself in the inconsistent position of condemning himself and his associates. Again, in his reference to the veto of Gov. Wright, Mr. W. confessed he was astonished when he found him supporting his arguments by facts which were not true. That gentleman stated that unless that veto power had been then interposed, the public officers would not have been enabled to redeem the state stocks falling due on the 1st of January and July last past.—Mr. W. would say to him that notwithstanding the commissioners of the canal fund *did* report a deficiency at the end of the fiscal year to redeem the stocks falling due on the 1st of January and July, yet, during the last session of the legislature, it was drawn out from them and was now a matter of record, that on the 30th of September last, they had under their control the means to pay every dollar of the stock due on those days, and yet have a sufficiency to meet all the appropriations made in that vetoed bill. Similar statements would be found, in most of the statements in relation to the public debt.—Though they might be true in one sense, yet they were not true, as matters upon which to base

legislation. For instance, he found on his table a document from the Comptroller, in which our canal debt was put down at \$17,516,119 47.—Now that was not the amount of canal debt due on the day stated in that report. For all practical purposes of legislation, the statement is untrue. Of that canal debt, about half a million of public stocks had been paid which were then in the office of the agent of the state, and paid with the public funds of the state. And yet that amount is put down with the rest as substantial debt against the state. That is a specimen of the manner of the statement of the debt in time past. Mr. W. regretted to see in the gentleman from Herkimer, such an utter distrust and contempt of the legislative power. He would cite an instance, where public officers had designedly violated a plain provision of law. In 1834, a law was passed requiring the canal commissioners to enlarge the capacity of the locks. At the next session, the canal commissioners say that they have disregarded that law because there was an absolute and imperious necessity to double the locks and to enlarge them to about the size which was afterwards ordered. Imperious necessity, they urged for disobeying that law, and another was passed in accordance with their recommendation, and from that day may be dated the fiscal embarrassments of the state. Mr. W. would say a word or two about the veto power. Whenever we create a power in the government, it is because we see, or think we see, a necessity for its existence.—Now why clothe an officer with this veto power at all? There must be some reason for it.—What is it? What is the justification for such action? He apprehended it would be found in this—that it was supposed there might be unwise, corrupt, or mischievous legislation, and because we anticipate that, we provide in advance a check upon such legislation, and this check we repose in the Executive. But it is only to be exercised in the supposition that such unwise, corrupt, mischievous, or unconstitutional legislation shall occur. The power, then, to remedy such an evil, must be effectual to prevent such mischief. Now would it be wise, after creating this power, to make it nugatory, and perfectly powerless? It certainly would not, in his estimation. To make it thus effectual, we must then go beyond a mere majority, for it would be found to be the case, that very few bills, that called out debate, would fail to pass by a majority of the votes of the two houses.—This very canal bill, which had been referred to, passed by a very large majority. Mr. W. regretted that sickness prevented him from being present to vote against its passage, for he thought it too miserable a pittance to recommend the public works upon only \$190,000. It would then be useless to provide that a majority might repass a bill, for that would make the veto power nugatory. Mr. W. agreed that this power might be abused, and it seemed throughout that gentlemen had been arguing against such abuse, instead of against the power itself. All power may be abused, but that is no argument against its existence. The Governor may abuse this power—the legislature may abuse its power; but if so, where is the remedy?—He and they must go before the people up-

on their acts. The Governor, when he vetoes a bill, must spread his reasons before the people, and they are astute enough to examine those reasons closely, and they will approve or condemn him, as they are good or bad. If the veto arrests the passage of a bad bill, it has a most salutary effect, and Mr. W. agreed with the gentleman from Herkimer, that it could only defer for a limited time the passage of a good bill.—It may prevent for all time the passage of a bill injurious in its effects. He thought we had better allow the veto power to remain, even though it be abused, than to permit a bad bill to pass. We had had this veto power for seventy years and no practical evil had resulted. Evil might have ensued, if a bare majority had possessed the power to repass a bill. He would cite an instance, where both Houses had passed a bill which openly violated a solemn contract made by the state. The veto was there interposed, and the state saved from the odium of violating its own contract and its own constitution. He knew of no other instance when a veto had arrested the mere action of party; but if the majority principle was to prevail, that power would be useless to arrest such party legislation. He should therefore vote against the amendment of the gentleman from Otsego and in favor of that of his colleague.

Mr. HOFFMAN said he would have no altercation with the gentleman. When the time came to speak upon the abuses of legislative power, he would undertake to show that all he had said had been in mercy, rather than in abuse. The gentleman had charged falsehood upon the Comptroller, and said he had wrongfully stated the amount of the canal debt. Mr. H. said, by the terms of the inquiry, the Comptroller was bound to state the amount of debt on the 1st of June, and he had given it truly on that day.—He could not give it to us as it would stand on the 1st of July. Mr. H. said the charge against the Canal Commissioners in 1834, was equally unfounded. They had done all they could to carry out that law, and had only been driven from their work by the actual approach of winter. As to the funds in the hand of the Comptroller on the 1st of July, Mr. H. knew the fact to be, that that officer was compelled to rake and scrape the canals tolls up to the 22d of June to enable him to meet the amount due on the 1st of July. All the charges of the gentleman were unfounded.

Mr. CHATFIELD followed, remarking that he would go with the gentleman from Herkimer, and as far as he, in imposing restrictions upon the Legislative power. But that was not the question here. We were upon the veto power. Mr. C. had always regarded this as a relic of monarchical government, and as at present exercised inconsistent with the theory and practice of our own. He would not be guided in his action, by anything that was past. He should not review the vetoes of Gen. Jackson or any other Executive. He was here advocating the adoption of a democratic principle. If we were here to organize a new Constitution, with no reference to precedent, no one, he apprehended, would advocate the incorporation of this provision into that instrument. He would now act as if we were thus situated. Mr. C. consid-

ered the reference to ancient times as out of place. No analogy could be drawn between the people of Rome and of our own. These powers did not, as here, return at short and definite periods to the people. In all the monarchies of Europe, what had produced confusion and bloodshed, unless it was the effort of the people to obtain some portion of the power? Reference had been made to Runnymede. What did the Barons there struggle for, except to contract and reduce the overshadowing veto power of the Crown? When we separated from the British Government, this veto power was reduced to constitutional limits. Mr. C. proceeded to advocate a restriction of the veto power, as he had proposed.

Mr. ST. JOHN moved the previous question, and it was seconded 41 to 26.

The main question was then ordered to be put.

The amendment of Mr. NICHOLAS, to restore the provisions of the present constitution, (allowing two-thirds of all *present*, instead of two-thirds of all elected, to repass a bill) was agreed to as follows:

AYES—Messrs. Angel, Archer, Ayrault, H. Backus, Baker, Bascom, Bouck, Bull, Cambreleng, R. Campbell, jr., Candee, Clark, Clyde, Crooker, Dana, Dodd, Dubois, Flanders, Forsyth, Gebhard, Graham, Greene, Hoffman, Hotchkiss, A. Huntington, Hyde, Jordan, Kemble, Kingsley, Marvin, Maxwell, Murphy, Nellis, Nicholas, Nicoll, Parish, Patterson, Perkins, Porter, President, Riker, Salisbury, Sears, Shepard, Simmons, E. Spencer, Stephens, Stetson, Stow, Strong, Swackhamer, Taggart, J. J. Taylor, Tilden, Warren, Waterbury, Willard, Witbeck, Wood, Worden, Young—61.

NAYS—Messrs. Brown, Brundage, Burr, Chatfield, Conely, Cook, Cornell, Cuddeback, Danforth, Dorlon, Harris, Hutchinson, Jones, Kirkland, Mann, McNitt, Miller, Morris, O'Connor, Penniman, Ruggles, Russell, St. John, Shaver, Shaw, Sheldon, Smith, W. H. Spencer, Stanton, Tallmadge, W. Taylor, Townsend, Tuthill, Vache, W. B. Wright, Yawger—36.

Mr. CHATFIELD then moved his amendment, allowing a *majority of all the members elected* to pass a bill after a veto.

The same was *lost* as follows:—

AYES—Messrs. Archer, H. Backus, Bascom, Bouck, Burr, Candee, Chatfield, Cook, Crooker, Dorlon, Gebhard, Harris, Hawley, Parish, Patterson, Penniman, Salisbury, Shaver, E. Spencer, W. H. Spencer, Taggart, Warren, Willard, W. B. Wright, Yawger—25.

NAYS—Messrs. Angel, Ayrault, Brown, Brundage, Bull, Cambreleng, R. Campbell, jr., Clark, Clyde, Conely, Cornell, Cuddeback, Dana, Danforth, Dodd, Dubois, Flanders, Forsyth, Graham, Greene, Hart, Hoffman, Hotchkiss, A. Huntington, Hutchinson, Hyde, Jones, Jordan, Kemble, Kingsley, Kirkland, Mann, McNitt, Marvin, Maxwell, Miller, Morris, Murphy, Nellis, Nicholas, Nicoll, O'Connor, Perkins, Porter, President, Richmond, Riker, Ruggles, Russell, St. John, Sears, Shaw, Sheldon, Shepard, Simmons, Smith, Stanton, Stephens, Stetson, Stow, Strong, Swackhamer, Taft, Tallmadge, J. J. Taylor, W. Taylor, Townsend, Townsend, Tuthill, Vache, Waterbury, Wood, Worden, Young—74.

Mr. MANN moved a reconsideration of the vote on the amendment of Mr. NICHOLAS. Laid over.

The section was then adopted.

So the whole Article on the Executive Department was finally agreed to, as follows:—

ARTICLE —.

On the election, tenure of office, compensation, powers and duties, (except the power to appoint or nominate to office,) of the Governor and Lieutenant-Governor.

§ 1. The Executive power of the state shall be vested in a Governor, who shall hold his office for two years.

A Lieutenant Governor shall be chosen at the same time and for the same term.

§ 2. No person except a citizen of the United States shall be eligible to the office of Governor; nor shall any person be eligible to that office who has not attained the age of thirty years, and who shall not have been five years next preceding his election a resident within this state.

§ 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the legislature at its next annual session shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

§ 4. The Governor shall be commander-in-chief of the military and naval forces of the State. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. He shall communicate by message to the legislature at every session the condition of the state, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation to be established by law, which shall neither be increased nor diminished after his election and during his continuance in office.

§ 5. The Governor shall have power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardon. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, commute the sentence, direct the execution thereof, or grant further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

§ 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the state, the powers and duties of the office shall devolve upon the Lieutenant-Governor, for the residue of the term, or until the disability shall cease. But when the Governor, shall with the consent of the legislature, be out of the state in time of war at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

§ 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the President of the Senate shall act as Governor until the vacancy be filled, or the disability shall cease.

§ 8. The Lieutenant-Governor shall, while acting as such, receive a compensation which shall be fixed by law, and which shall not be increased or diminished during his continuance in office.

§ 9. Every bill which shall have passed the Senate and Assembly, shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law notwithstanding the objections of the Governor. But in all cases, the votes of both houses shall be determined by yeas and

nays, and the names voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

Mr. PATTERSON suggesting that subsequent

action of the Convention might lead to the necessity of some alterations in this report, moved to lay the report on the table, and that it be printed.

Before any question was taken, the Convention adjourned.

TUESDAY, JULY 21.

Prayer by the Rev. Dr. KENNEDY.

BANKS AND BANKING.

Mr. CAMBRELENG submitted the following propositions as amendments which he should offer to the appropriate article of the constitution, when the Convention should be in committee of the whole thereon:—

All incorporated companies and associations exercising banking powers shall be subject to visitation and examination at the instance of their shareholders, or of their creditors, under regulations to be established by the legislature; and in case of the failure of any such incorporation or association, to discharge its debts or liabilities, or of any of its members to discharge the debts for which they may be personally liable as members of such incorporation or association, provision shall be made for the speedy and equitable settlement of the affairs of such incorporation or association and for dissolving the same.

The legislature shall provide by law for the exclusion of the notes of Banks of other states from circulation within this state.

The legislature shall limit the aggregate amount of Bank notes to be issued by all the Banks and joint stock associations in this state, now existing or which may be hereafter established.

They were committed to the committee of the whole, and ordered to be printed.

MAJORITY LEGISLATION.

Mr. MANN offered the following resolution, which was adopted:—

Resolved, That it be referred to the committee No. 2, on the powers and duties of the legislature, except as to matters otherwise referred, to consider the propriety and expediency of reporting a section to the constitution requiring the vote of a majority of all the members elected to (both branches) the legislature to pass any bill or law.

LOANS AND APPROPRIATIONS FOR COLLEGES, &c.

Mr. SWACKHAMER offered the following, which was referred to the committee on common schools, &c., after a few words from Messrs. STETSON, NICOLL, WILLARD, A. W. YOUNG, and SWACKHAMER:—

Resolved, That the Comptroller be respectfully requested to furnish this Convention a statement of the amount of money or property appropriated, given, or loaned to the several Colleges, Seminaries, Institutes, and Academies of this State, and the University of the city of New York, since 1821. And, also, the amount appropriated to these institutions respectively from the Literature Fund, during the same period. And, as far as practicable, what proportion of the sum so appropriated has been used for the benefit of females.

RESTRICTION ON AMENDMENTS.

Mr. HAWLEY offered the following:—

Resolved, That no amendment to a proposition which shall have been considered in committee of the whole, shall be in order in the Convention, unless the substance of the amendment shall have been offered and decided in committee of the whole.

After a few words from several gentlemen, it was referred to the committee on rules.

LEGISLATIVE DEPARTMENT.

On motion of Mr. BROWN, the Convention resolved itself into committee of the whole, Mr. PATTERSON in the chair, and took up the report of standing committee number one, on the apportionment, election, tenure of office, and compensation of the legislature.

The first section was read as follows, and it was passed over without amendment:

§ 1. The legislative power of the state shall be vested in a Senate and Assembly.

The next section was read as follows:—

§ 2. The Senate shall consist of thirty-two members, and the senators shall be chosen for two years. The Assembly shall consist of one hundred and twenty-eight members, who shall be chosen annually.

Mr. W. TAYLOR said the only alteration which the committee had made in this section, was to substitute two for four years, as the term of service of senators. It would be proper that he should say, that as the committee had resolved on the plan of single districts, they deemed it proper that the term of senators should be shorter. This and the following section were so much involved, as necessarily to some extent to require to be considered together. He would say however that by the present plan the senators were chosen every four years—one being chosen in each district annually, by which means there is an annual expression of the sentiments of the people to that branch of the legislature. If the single senate district system were adopted without changing the term, there would be a lapse of three years, during which the popular sentiment could not be expressed by an election. But the committee decided that term too long. It was true there were some advantages in the four year system. The senate was designed as a sort of check on the more popular branch of the legislature, and hence it was advisable that that body should be composed of a less number, should have more stability in its organization, and should have some constantly present possessing experience in past legislation. But the advantages of the single district system, and shorter terms, it was believed, would counterbalance the loss of the other advantages. It was important that there should not be so long an interval as four years from the election of a senator and the expiration of his office. A senator might entertain opinions contrary to the well-known wishes of his constituents. He might have selfish designs, contrary to the public interests, and it was possible he might be corrupt; and if the period of four years were to stand as the term of his office, the people would cease to trouble themselves about him; or they would indulge in use-

less regrets that they had no means of reaching him till the term of his office expired. By lessening the term one-half, and adopting the single district system; they brought the senator more immediately within the knowledge and observation of his constituents. The people could reach him if they desired, sooner, by half, than by the present system, and still they preserved the essential feature of a senate, stability in its organization, and experience in one portion of its members. One-half every year, too, would come in fresh from the people, and from all parts of the state, the plan being to take them from alternate districts, and hence they got annually a fresh infusion of public sentiment, intermingled with stability and experience.

Mr. RICHMOND moved to strike out two and insert nine, so as to increase the number of senators from thirty-two to thirty-nine. He also proposed to amend by striking out two and inserting three, to make the term of service three years instead of two. He agreed in part with the chairman of the committee, in reference to the propriety of bringing senators oftener before the tribunal of public opinion; but he thought a change of one year would be sufficient for all practical purposes, especially as it would, with his other amendment, be accompanied with other advantages. His purpose in increasing the number of senators from thirty-two to thirty-nine, was not so much to have a larger body, as to do more equal justice to all parts of the state in the distribution of senators. On looking over the report of the committee, he had come to the conclusion (although he would give the committee credit for having done the best they could in reference to the particular number of which the Senate was composed,) that greater justice would be done by increasing the number to thirty-nine. He had prepared an apportionment to demonstrate this position; but not expecting this subject to be taken up to-day, he had it not at hand. He would however produce it hereafter. It might be supposed that by an increase of seven senators, there would be a startling increase of expense. But on this point he would remark, that it was understood that the Senate was not to meet as a court of errors two or three times a year, and charge fees for travelling and constructive travelling. They were only to meet as a part of the legislature, once a year. Hence the expense would be less than heretofore, even with an increase of senators.

Mr. CHATFIELD should be obliged to vote against this proposition, because he preferred another. The plan which he should advocate was to give to the legislature power at any time after an enumeration of the inhabitants of the state, to increase the number of senators, to any number not exceeding 48.

Mr. RICHMOND thought the public would expect them definitely to settle the number. As to the term of three years, the committee would perceive that it was a number which would afford facilities for electing annually precisely one third, three times 13 being 39. He could find no other number that would so well answer that purpose, and by which the population would be so equally represented; and it was desirable to get an equality of senatorial representation as near as possible without dividing counties.

Mr. BURR intimated that he should vote against the proposition of the gentleman from Genesee, though he was in favor of increasing the number eventually. He preferred the proposition of the gentleman from Otsego.

Mr. WHITE objected to the change from 32 to 39, inasmuch as it would not do justice to New York city, which was entitled to one-eighth of the representation. He cared not whether it was 38 or 40, or any other number by which New York could have her equitable representation.

Mr. TAGGART said as the ratio was 60,000, New York would have her share and a little over.

Mr. A. W. YOUNG hoped the Convention would favor the proposition of the gentleman from Genesee (Mr. RICHMOND). He believed in most of the states there was not so great a disproportion between the Senate and the House of Representatives as in this state. In some states the Senate was half the size of the popular branch. He believed the people would be satisfied with an increase, and thirty-nine was small enough. There was now an inequality in the representation of some districts of 10,000 or 12,000 too many or too little. If they could arrive at a greater equality, he thought that would be a strong reason for increasing the number of senators.

Mr. WATERBURY intimated that the congressional districts might be adopted.

Mr. RUSSELL desired a division of the question, so that the vote might be first taken on the number of senators.

Mr. TALLMADGE inquired if it was intended to propose any change in the number of the members of Assembly?

Mr. W. TAYLOR replied in the negative.

Mr. TALLMADGE desired to continue thirty-two as the number of senators; nor had he any desire that the four year term should be abandoned. If this government should be assailed, and its liberties invaded, it would come in moments of popular excitement. The present number of 32 multiplied by 4, gives a ratio equal to 128, the number of members of the Assembly, and that reason influenced the Convention of 1821, instead of retaining the number of 125, of which the Assembly once consisted.— There were originally four districts returning eight senators; but the districts were divided, making eight with four senators each, 4 times 8 being 32, and 4 times 32 made 128, the number of the other House. He was opposed to too large a representative body, because great numbers led to disorder in the work of legislation. Even with this body of but 128 members, by continued encroachments of conversation with each other, writing letters, and sending off packages, it was almost impossible for them to do their business; and he thought there would be great wisdom in adhering to the number as it now stands in both houses.

Mr. PENNIMAN preferred an increase which would give a representation for the large fractions which were found in some counties. He also dissented from the position of the gentleman from Dutchess, that small bodies did the work of legislation better than large ones. In Massachusetts, with a body of from five hundred to six hundred members, and in New-

Hampshire, with a large body, the work was done as well and as promptly as elsewhere; and he had observed in this body, that with eighty or ninety members present, there was not so much progress made as when the Convention was full.

Mr. BASCOM had sometimes been impatient at the delay he had observed there, but now he confessed he regretted to see a disposition to hurry along this matter without giving it due consideration. He had no disposition to debate the great principle involved in the question under consideration. Representation—and how large it should be and how it should be appropriated among the people,—were questions of the first importance in a free government.—They were questions which, he trusted, were not to be settled in this body, without careful deliberation. Without having had any opportunity for the necessary examination and consideration of the subject that he hoped others might have improved, he had no wish to enter at large into the debate which he hoped would be had, but he was willing to avow himself in favor of a liberal increase of representation in both branches of the legislature. He would hardly be satisfied with less than forty-eight in the upper branch. Most of the other States had provided a much larger representation than we had. The framers of the constitution of 1777, seemed to contemplate a far larger representation than that provided by the constitution of 1821. The limits by the constitution of 1777, were 100 for the senate and 300 for the House, and the framers could hardly have anticipated the increase of population that has become matter of history. The report of the committee provides for continuing the representation deemed sufficient in 1821, for at least half a century. Would gentlemen consider the actual increase of the constituency up to the present period, and that which must be anticipated during the existence of the constitution we are framing? The purity of legislation required an increase of the upper branch. How many important propositions had been adopted or defeated by 17 men in a full Senate, and by a smaller number when the Senate was not full, too small a number to settle the destinies and interests of this great state. He should oppose the number proposed by the gentleman from Genesee, in the hope that when the matter came to be duly considered, a larger number for the Senate would be agreed upon.

Mr. STRONG desired the question to be taken, first, simply on striking out.

Mr. RICHMOND had no objection.

Some conversation ensued on the mode of putting the question.

Mr. W. TAYLOR said he saw the committee were about to take the vote. He had hoped that there would first have been more discussion.—He then proceeded to enquire if a change in the number of senators had been called for by the people, and said he thought no such change was called for. He pointed to the disparity in congress between the two houses, and in the state legislatures, to show that the senate, as a sort of check on the popular branch, and as an advisory body, was universally deemed best adapted for its purposes, when much smaller than the other

branch of the legislature. He said he should like to have some good, substantial reason why they should make this increase in that co-ordinate branch of the legislature, for he ventured to say that the people had neither asked for nor desired it.

Mr. SALISBURY felt it was due to himself that he should briefly explain the vote he was about to give on the proposition before the committee. This was one of those subjects on which the committee themselves were not entirely agreed. He dissented from the majority of the committee as to the number of senators, and he supposed his judgment on this matter was governed by considerations in anticipation of the future action of this body in reference to the duties of the Senate. He supposed the Senate was to be a single branch of the Legislature, having duties exclusively of legislation, and entirely separated from the judiciary department. If this was to be the case, he believed that their expenses would not be much increased by an increase of their number. He believed that their number might be increased to as many as 48, without any increase of the expenses, and he should favor such an increase, although he was disposed to favor the proposition to leave with the Legislature the question of an increase of representation. The number was usually fixed with an idea to convenience, as the whole body of the people cannot meet to enact their own laws. As connected with the judicial department of the government, the number of 32 was supposed to be the best; but under the new organization of the Senate, he was inclined to believe that a larger number would be advisable, and that no increase of expense would be occasioned by it.

Mr. PERKINS was of opinion, that a moderate increase of the number of members of the Senate and Assembly, would be advisable, but he did not think a very large increase would be either desirable or acceptable. Perhaps it would be well to clothe the legislature with a discretionary power within a certain limit to fix the number of senators, so that there should not be less than 36 nor more than 48. He was also in favor of a term of three years instead of two. As the Senate occupied the position of an advisory branch of the legislature, the members should have some experience in legislation. But if one half were to go out every year, this design would measureably fail. The plan of the committee required great disproportion in the apportionment. There would be a difference in the population of the districts of about 32,000. So great a disproportion should not be sanctioned by the Convention, unless it was absolutely unavoidable. He trusted they were not here to arrange districts with a political object in view. We then should be careful how we set an example which might be grossly abused by some future legislature.

Mr. TILDEN thought there was a defect in the report of the committee. He would be in favor of bringing the people as near to their constituents as possible, but he did not wish to violate another and important principle. He would hesitate considerably before he would vote to elect senators biennially by single districts. His own opinion was, that a fair compromise between the

propositions submitted would be to make each district elect two senators and for two years, and increase the number. He did not perceive the reason why the senators should be elected for a longer term than the governor. He was not prepared to debate the question, but before the adoption of an important principle he wished to give his dissent from the proposition before the committee.

Mr. STRONG could not see the applicability of the gentleman's objection. The idea that this proposition cut off the right of the people to vote, was strange. He should vote in favor of the motion to strike out and to increase the number of Senators. He could see no force in the reasoning of the chairman that the Senate should be just one-fourth as numerous as the Assembly, nor that a small body would be a greater check upon the Assembly than a larger one. He thought the reverse of this would be found to be true.

Mr. CHATFIELD did not rise to debate the question, but to say, that, perhaps, it might be found expedient to refer back this report to the committee for the purpose of completing the apportionment, if the number of members should be changed, and the single district system retained; or so to alter it as to leave this matter to the legislature. There were in some counties fractions as large as 16,000, and in some a deficiency of that amount. He enumerated various counties in which these disproportions existed, and said these fractions were too large and should be avoided.

Mr. W. TAYLOR had spoken before to the single proposition of the gentleman from Genesee, but since that time other suggestions had been made, to which he desired to say a word. He regretted and so did the committee, that such inequalities existed. They could be remedied, should it be determined to cut up counties or depart from the rule that the districts should not consist of contiguous territory. The committee thought this would be inadvisable. He believed if any reform had been called for by the people it was the single district system. Mr. T. showed how the inequalities could be remedied. For instance, Dutchess and Columbia were put together, making a large excess, while Rensselaer stood alone, with about an equal deficiency. Now cut Columbia in two, and you would make two very nearly equal districts. Or place Schenectady with Rensselaer, and then you would equalize the districts. So Richmond might be placed with Suffolk and Queens, leaving Kings to stand alone. But gentlemen would find, take any number they please—39, 40 or 48—equal difficulty in getting rid of these excesses and deficiencies. He did not believe the Convention would be in favor of dividing counties, for that would leave to legislatures hereafter the power to adopt the system of gerrymandering for political effect.

Mr. HARRIS did not feel great solicitude about this question, yet he should vote in favor of the proposition of the gentleman from Genesee, (Mr. RICHMOND.) He would not greatly increase the number, but seven would not be an objectionable increase. He would not divide counties; he would prefer rather some inequalities in representation, because such were our associa-

tions in counties that he apprehended the people would prefer that they should not be divided. He preferred the proposition of the gentleman from Genesee, because the slight examination he had given to it had satisfied him that by fixing that number of senators, they should be able to accommodate a greater number of counties as single districts. For example, by the report of the committee, only five counties could be made separate senatorial districts, while by adopting thirty-nine as the number, they might have one-third of the districts made up of single counties, and of the remaining two-thirds, with a single exception, the senatorial districts would be made up of two counties each. Essex, Clinton and Franklin alone would be the exception of which he had spoken. This was an important consideration. He was in favor of bringing the representation as nearly home to the people as was practicable, and when they could form senatorial districts by single counties he thought it would be desirable though there might be some inequalities in the ratio of representation. Since the discussion had been going on he had taken up the report of the committee, and he had selected the counties in which the plan of the gentleman from Genesee might be carried out. He found that single districts might be made of Kings, Albany, Rensselaer, St. Lawrence, Oneida, Jefferson, Onondaga, Monroe, Otsego, Erie, Orange, Oswego and Cayuga. Double districts might be made out of the following counties:—Dutchess and Putnam, Steuben and Chemung, Suffolk and Queens, Westchester and Rockland, Ulster and Sullivan, Columbia and Greene, Delaware and Schoharie, Saratoga and Schenectady, Washington and Warren, Fulton and Montgomery, Herkimer and Lewis, Chenango and Broome, Madison and Cortland, Tompkins and Tioga, Seneca and Wayne, Ontario and Yates, Livingston and Allegany, Genesee and Wyoming, Orleans and Niagara, Chautauque and Cattaraugus. He did not say this was the best division, but he had only drawn it hastily to show how much more favorable would be the proposed amendment, than that of the committee.

Mr. RUSSELL concurred with the views of the gentleman from Albany. They were sound, and were based upon sound principles. He was of opinion that the committee had made a great mistake in limiting the number to 32. By single districts for 32 Senators, as reported by the committee, 5 single counties constitute single districts, viz:

Erie, deficient of rep. population	6,314
Monroe, do. do.	11,399
Onondaga, do. do.	7,566
Rensselaer, do. do.	16,314
Oneida, with a surplus of	3,711

Smaller counties united in single districts present large excesses, as

Cayuga and Wane, an excess of	14,547
Madison and Oswego, do.	11,837
Dutchess and Columbia, do.	16,077

By adopting forty as the number of Senators, twelve counties may each constitute a single district, with small a excess, except in a single county, to wit:

Erie, excess of	8,671
Monroe, do	3,586
Onondaga, do.	7,419

Oneida, do.	18,696
Jefferson, do.	2,636
Kings, do.	1,611
Albany, do.	8,632
Dutchess, with deficiency of	8,794
St. Lawrence, do.	1,374
Otsego, do.	10,239
Steuben, do.	9,229
Rensselaer, do.	1,399

The smaller counties can easily be arranged in single districts. He advocated at some length the necessity of adopting the ratio so as to make greater equality with representation.

Mr. NICOLL said the great question involved in striking out the number thirty-two was one of principle—that of making the representation of the Houses more nearly accord with population. He had no hesitation in saying that he was in favor of having a much smaller number of senators than representatives, and would have no objection to forty, provided there could be a proper ratio devised under that number.—It should be taken into consideration that the population of the state was constantly changing in its character, but if any appropriate division can be made he believed it was proper that this Convention should revise the present system.—Great inequality might soon be found in the wards in the city of New York, for there were wards there, the population of which in five years had increased 13,000, and very soon they might each be entitled to be a single senatorial district. He thought in the arrangement of the districts, the character of the population should be taken into view, and that it was of vital importance that the people each year should have a vote in the choice of a senator, for he desired that public sentiment should be annually brought to bear on that body.

Mr. RHOADES was in favor of the proposition of the committee, dividing the state into single Senate districts. On no question had the people of the state more distinctly expressed their approbation. But they had appeared to be perfectly satisfied with the present number of which the Senate was composed, and he could find no reason why what was well enough and satisfactory should be disturbed. If a change was to be made, he did not see why the number should not be increased to 128, to an equality with the Assembly. The people of the state had lost their confidence in one branch of the Judiciary—the Court of Errors; and one reason for it was, he believed, the large number of which it was composed. But they had not lost confidence in either branch of the legislature. They were uniformly found in this state to have the greatest respect for the Senate in Congress, because it was composed of the smaller number, who were able to conduct their business with dignity and decorum, free from the confusion and high feeling often found in the larger body. While things were perfectly satisfactory, he hoped they would be allowed to remain as they existed.

Mr. STETSON advocated an increase of the number of Senators, as being called for by justice and propriety. As it was, too much importance was often attached to the vote of a single Senator. He was in favor of this, because he was sent here to secure single Senate districts if he could. He would bring home that body to the constituency, as near as possible, and not leave it to the more fragmentary responsibility

of the present system. If it was to be settled that we were to have but 32 Senators, he should do all he could to make all the Senators elected every year, or else make double districts. He stated at considerable length his objections to the plan presented by the committee. He would much prefer twenty double districts, with one Senator to be elected every year. This would allow the whole people to vote on the election of Senators every year. He would also go for an increase of the number of the Assembly. He pointed out the injustice done by the present constitution to such counties as his own, where a large fraction were deprived of all representation, while counties, not having half its number of inhabitants, still had one representative. This could only be remedied by an increase of the Assembly.

Mr. RICHMOND would not be in favor of increasing either the Senate or Assembly, if we could reach anything like equal representation. True, there had been but little feeling as to this particular point, but there had been deep feeling as to this unequal representation. The gentleman from Onondaga was opposed to an increase. This was because Onondaga could be better accommodated, as the present apportionment suited that county better than any other. Hence the gentleman was in favor of letting well enough alone.

Mr. W. TAYLOR disclaimed being actuated by any such selfish consideration.

Mr. RICHMOND had referred to the gentleman's colleague.

Mr. RHOADES begged leave to adopt the disclaimer of his colleague, as his own.

Mr. RICHMOND, notwithstanding this, hoped he might be permitted to point out the inequality of Onondaga as compared with other counties. Wyoming or Orleans had together a population equal to three-fourths of Onondaga, and yet had but half as many representatives on this floor. He also instituted a comparison between those counties and New York, showing a still greater inequality. He wanted to get rid of this inequality, and if no other mode of doing so could be devised, he would consent to the division of counties.

Mr. W. B. WRIGHT said that as a member of committee number one it was proper that he should present the reasons which induced him to differ in some respects from a majority of that committee. The chairman (Mr. W. TAYLOR) stated on the introduction of the report that it had been agreed to by a majority, but that each member regarded himself as not committed to all its provisions, and that even those who consented to it, felt at liberty to change their views, if upon argument or reflection, there seemed to be a necessity for doing so. The chairman might also have added, if he did not, that it was so understood in committee. Now with the leading principles of the report he did most cheerfully concur; it was with the details only that he, in part, differed. The policy of single districts he considered as conclusively settled by the popular judgment, and that the Convention would fail to carry out the clearly and fully expressed wish of the people of the state, should any other system of legislative representation be adopted. In committee he proposed an in-

crease of the number of senators to 48. He regarded the present number of 32 as too limited for a legislative body. As had been frequently remarked, the Senate as at present constituted was to large and unwieldy for a court and too contracted in No.s for exclusively legislative purposes. If it be, as is generally believed, that the Convention will strip the Senate of its judicial functions, if not of all other powers except those of an exclusive legislative character, then, in fixing upon a number, due importance should be given to that fact, for whether the number should be thirty-two or a larger one, in his opinion, depended in a considerable degree on the powers conferred on the body. Upon the supposition that the court for the correction of errors as at present organized, was to be abrogated, he submitted that it would be expedient to increase the number. He had recently been examining the constitution of other states, and found that in a majority of them, (out of New England) the proportion between senators and representatives was as one to three. In several of the states—for example, in Indiana and North Carolina—the proportion was as one to two. Although it was a principle in two or three states, he was unwilling to adopt the suggestion of the gentleman from Otsego (Mr. CHATFIELD) to leave to the legislature the power of fixing the actual number of senators intermediate a minimum and maximum number established by the constitution, for the legislature should not be permitted to exercise a discretion that might be abused in subserving partizan purposes. He would not only increase, but fix the increase definitely in the constitution.

What, said Mr. W., has created the desire with the people for single districts? Why have complaints been made in relation to the present arrangement? Because an important object is to be gained by bringing the senator home to his constituents,—by making him familiar with his constituency, and enabling him to acquire an accurate knowledge of their peculiar condition and wants. The county which he had the honor to represent was situated in the second senatorial district—the district was extensive in territory—and he doubted whether two of the senators now representing her had ever set foot within the limits of Sullivan, and certain it is that those senators were found, last winter, in these halls, directly opposing, by their votes, her dearest interests. The larger the number of senators the more limited will be the constituency, and consequently the more familiar will the representative be with its peculiar interests.

The only objection, said Mr. W., urged in committee against increasing the number, was the difficulty of apportionment by counties.—This difficulty arose in the larger counties, such as Oneida, Onondaga, Albany and Erie; when by adopting 48 as the number of senators, large fractions would remain unrepresented.—It is, however, to be observed that this apparent inequality exists in those counties containing cities, in which the population is rapidly increasing, and perhaps upon another enumeration of the inhabitants of the State, by that rapid increase the difficulty would be obviated; for in a subsequent section of this report, the committee provide that in the formation of sen-

ate districts a county may be divided, when entitled to two or more Senators, so that if the principle of preserving county lines in the arrangement of the districts, is important—and it seemed to be so regarded by a majority of the committee—it may with the number of forty-eight, perhaps, be more successfully carried out upon the next census, than with a smaller number. But wherein exists the imperative necessity of preserving county lines in the arrangement of districts, if by so doing a fair representation may be defeated? What is there in these arbitrary divisions of the state, that so much importance should be attached to them? Gentlemen say that by a division you break up those natural distinct relations which exist in counties. This is not so, unless partizan relations are meant. And if by a division of counties there is a tendency to break up these, it is a conclusive reason for setting about the important work without delay. All know that at the capital of these counties, (especially where they are cities,) a political regency has grown up, who assume the control of political matters, and the distribution of offices—who pack your county conventions, and subvert themselves, in a great measure, upon official spoils. If by disregarding county lines in the establishment of senatorial districts, these regencies would be broken up, and these demagogues shorn of their abused power, the reason was potent with him for disregarding them.

If counties are divided, said Mr. W., unquestionably a more equal representation could be obtained. No such disparity would exist as may be found in the report of the committee.—Have gentlemen ascertained the fact that it is proposed by that report to elect seventeen senators by a representative population of 1,169,433 and to elect the remaining fifteen by a population of 1,230,109—making the constituency of fifteen senators over 60,000 more than that of seventeen. Is there any equality of representation in this result of adhering to county lines? And so it will be to some extent upon the selection of any number, although, in his opinion, the larger the number the less numerous are the cases of inequality. It is proposed that the counties of Dutchess and Columbia, with a representative population of 91,862, shall elect one senator, whereas Suffolk and Queens with a population of 58,657 shall also elect one.—Should this disparity exist, if there can be found any remedy for it? If by dividing counties, or by fixing the number of 48, or by adopting the proposition of the gentleman from Albany (Mr. HARRIS), this inequality could be obviated, he was disposed to take either course. He had left at his room, not expecting that this question would come up this morning, a statement shewing that by taking a number beyond forty, a more equal representation could be had, even upon the principle of adhering to county lines, and that more single counties would be entitled to elect senators than under the proposition of the committee. By their report, out of the city of New York, but four counties constitute senatorial districts within themselves, whereas with the number of forty-eight, the counties of Kings, Dutchess, Albany, Rensselaer, St. Lawrence, Jefferson, Orange, Steuben, Otsego, Os-

wego, Cayuga, Chautauque, and perhaps others, would each be entitled to a senator. So also, if the report is closely examined, it will be perceived, that it is proposed to elect more than one-third of the senators, from counties in which large cities are embraced. For example, five from the city and county of New York, one from the county of Kings, embracing the city of Brooklyn, one from the county of Albany, embracing the Capital, one from the county of Oneida, embracing the city of Utica, one from the county of Monroe, embracing the city of Rochester, one from the county of Rensselaer, embracing the city of Troy, and one from the county of Erie, embracing the city of Buffalo. Eleven senators, (more than one-third) would be elected by such counties. Those counties, if the number of thirty-two be adopted, have now in some instances but a small fractional excess, and in others a large fractional deficiency. The largest fractional excesses are to be found in the rural counties. Yet a majority of the committee, instead of adopting a number which would leave fractional deficiencies in the agricultural counties where it is not expected the representative population will rapidly increase, they have chosen that number which will leave little or no fractional excess in those counties, where had it been done, would, in connection with the rapid increase of their population, upon another enumeration of the inhabitants of the state, have entitled them to two senators.

The chairman, said Mr. W., had said that the reason why a majority of the committee had not proposed an increase of the number of senators, was because the people had not demanded it. If the Convention should decide to adopt only such amendments as the people of the whole state had demanded, he believed that the members of this body had as well adjourn now, and go to their homes. But have they not asked for it? He could not speak of public sentiment in the county of Onondaga, but in the southern part of the state an increase had been frequently suggested. Besides, the people have loudly called for single senate districts, and if in carrying out that principle a necessity arises for increasing the number of senators, then, in effect, an increase is one of those distinctive propositions, marked in advance, with the popular assent. The Chairman (Mr. W. TAYLOR) also had said that an increase of the number of senators would involve an increase of the expenses of this branch of the government. But in considering and settling a grave question which is to effect the state, for good or evil, whilst the constitution exists, a trifling matter of expense seemed to him of no account. However, by abolishing the Court for the Correction of Errors, would not the expenses of the Senate be decreased, even with the number of forty-eight? He had no doubt of it. So also the Chairman had stated that the committee were opposed to dividing counties, because it would lead to a system of gerrymandering. If the districts were formed of contiguous territory, he really could not see how such a result could be produced. There was certainly more danger of the adoption of such a system by adhering to county lines, than by disregarding them. The gentleman from Onondaga (Mr. RHODES) had said

that the increase of the number of senators involved the necessity of increasing the Assembly. He (Mr. W.) did not see that by increasing the smaller branch of the legislature, it necessarily followed that there should be an increase of the larger. Suppose the Senate is increased to forty-eight, wherein exists the stern necessity of increasing the Assembly? He was ready to act with the gentleman from Clinton (Mr. STETSON) as to an increase of the Assembly.—He believed that an inequality of representation existed in that body, and if it could be removed by an increase of the number, he would go for such increase; but he did not think there was such magic in the increase of the Senate as would naturally and irresistibly lead to an increase of the other house. He was satisfied that in representation, great inequalities existed in the Assembly. The county of Wyoming, with a population greater now than that of Genesee, had one member, whilst Genesee had two. Clinton with a population more than Richmond and Putnam combined, had but one member, whilst those counties were represented by two. He would go with the gentleman from Clinton in any reasonable way to lessen the disparity which existed in the representation. He was first, however, for an increase of the number of senators to 48. If the number was fixed at this mark, with single districts, numbering from one to forty-eight, and leaving with the legislature the division of the districts, there could be no doubt that that body would, as far as possible, preserve county lines; indeed there would be no necessity in more than three or four instances of disregarding them. He would not, however, by the constitution make it imperative upon the legislature to preserve the integrity of these lines, and thus refuse to carry out the system—of single districts and equal representation. This convention should set an example in regard to this, and show to that body that equality of representation is of more importance than the mere preservation of county lines. He would go for the best principle upon which a proper division of representation could be effected, and if it could be done without breaking over the lines of counties, let it be so done; but if not, then let those lines be disregarded. The great ends to be secured, were single senate districts, and equality in representation.

Mr. A. W. YOUNG said if there was any member who should feel an interest in this question, it was himself. And his constituents, also, felt a deep interest. The county of Wyoming had an unrepresented fraction of 12,00, almost equal to that of three others in the state which had one member each. He referred to the present apportionment to show the great inequalities of representation—mentioning to various counties in illustration. Some had very large surplusses, while in others there were even greater deficiencies. This evil should be remedied. It could be done in a manner by increasing the Senate. He should vote for such increase, believing it wise and safe for the people. If there was danger from corruption in the legislature, the greater the body the less would that danger be. The people desired a more equal representation, and this could only be done

by an increase of representatives. There might be counties well enough now, but that was no reason why others should longer suffer from their present grievances. He believed this state had a less comparative number of representatives than any other state, and he would therefore favor an increase.

Mr. R. CAMPBELL defended the report of the committee, which had been assailed by the gentleman from St Lawrence (Mr. RUSSELL).—He said that if any one fact should be prominent in this discussion, relative to the duty of this Convention, it was the fact that complaints had so long been made of misrepresentation in the legislative bodies. He referred to the instructions given by the nominating conventions in relation to this subject, as an indication of the popular will. The districts as now organized, was a system of misrepresentation, and not of representation. Some of them embraced a territory of some 200 or 300 miles, and it could not be supposed that one elector in 100 could be acquainted with their senatorial candidates.—Hence the single senate district system had been adopted by the committee. He also examined the propriety of the system of biennial elections, and the question respecting the division of county lines. He was strongly opposed to the division of counties. The counties had for certain purposes, local governments, and very extensive legislative and criminal jurisdiction, and it was anticipated to give them still more.—Their limits should not, then, be arbitrarily disregarded for the purpose of forming election districts. He illustrated his positions at great length, and discussed several collateral questions in reply to preceding speakers.

Mr. RICHMOND here varied his motion so as to strike out 32.

Mr. W. TAYLOR in reply to Mr. HARRIS, said he had looked over that gentleman's apportionment since the debate had been going on, and he found that the aggregate excesses and deficiencies were greater under that than under the plan of the committee. And he ventured to say that you might take any other number proposed, and the inequalities would be found to be as great, if not greater, than under the plan of the committee. In regard to the largest deficiency, Suffolk and Queens, he proposed to add Richmond, which would reduce the inequality then down to 3000. But divide the state as you would, and there would be inequalities—and he felt justified in saying that the committee's plan did not produce as great inequalities as either the plans of the gentlemen from Albany or Genesee. So that the idea of getting rid of inequalities by increasing the number of senators, was fallacious. If gentlemen had other objects, that presented another view of the question.—But with the correction alluded to, he believed the committee's plan would be found to present fewer inequalities than under any other, unless we cut up counties and towns, which he presumed no one intended.

Mr. DANA said a blind man, on being asked how he could walk safely, replied that when he raised his foot, he found a safe place before he put it down again. With the report of the committee before him, he could see and understand the whole plan. But to change the number to

39 or 48, he could not at once determine what the deficiencies and excesses would be. Perhaps if we had spent less time in talking and more in examining the census maps, we might be better prepared to act. As it was, he was satisfied with 32 members, and unless it could be shown that some other number would reduce these excesses and deficiencies, he should vote to sustain the report of the committee.

Mr. TALLMADGE said he would retain the representation where it was in the Senate and Assembly. And as a leading principle, he should insist on an equality of representation as nearly as might be without the splitting up of counties. Again, he would not increase the representation. As it was we could scarcely hear each other across this hall—and if we had more members we must pull down the capitol or construct the hall on some different principle. He was a decided advocate for single districts both for the Senate and the Assembly. But he went for four years for senators, two for the Governor, and annual elections of members of the house. The Senate he would make more permanent than the other branch, as a check against temporary excitements and excesses. He had before alluded to Shay's rebellion in Massachusetts, to the outbreak in Rhode Island, and to that in Pennsylvania a few years ago. A variety of exigencies might be imagined which required a body of some stability that should be beyond the reach of a passing excitement, and which should operate as a check upon hasty legislation. Gentleman had spoken of the evil of the unlimited power to create debt, loan and to money to corporations. He went with them in putting restraints upon these indiscretions. But he had rather see these checks created by a permanent body such as the Senate, which should not feel these temporary excitements of anti-masonry at one time, and anti-riticism at another. Hence, he went for four years for a senator.—If he could not get that, he went for three years. And when we came to elect all our judges and almost all other officers, as we should probably, we could very well afford to elect a senator once in four years only in a particular district. Again, in apportioning representation, another principle should be adhered to—and that was to place deficiencies in the growing counties and districts, instead of those which were dwindling in population as some of the agricultural counties were. Mr. T. went over the apportionment of the committee, pointing out where this principle had not been regarded.—He also objected to the union of such counties as Putnam and Rockland, Dutchess and Columbia, which had no affinities or business relations—the course of trade in them being not through each other, but in different channels. But he barely rose to avow his desire to hold the senate as it was, a fixed and comparatively permanent body, to have representation equalized as near as might be, by making single districts of contiguous and naturally connected territory, and giving to the growing districts the deficiencies.

Mr. WILLARD remarked that many had been taken by surprise this morning, not supposing this report was coming up; and of course they were not prepared to go into an argument

which must be based chiefly on numerical calculations. He moved, therefore, that the Convention adjourn.

The committee rose, reported progress, and the Convention took a recess until 4 P. M.

AFTERNOON SESSION.

Mr. WORDEN rose to say that the business of the Convention might be expedited by the course he was about to propose. We had been discussing all the morning the question whether we should have 32 or more senators. This question ought to be settled before proceeding much further with this Article. And this being a single question, it had better be settled in Convention where debate could be brought to a close sooner than in committee. He moved therefore, to bring the question up distinctly, to recommit the Article with instructions to report sections fixing the number of senators at 50, their term of office two years, to be elected in single districts—the number of members of assembly to be 150, with a new ratio of apportionment—the legislature to divide the counties into single districts. These two questions settled, the rest could be easily adjusted. He threw out these rather as suggestions—not intending to commit himself to these numbers, but to allow a range for amendments.

Mr. R. CAMPBELL thought the gentleman's proposition would not affect the object; for after all the number of senators depended, or ought to depend, on the number that would produce the greatest equality, and that depended on calculation. Better pass to the section making the apportionment, and see how the districts could be arranged with the greatest equality. Then we could better determine the number of senators.

Mr. WORDEN thought we could settle the question in the outset, as to how many senators we would have, whether 32, 38, 40, or 50—and without a tedious debate. He preferred 40 himself, but he specified 50 to cover the extreme ground.

Mr. CHATFIELD:—Why not move to discharge the committee of the whole from the two sections specifying the number of the two houses?

Mr. WORDEN assented to that.

Mr. CHATFIELD would strike out the ratio altogether—leaving it to the legislature to apportion senators and representatives. It would occupy too much of our time.

Mr. BERGEN moved to make the number of senators 40, and of the assemblymen 128.

Mr. CHATFIELD moved 48 senators.

Mr. MARVIN suggested that the instructions should be offered in blank so that it might be filled by motion.

Mr. NICHOLAS was not prepared for one to vote on the number of senators to-day. He suggested that we should now go into committee and pass over the two sections referred to.

Mr. WORDEN assented to that course, and

The Convention again went into committee of the whole, Mr. PATTERSON in the Chair, on the article in relation to the Legislative department.

The committee took up the sixth section, as follows:—

§ 6. An enumeration of the inhabitants of the state shall be taken under the direction of the legislature

in the year one thousand eight hundred and fifty-five and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature at the first session after the return of every enumeration that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of color not taxed; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district, except such county shall be entitled to two or more senators.

Mr. CHATFIELD asked for an explanation of the reason for "including aliens, paupers and persons of color not taxed" from the basis of representation. For the purpose of drawing out an explanation, he moved to strike out these words.

Mr. W. TAYLOR said there was a proposition made in committee to strike out paupers and persons of color:—but the committee concluded, finding the words in the constitution, to leave them untouched for the action of the Convention. He would have preferred to have struck out the whole, but for the fact that this alien population was fluctuating, and in the city of New York, for instance, upon a large influx of aliens, might give that city a representative, and yet these aliens in the course of a year, might be scattered all over the country. But paupers and colored persons not taxed, were subjects of legislation, and might with propriety constitute a portion of the representative population. So might aliens, but for the considerations stated.

Mr. CHATFIELD could well see why transient persons, merely passing through a seaport town to other parts of the country, should not be included in the basis of representation. But why should aliens who were taxed be excluded? And why exclude persons of color who were allowed to vote? The only true basis of representation, it struck him, was the whole population.

Mr. BERGEN concurred in this view of the question. He did not see why injustice should be done to other counties because New York might gain a little. In Kings county, there were some 17,000 persons that would not be included in this apportionment. Among them were resident aliens. Why should not they be included in the basis of representation? They were included in the basis of representation for congress. Why not here?

Mr. W. TAYLOR repeated, his own views were favorable to striking out paupers and persons of color not taxed. And the reasons for excluding aliens, was no doubt the same that operated with the convention of 1821. It would give New York an undue representation, from the large proportion of aliens there. It appeared from the last census, that of the three classes of persons excluded from the section, New York contained about one-third of the whole number in the state—in all about 74,000. Now aliens, who could so easily become naturalized, if they chose, ought certainly not to be included in the basis of representation. As to paupers, they were entitled to vote and ought to be included. And persons of color not taxed ought to be, for they lived among us and had rights in common with us. All these classes formed the basis of congressional representation. But it would be

unjust to give New York an additional senator and additional representatives on the basis of her accidental alien population.

Mr. O'CONOR adverted to the elemental principles on which this doctrine of representation is based. We had established as a basis, not the electors but the inhabitants, the persons subject to the law, who were to be governed within the district which elected the representative. We have included all the non-voting classes—and with great propriety; because the electors taking part in the government in the particular district, had charge over them, exercising all the duty of government in relation to them. Aliens ought to be included with the rest, because all the burthens of their government, so far as these burthens were of a local character, such as police expenses, &c., fell upon the electors of the district. The gentleman from Onondaga (Mr. TAYLOR) had treated this subject, as if there was an effort, by including aliens in the basis of representation, to give them a representation here. This was not so, unless the gentleman meant to say that aliens were allowed to vote in New York. The gentleman's argument proceeded upon the ground that aliens might be naturalized, and that if they neglected so to do, they should not have a representation. This is true, but it proved nothing here, since no person proposed to allow them a representation. It was the electors of the district within which they resided, who claimed a voice in the government corresponding with the population of the district. The large number of aliens in the district of New York, imposed heavy burthens upon the electors to maintain the law over them. In all the districts of the state there was a class of non-voting inhabitants included in the basis of representation—lunatics and felons, as well as women and children. Again, if you adopted the electors, instead of inhabitants, as the basis of representation, you would do to New York measurably another great piece of injustice—for there resided many families the heads of which were often permanently absent, such as sea-faring men and others. In other words the relative proportion of males and females in New York and the rural portions of the state, would show a large disproportion of the latter against New York. Without claiming for aliens a right to representation—for they had no right—but claiming for the electors of New York a right of representation corresponding with the burthens cast on them—he insisted that aliens should be included in the population which was to form the basis of representation. As to paupers, we in New York had a still stronger right—for in addition to the burthen of sustaining a police to restrain them from violations of law, we had the burthen of actually maintaining them—and they could not be deprived of the right of voting. If any exclusion whatever was to be introduced, paupers clearly should not be excluded, and so as to persons of color not taxed. The latter were excluded because they did not exercise the elective franchise. In that respect they were in the condition of aliens, and all the burthens incident to the existence of one class in a district, were incident to the existence of the other. And the district had just the same right to a

voice in the councils of the state, in proportion to the number thus charged upon it, as it had to a voice in proportion to the number of non-voting women and children in it. Again, persons of color not taxed, he insisted, ought not to be excluded from the basis of representation any more than women and children. They were equally members of society—equally burthens upon the electors. He objected to this exclusion because it recognized a doctrine that had been repudiated—that the payment of taxes was the circumstance which gave a man a right to be represented. We had gone far beyond the doctrine of those early days in the struggle for civil liberty, when it was claimed that taxation and representation ought to go together. We now permit persons to vote who not only did not contribute to the public burthens, but who were actually maintained by the state. Why should we preserve in the constitution an application of the rule, after having abolished the rule itself? This was a strong additional reason for striking out from the exception 'persons of color not taxed.' He regarded it as a blot upon our constitution. He took it also to be the last degree of injustice to say to New York, because you are so circumstanced that you are burthened with the greatest number of paupers, whom you must admit to an equality with you in the exercise of the electoral right, still you shall have all the burthens consequent upon their being among you, and yet you shall not be allowed a voice in the councils of the state, corresponding with their number as a part of your population. He supposed however, there would be little objection to striking out paupers and persons of color not taxed, because it would give but a slight advantage to New York over other parts of the state. But on the subject of aliens he anticipated more difficulty. And on a question like this, the city of New York being mainly interested in it, her delegation stood here perfectly at the mercy of the rest of the state. They had no power but that of expostulation—the power of the weak against the strong. But he did hope that whatever jealousy might exist in reference to the representation of the city here, the great and just principle which he had sought to maintain, would prevail—and that was that the electors of each district should have a voice in the councils of the state in proportion to the number of inhabitants in each district, and the consequent burthens that fall upon them—without reference to the question whether they were electors or not. Again, he contended that the aliens in question were not transient persons—for transient persons were not included in the census. He did not deny but there were some resident aliens who doing business in New York might be included in the census, who yet were properly speaking transient persons, or foreign agents, &c., but that was an extremely small number of persons.—The class of aliens included in the census was mainly composed of persons as permanently domiciliated here as the natives. Persons awaiting the five years' probationary term before naturalization entered into it, their wives and their children, not unfrequently very numerous, entered into it. Women of for-

own birth permanently settling in the country scarcely ever became naturalized. Women do not usually think of political matters or of assuming or putting off national character. These, even when they intermarried with native citizens, remained aliens, and were included in that class. To exclude all these persons from the basis of representation, was unjust and improper. He did not claim a representation for aliens, but merely that they should be included in the basis of representation.

Mr. W. TAYLOR said the gentleman had based his argument on the supposition that he (Mr. T.) went for excluding aliens here to prevent their being represented. His position was that they should not form a part of the basis of representation.

Mr. O'CONOR did not doubt the gentleman meant to present this matter properly. Mr. O'C. thought that the manner in which he presented it, tended to produce an impression that those who went for striking out, wished to secure for aliens some voice in our legislative halls—and that he wished to repudiate.

Mr. WORDEN said he should be inclined to sustain this motion to strike out, if he supposed any advantage would result from it to the classes specified. But he believed that the tendency would be to throw new impediments in the way of their enjoyment of the political rights of which they were now deprived. Nor did the proposition rest on any sound ground of principle. The true basis of representation was the great body of voters. Because they were the body, on whom rested the whole responsibility of the government, for they elected those who had the control of it. To bring in these classes of people into the basis of representation, it was conceded, would give to New-York an additional representative here, on an accidental basis, beyond her fair proportion compared with the agricultural portions of the state.—As it stood now, having reference to the voting population, New York had an advantage over other sections of the state; and to extend all over the state a principle which would still farther benefit New York, would be wrong. But the great objection was that it was wrong in principle—radically wrong. It would raise up a barrier which would operate still stronger to exclude these very classes from all participation in the rights of citizenship. He held that all men who submitted themselves to the government under which they lived, with an honest, *bona fide* intention of sustaining that government, should have a voice through the ballot boxes in the management of that government. As far as was practicable and safe, he would extend this principle to all into whom God had breathed the breath of life—every responsible and intelligent man should enjoy that right. But allow these excluded persons to be part of the basis of representation, and you would raise up an interest in another class operating to exclude them from this right. In the slave states, every five slaves counted as much in the basis of representation as three free men. He asked if this provision, giving as it did a greater degree of political power to the whites, did not of itself interpose an almost insurmountable barrier to the emancipation of the slave?

Mr. CHATFIELD asked if in the free states, the black population was not also part of the basis of representation in Congress?

Mr. WORDEN said that might be true—and yet be no ground of argument here. He was considering the effect that the fact of this slave population giving political power to another portion of the population, had in preventing their restoration to their rights. Take the case of the city of New-York—suppose they were allowed to send four more representatives here and a senator on the basis of her non-voting population?—Would the voting class ever be disposed to enfranchise these non-voting classes? Now, as New-York had the honor of making the first attempt to exclude the alien population from the right of voting and citizenship, he would not adopt a principle which would make that exclusion more rigid, which would infuse new life it, and build up there a new interest to raise again the hydra-head of persecution, in the exclusion of that portion of the population from citizenship. It would of necessity have the operation and effect to make of 60,000 electors now electing sixteen members, exert themselves to prevent 70,000 uniting with them in the election of four additional members. He would so modify this section as to make the elective body, as far as practicable, the basis of representation. At all events he would not engraft on the constitution a principle, the operation of which would give to one class a new argument or inducement to work the exclusion of other classes from their political rights.—This would be the tendency if you allowed one portion of our population to vote on another, or to be represented on another—especially when that other portion was unequally distributed, and when it gave to that county four additional members.

Mr. LOOMIS said it had been well remarked that taxation and representation was not the maxim now so far as regarded individuals—but the great national maxim, that no one people could not tax another people without representation, was as popular now as ever. But the gentleman from New York who adverted to this doctrine, had stopped short of the conclusions to which he would have been led had he followed out the elemental principles of government. It was the qualified the electors that constituted the government. They, about one fifth of the whole population, had assumed to themselves to say who should govern the country.—We excluded women, children, lunatics, &c., and that we had the right to do it. To carry out that principle, these electors should have an equal voice in the government. This equality would be directly subverted by giving the electors in one part of the state, where there was a large non-voting population, a representation and a voice in the government corresponding with that population. To say that this representation should be based on the burthens sustained, would be to resolve representation into a property representation. His own impression was strong that the best word here would be qualified electors.

RDAN understood the basis Mr. JO of representation to be that which was representation sent.—

The gentleman from New York he thought was very unfortunate in his definition of it.

Mr. O'CONNOR could not have been unfortunate in reading from the section, which made inhabitants, with certain exceptions, the basis of representation.

Mr. JORDAN, according to his idea of that basis, should vote to retain paupers. The other classes of persons were not represented in the Assembly; they did not vote, and should not be included in the basis of representation. The voting population were the true basis. To allow aliens to form part of the basis, would be to admit an additional representative from New York for instance, but he would be the representative of nobody except those who formed the true basis; and the consequence would be that those in the city who were really represented here would be represented by one more than their fair proportion. Such would be the result of including the colored persons not taxed; and the effect of that would be to give the represented population the power of an additional member to rivet the chains that now bound them down and prevented them from becoming free citizens. He should therefore vote to strike out paupers, but to retain "aliens and persons of color not taxed."

Mr. MURPHY said that we should keep distinctly in mind this distinction,—that the question was one as to the basis of representation and not as to representation itself. He would confine his observations to the reasons which had been urged in favor of the plan proposed by the committee. He had waited to hear, in answer to the inquiry of the gentleman from Otsego, (Mr. CHATFIELD,) such reasons from that committee, but none had been given except that of precedent; but when pushed a little further, the honorable chairman, (Mr. TAYLOR,) had admitted that he did not regard the exclusion which it was now sought to strike out as entirely proper, and that he himself was in favor of striking out "paupers and persons of color not taxed" but of retaining the exclusion of aliens from the basis of representation. But though the committee had not favored us with an argument in support of their report, gentlemen not of the committee had come to the rescue and endeavored to sustain it. For himself he regarded it as a question of might against right. He believed it was a foregone conclusion that the basis of representation in those countries where there were large cities, was to be reduced in order to strip them of their legitimate influence and power in these halls. The gentleman from Herkimer, who has just taken his seat, (Mr. LOOMIS,) has earnestly advocated this exclusion on the ground that it is necessary in order to preserve an equality of power in the electors, that is, if he understood him, to give to each elector the same influence in the government as any other may have; and contended that if aliens, were included in the basis of representation, each voter in New York, for instance, would in consequence of the enlarged basis, have a power, as compared with a voter in the country, of six to five. He (Mr. M.) would not deny this; but he called upon that gentleman to go on and carry out his own principle. If equality of power in the voter, were

to be the test, it would be found that as great inequalities now exist among the counties other than New York, as would exist between New York and the most favored of the rural districts. He had during the remarks of the gentleman, hastily run over the tables of population in some of the other counties, to see how the principle would work. He had before him the abstract of the census furnished the last legislature by the Secretary of State, and from that he made his calculations. He regretted that this abstract had not been printed for the use of the Convention, as the tables appended to the report of the committee were entirely useless on this question. He found, then, that in Niagara and Erie and perhaps others, the proportion of power in the elector was as compared with Delaware, Columbia, Dutchess and Putnam, for instance, as five and three-tenths to four and five-tenths, or thereabouts. Now if the gentleman were truly desirous of preserving electoral equality, why did he not carry out his principle, and seek to correct this disparity also?

Mr. LOOMIS interposed to say that these facts only showed more strongly the correctness of his principle.

Mr. MURPHY resumed. He said he did not complain of the gentleman's principle, but of the partial manner in which he applied it. The tables show that as great differences exist in the relative power of voters in different sections of the country, as between the cities and the average of the country. He therefore could not subscribe to the reasoning of the gentleman from Herkimer, unless he would give his principle a general application. The gentleman from Ontario (Mr. WORDEN) had also undertaken to justify the exclusion. He asserts that the basis of representation is the electoral body. This is not so. The old constitution of 1777 did so provide. But now the whole population, including electors, women, minors, idiots, lunatics, and all other residents, except aliens, paupers add persons of color not taxed, constitutes the basis. The gentleman was therefore wrong in the premises of his argument; and the gentleman from Columbia had partially endorsed the same erroneous view. Now if women, children, lunatics and other non-voting persons, are admitted in the basis of representation, he asked on what principle can we exclude aliens, paupers and persons of color not taxed? Are not the latter as much the objects of government as the former? Are they not as much the subjects of local protection in the community in which they live as the other? For his part he conceived it great injustice to require from that community to extend to them all the advantages of their protection, and then to deprive that community of the reciprocal advantage which they ought to derive from them in the direction of the government of the state. Some gentlemen considered the alien population a curse instead of a blessing, and as a burden upon the society in which they live, filling up the alms houses, yet at the same time, they are unwilling to let that society defend itself in the only way in which it can do so—that is, by a due representation in the state councils. The gentleman from Ontario had advanced another reason of a most extraordinary character for him. He said

that he wished to protect the rights of this unenfranchised portion of the population. He would, if he could, let aliens vote even without the present time of probation for naturalization; but as he could not do that, he wished to protect them from the rest of the community in which they live. And for what reason? Because if the other part of the community were allowed more representatives, they would exercise a power which they would be loth to give up, and would have an interest to prevent the enfranchisement of aliens. In this the gentleman displayed an extraordinary regard for our foreign population; but he thought he had overshot the mark. His zeal was too warm; for at the same time that he manifested a regard for the non-voting aliens, he was guilty of gross injustice towards the naturalized citizen. He forgot that in those communities where these non-voting aliens resided, there was, for that very reason, necessarily the largest proportion of adopted citizens. The former, therefore, were in a great degree, in the power of their own countrymen and friends, if those communities would have any power at all—which he (Mr. M.) could not admit—to keep them in their unenfranchised state. The argument of the gentleman was simply this, that the power in the hands of adopted citizens would be in the hands of fratricides,—turned turned against their own brethren.

As to the precedent alluded to by the chairman of the committee, contained in the present constitution, he did not consider it of any weight. He had not looked to see how it came to be introduced. Considering it wrong in principle, it had no force with him. Yet if we are to be referred to precedent, there was one much stronger in favor of his position, and that was the

basis of representation in the Congress of the U. S. There, no distinction prevails, but the whole population, of every and whatever description, is included. Now, he asked, what propriety is there in adopting a different basis for your state representation, from that fixed for the federal representation? To his mind, there was none. If there were any, it would be to reverse the distinction, because it was the state government only that took cognizance of our internal and local affairs.

He had thus briefly replied to the arguments adduced in favor of the report of the committee, without any expectation of changing that report. As he had before observed, the question appeared to him to be made here, one of the strong against the weak. The numerical interest was against the amendment. He had arisen only from a sense of duty to that constituency which had sent him here; and he could not allow a provision which deprived the county he in part represented, of its just influence in the legislature, without raising his voice against it. The decision, however, rested with the Convention.

Mr. WATERBURY said if he could be convinced that by striking out these words, we could give every man the equal rights to which he was entitled, he would do it cheerfully—for he had sworn adhesion to the great doctrine of equal rights. But believing that the effect would be directly the other way, he should vote to retain

Mr. STOW made some remark, which was not distinctly heard, in relation to the Indian population, when

The committee rose and reported progress, and the Convention

Adj. to 9 o'clock to-morrow morning.

WEDNESDAY, JULY 22.

Prayer by the Rev. Dr. KENNEDY.

Mr. ANGEL presented a memorial from a convention of delegates from several western counties, held at Rochester, on the 19th of June, in relation to the unfinished canals. Referred to committee No. 3.

The PRESIDENT laid before the Convention a report from the circuit judge of the 1st circuit, containing a statement of his fees, pursuant to a resolution of the Convention. Referred to the judiciary committee.

COMMON SCHOOLS, &c

Mr. NICOLL, from committee No. 12, made a report, which was read, as follows:—

ARTICLE.

§ 1. *The proceeds of all lands belonging to this state, except such parts thereof as may be reserved or appropriated to public use or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the Common School fund, and all moneys heretofore appropriated by law to the use and benefit of the said fund shall be and remain a perpetual fund, the interest of which shall be inviolably appropriated and applied to the support of Common Schools throughout this state.*

§ 2. *It shall be the duty of the legislature to pass such laws as may be necessary to keep at all times securely invested and to preserve from loss or waste all*

moneys arising from the sales of the said lands in the said first section mentioned, and all moneys now belonging or which hereafter may belong to the said common school fund.

§ 3. *The revenues accruing from the proportional share of the moneys of the United States received on deposit with this state upon the terms specified in an act of Congress of the United States entitled "An act to regulate the deposits of the public money, approved the 23d of June, 1836," after retaining so much thereof as may from time to time be necessary to make good any deficiency in the principal, shall hereafter be inviolably applied to the purposes of common school education, subject to the limitations and restrictions in the next succeeding sections contained.*

§ 4. *All existing appropriations heretofore made by law of portions of the said revenues in the preceding section mentioned, for terms of years which have not yet expired, shall continue to be made until the expiration of said terms of years, and not afterwards.*

§ 5. *The portion of the said revenues now directed by law to be annually paid over to the Literature fund shall be so paid in the year one thousand eight hundred and forty-seven, and not afterwards; and after that period all existing specific appropriations now directed by law to be paid out of the revenues of the Literature fund, shall be paid out of the revenues in the said preceding third section mentioned, until otherwise ordered by the legislature.*

The committee further report for the consideration of the Convention, and recommend to be submitted to the people separately the following additional section:

§ 6. The legislature shall, at its first session after the adoption of this constitution, and from time to time thereafter as shall be necessary, provide by law for the free education and instruction of every child between the ages of four and sixteen years, whose parents, guardians or employers shall be resident of the state, in the common schools now established or which shall hereafter be established therein—the expense of such education and instruction, after applying the public funds as above provided shall be defrayed by taxation at the same time, and in the same manner as may be provided by law for the liquidation of town and county charges.

HENRY NICOLL,
Chairman.

Mr. N. explained as had been done by the chairmen of other committees, on presenting their reports, that there was a difference of opinion in the committee, and that the individual members reserved to themselves the right to express their views hereafter.

The report was referred to the committee of the whole, and ordered to be printed.

LEGISLATIVE DEPARTMENT.

The Convention again went into committee of the whole on the report of committee number 1, on the appointment, election and tenure of office, and compensation of the legislature, Mr. PAT. TERSON in the chair.

The pending question was on striking out from lines 7 and 8 of section 6, the words "excluding aliens, paupers, and persons of color not taxed."

Mr. KIRKLAND spoke in opposition to the amendment. He said he found, by referring to the Conventions of 1777 and 1801, that the basis of representation was upon the body of electors. He found that in the Convention of 1821, the change was made in consequence of the alteration in the right of the elective franchise. That Convention provided, for instance, that to entitle a man to vote, he must have performed labor on the highways, &c. To adopt the electoral body then, as the basis of representation, would have operated most oppressively upon the city of New-York, where no such work was performed. It was on motion of a delegate from New-York, that the rule was altered, and every inhabitant was made the basis, with the exceptions here named. Mr. K., under present circumstances, could see no objection to the adoption of the rule recognized in 1777 and 1801, and make the electoral body the basis of representation. He illustrated his position. If there were now residing in Western New-York large numbers of the aborigines of our country, it would not be just to the other portions of the state, to admit them as a basis of representation, for they had never been admitted to the exercise of the elective franchise. We were adopting an arbitrary rule, and we should see that it worked no injustice to any part of the state. In one portion of the state there were some 80,000 persons who could not, in the nature of things, exercise the elective franchise. In other portions of the state there but few of this class. To adopt this amendment then, would work unequally. But make the electoral body the rule, and equal justice could be done to all. Mr. K. proceeded to answer the objections which had been urged against this view of the case. From the very necessity of things, in our government, the sovereignty of this country rested with the electoral body. Their rep-

resentatives were bound to protect the rights and property of all, aliens as well as others, and this without any reference to the rule of representation. There might not be any strong reason for changing the rule as it existed in 1821. But there was strong reason why the electoral body in one part of the state should not have an undue advantage over another part. There was no good reason for the rule proposed by this amendment, but many objections to it. It would make the 60,000 electors in New-York equal to at least 75,000 in other sections of the state. He continued his remarks at some length in opposition to the amendment, commenting upon the rule adopted in the Federal Constitution, contending that the case was not at all analogous.

Mr. CHATFIELD said when he offered his amendment, it was in a great measure to collect information, but he thought the advantages to be gained were not sufficient to counterbalance the disadvantage of this discussion. He now proposed to modify his amendment so as to strike out only the word "paupers."

The motion was agreed to, 65 voting in the affirmative.

Mr. BERGEN renewed the motion to strike out the words "excluding aliens, and persons of color not taxed."

Mr. MORRIS conceived that a principle was involved in this matter, or he would not have risen. Like his friend from Oneida, he did not rise on account of any local advantages or disadvantages it involved, but to advocate a principle without reference to locality. He was one who believed that the present age was infinitely better informed, and more fully appreciated what was meant by "liberal institutions" and "the people," than their ancestors, who had the cleverness to establish the institutions under which we live. That might be called the egotism of the age, and he might be censured for it; but it was true nevertheless. We practically carry out the principles our ancestors established.—They had them in theory, but it required years for their descendants to come to their practice. They were not however the less to be eulogized for what they did. They were not the less entitled to the character of patriots and advocates of the rights of man. Fulton is certainly entitled to more praise for his invention than the skillful machinist who improved and carried it out; and yet none would pretend that at his death he knew more of the practical operation of machinery than some of our mechanics. So it is with us. We have practically applied the theory of government which our ancestors established. The constitution of 1777, by copying into it the Declaration of Independence, used the word "people" as the source of all power. Previous to the Declaration of Independence, the terms used were "the good people of the state of New York." The Kings of England were described as being "Kings by the grace of God," of which we republicans say there is a falsehood on its face. We do not believe that the grace of God made the kings of England to rule over the people of that nation. Our document—the last constitution—commences with the avowment that the people are the source of all power—that it

all emanates from the people. He trusted the constitution to be framed by the Convention, would begin in the same manner, using the words that were in the constitution of 1777, and in the Declaration of Independence. And he desired that it should mean what it asserted. He did not wish our successors to bring up our words to shew that we were guilty of falsehood. He hoped they would either establish what they believed—that all power emanates from the people, or strike out the words if practically they meant nothing. Let them not start with a falsehood in their mouths. Now he did not believe that the “electors” of a state were the source of all power. They are a mere delegated body—the agents of the people for the performance of a particular duty. Without being astonished then, at any thing, they might nevertheless wonder at the restrictions imposed by the Convention of 1821, which in fact imposed a property qualification. The word pauper however had been restored. But he thought it wrong in gentlemen to exclude “colored persons not taxed,” so long as they permitted those to come in who are taxed, because it was making a property qualification independently of all other. It considered man not a part of the people, unless he possessed certain property, and made that property the basis of representation. Then they came to the word “alien.” And what was its meaning as here used? He was under the necessity of going to his own particular locality to portray it. The laws of the United States authorize persons to come here from abroad and live amongst us, and the states are obliged to receive them whether they desire it or not. The law says if an alien comes over the age of eighteen he must, declare his intention to become a citizen—if he is under the age of 18, no declaration is necessary—and after being here five years he may become a citizen. And what did they do by making “inhabitants” the basis of representation? It was necessary that a person removing from New-Jersey to the city and county of New-York, should reside there one year to make an elector of him, but he might be counted as one of those who were the basis of representation. But here they said an alien should not be counted; and whom did this include? It included every man who had made the declaration of his intention to become a citizen, because he was still an alien. Nor did the term inhabitants, as gentlemen supposed, embrace that floating population of 60,000 or 100,000 persons who come in annually. It did not include the tens of thousands who come up the North River, after getting on board at the Quarantine ground, who were entered in the documents as having landed at the port of New-York, but whose foot never touched the soil of the Island of New-York, for they passed it, and travelled beyond it either by the canal or rail-roads or rivers. It included then those persons who had declared their intention to become naturalized; children who might become naturalized by the naturalization of their parents; children who were under eighteen years of age, and who could become naturalized without any previous declaration to that effect; and it included the mass of women who never become naturalized—the wives, not only of adopted

citizens, but of those who were American born, when they married women who came from across the Atlantic. When these foreigners, to whom inducements were held out to reside amongst us, gave notice of their intention to become naturalized, they became a part of us, so much so as to fit them to become a part of the basis of representation, as well as infants and persons who never can become electors. Now for these reasons, and for the purpose of having this instrument really mean in practice what it proclaimed in theory, he trusted this word would be stricken out, and that the people should mean the whole mass who are here under our laws,—here with the intention of remaining under our laws,—and who have to be protected, and guarded, and controlled by our laws. And now to the equitable claim of the cities where these people were. Much expense was necessarily incurred by these cities. There was not a county or town in the state that was not put to more or less expense by reason of these people, and he could but approve of the argument of his associate, that where such burdens were sustained, they should be entitled to such additional representation as would enable them to pass laws to regulate and take charge of them.

Mr. RHOADES was always pleased to hear the gentleman from New York talk about the rights of the people, for he always exhibited a philanthropy towards all classes, and a love and respect for the rights of the people whether high or low, rich or poor, which harmonized with his own feelings. He only hoped this feeling would be exhibited when a motion should be made to amend the report of committee No. four, by striking out the word “white” and thus extend the elective franchise to some 8,000 or 10,000 inhabitants now excluded. While however he agreed with the gentleman from New York in his feeling for the people, he could not agree with him as to the basis of representation. He was in favor of striking out these words, and of inserting the word “electors.” He believed the electors held a trust to be exercised for the benefit of all the people of the state. This right had not been given to them, but they had taken it upon themselves. He believed that every other plan, except that proposed by him, was liable to objection. If we make the *inhabitants* the rule, then there would be injustice—for we have a large class of floating population, constantly changing, and who had no title to be represented here or elsewhere, for they had no intention of residing here. If we exclude aliens, we exclude a class that have come here with the intention of residing with us, and they are as much entitled to representation, when they should become naturalized, as if they had been born here. If we retain the word paupers, we do injustice, though the number be small. By examining returns, it would be found that nearly one-half of this class were either aliens or persons of color not taxed, who, it is contended, should not be reckoned. The true basis, he thought, was the “electors.” There was no principle so free from objections, while it would secure the most just, fair and equal representation.

Mr. BAKER desired to get the question into a

shape in which it might be available hereafter. He called attention to the report of the committee on franchise, who had reported a section which would, if adopted, place people of color not taxed and white people not taxed on the same footing; and for the purpose of making this section compare with that reported by that committee, he moved that the question be taken separately, so that if the former section was passed, this could be again recurred to. In answer to the eloquent argument of the gentleman from New York, in favor of giving to New York a representation equal to the burthens which she had to bear for the support of the government, in consequence of the foreigners who were among her population, he would say that New York already possessed upon this floor, and in the Legislature, greater power than they were in reality equitably entitled to. With a population less than that of the counties of Clinton, Essex, Montgomery, Cortland, Broome, Queens, Tioga, Chemung, Orleans, Wyoming and Yates, which send 12 members, New York sends her 16. If the gentleman from New York contended that they were entitled to a representation in accordance with the burthens of government imposed by their foreign population, the gentlemen from Hamilton and Essex might perhaps claim that they have in their wild lands a greater number of badgers, wolves, bears, for the taking of which they were obliged to keep a quantity of traps and hunting materials, and demand that the necessity for keeping these instruments, and the burthens which these badgers and wolves and bears imposed upon them should be taken into consideration in settling the basis of representation. He had no intention to detain the committee with a speech upon this question, but merely desired to have the question taken upon this amendment separately, so that a recurrence might be had to this subject hereafter.

After a few words from Mr. WATERBURY, the question was taken on the motion to strike out the word "alien," which was lost, only 20 voting in the affirmative.

The next question was on striking out the words "persons of color not taxed," which did not prevail, 31 only rising in favor of it.

Mr. BASCOM said in anticipation of the probability, if gentlemen would have it so, that persons of color may yet constitute a part of the electoral class, he proposed the following amendment to come in after the words "persons of color not taxed":—

So long only as persons of color shall be precluded from enjoying the rights of suffrage upon the same terms as white persons.

Mr. NICOLL thought the amendment unnecessary.

Mr. BASCOM explained.

The amendment was then rejected.

Mr. RHOADES moved to strike out "inhabitants, excluding aliens and persons of color not taxed" and insert "electors."

Some conversation ensued between Messrs. SIMMONS, RICHMOND, RHOADES, LOOMIS, STRONG, CHATFIELD and PERKINS.

Mr. CHATFIELD was satisfied this basis of representation would be exceedingly unequal.

Mr. STOW rose to point out an insuperable objection to it in its present form. It was that

they should hereby leave it to the census-taker to determine who were electors of this state.— He thought this would be too great and too dangerous a power to be so entrusted.

Mr. KENNEDY was about to make the same remark, when the gentleman from Erie rose — He had evidence on which to base his objection to the entrusting of such a power to the census-takers, in a document of the city convention now sitting in New-York, which exhibited the fact that the 4th district of the 4th ward, according to the last census, had 1878 voters, whereas the entire male population of the district was but 3893. At the November election, in 1844, this district polled 574, so that the census-taker had evidently made upwards of a thousand votes.

The debate was continued by Messrs. TOWNSEND, RHOADES, MARVIN, TILDEN, and WORDEN.

The amendment was then rejected.

Mr. JORDAN moved to amend by inserting after the word "thereafter," the following:—

The legislature shall, at its next session after the adoption of this constitution, divide the state into districts according to the fifth section of this article

Mr. J. said his object was to throw upon the legislature, this whole question of districting the state, which, if considered here, would be one of the most perplexing and protracted that could come before us. After 1855, the legislature were to perform this duty, and he did not see why the legislature, next to meet, could not do this work as well as future legislatures. He spoke of the imperious necessity of husbanding the time of the Convention, else we could not complete our labors before the election.

Mr. BROWN apprehended there were very few members of the Convention, who did not fully concur with the gentleman in the absolute necessity of saving the time of the Convention. There was great apprehension among the people, that the whole object of the Convention would fail, unless we retraced our steps. When he became a member of this Convention, he promised himself that its labors would close by the 1st of August. And now that day was just at hand, and yet all that we had done was to strike out the word "native" from the third section of the article in relation to the Executive department. He earnestly hoped the Convention would adopt either this amendment, or the motion submitted yesterday by Mr. WORDEN, which met with more favor from him. The question whether one county had too few or too many representatives, should be left where it belonged, with the legislature.

Mr. W. TAYLOR thought the question of the apportionment might be decided very easily by the committee. It was settled in a short time by the Convention of 1821, and he believed if the committee should proceed with the amendments to be offered to the remainder of the report, and then recur back to the apportionment, the whole would be disposed of in a very short time. He did not see why there should be any recommitment to committee No. one. They could not make the matter any plainer. If the question of apportionment should be given to the legislature, it would be throwing upon them an immense amount of

labor; and one which he believed properly belonged to this body.

Mr. STETSON continued the debate.

Mr. JORDAN explained that by referring to the fifth section in his amendment, he did not propose to adopt that section as it stood. He would not pass definitely upon that section at present. He would strike out of it all that related to the districting of the state, merely declaring that there should be single districts, and also how the senators should be classified. In reply to Mr. TAYLOR, Mr. J. contended there was not the least necessity for us to district the state. Cast your eyes over the important subjects upon which we are to pass, and could we possibly get through before the election if we were also to waste time in this useless work of districting the state, reconciling and harmonizing as we must all the conflicting interests of the different portions of the state?

Mr. MARVIN was as anxious as any one to expedite business; but it struck him that two or three questions must be decided before entering upon that proposed by the gentleman. We must first determine how many Senate and Assembly districts we will have—and whether they shall be single districts or not, before passing upon this proposition. He suggested that we should return to the prior section, and settle the grand question first, and then if we could not agree to the plan for distributing, we might all agree to throw that back upon the legislature.

Mr. RUSSELL could not agree with Mr. BROWN that the people of this state would excuse this Convention from the performance of their appropriate duty, in settling definitely the districts from which their senators are to be elected. He was proceeding to argue that this was the duty of the Convention to decide this question, instead of giving it to the next legislature, when

Mr. JORDAN called him to order. That was not the question before the Convention.

Mr. RUSSELL was, however, allowed to proceed in order. He believed it was a question involving the purity of legislation, that this question of deciding what portions of the state should compose the districts from which their own body should thereafter be elected. He would have the Senate districts permanently fixed, so that the Senators, both those who went out and those who remained, should be perfectly unbiased in relation to the localities from which the newly elected members should come. If time was allowed, he should also be in favor of allotting the Assembly districts. He believed that the Convention had time to dispose of their business in good season, if, instead of coming back here for an hour or two in the afternoon, they should remain at their posts until late in the evening, as they should do.

Mr. HARRIS was decidedly in favor of dividing the state into senatorial districts. But he was now satisfied that was not practicable, and the duty must devolve upon the next legislature. This being so, he thought we could dispose of the whole question in a brief time. Let us go back to the 2d section, and determine how many Senate and Assembly districts there should be, strike out all relating to the districting, and then so alter this 6th section, as to throw the

apportionment upon the next legislature. This would make the whole system complete, and he hoped this suggestion would be agreed to in case it should be deemed expedient for us to district the state.

Mr. WARD concurred in the propriety of returning to the 2d section, and appealed to Mr. JORDAN to withdraw his amendment.

Mr. JORDAN declined.

Mr. WARD said, then he was in favor of districting the state here, take what time it would. That responsibility was thrown upon us, and for one he was ready to meet his share of it. He was in favor of single senate districts and believed a majority of the Convention were.—There was a difference as to the number. His own opinion was against an increase from the present number. He should vote against the amendment now before the committee.

Mr. W. TAYLOR said that the amendment would not secure the object sought. We had got to have this whole debate on the proposition, how many districts you would have. We might as well meet that question now. He hoped we should stop debating these side questions, and confine ourselves to the subject in hand. We should gain nothing by the adoption of the amendment.

Mr. TILDEN opposed the amendment as premature at this time.

Mr. CHATFIELD said this amendment would adopt the 5th section as it now stood, and he could not vote for this in advance.

Mr. JORDAN combatted this view. His amendment would apply to that section as it should be finally adopted. He would be pleased to withdraw his proposition to please some of his friends here, but having offered it from a solemn sense of duty, he should feel that he would be recreant to that duty, did he not press it to a vote.

Mr. W. TAYLOR appealed to Mr. J. to waive his amendment for the time being, and he assented.

Mr. HARRIS offered the following amendment:—

“Strike out all after the word ‘thereafter,’ in the 4th line, to and including the word ‘district,’ in the 6th line, and insert, ‘The Legislature, at its next annual session, and at the first session after the return of every enumeration, shall divide the state into—Senate Districts, which.’”

Mr. PERKINS moved to pass over this section and return to section 2d. Agreed to.

The question then was upon striking out the word “thirty-two.”

Mr. RUSSELL briefly supported the motion, remarking that he had drawn a plan embracing 20 double districts, each electing two Senators, one every year, and yet in no district would there be a variation from the average ratio of more than 4000. He believed we would be forced to adopt a compromise of 20 double districts with 40 Senators, to harmonize the views of such as were in favor of single districts on the one hand, and the present system on the other.

Mr. W. TAYLOR said it was not necessary to increase the number of senators to equalize the representation. Nor did he believe the people called for or expected an increase, which must add materially to the expenses of legislation. If the Convention preferred double dis-

tricts, the representation could be made more equal. But he believed single districts were called for, and were more expedient.

Mr. VAN SCHOONHOVEN also insisted that the people did not call for an increase of the legislative force. Nor, if we stripped the legislature of much of its power and duty, was it necessary. He thought the report very well as it stood, though more equality might perhaps be produced by a few alterations. This arrangement, it was to be recollected, was only to last eight years, and whatever disposition of the districts might now be made, circumstances would in that time require alterations, which the legislature would take care of. Arrange it as we would, there must be dissatisfaction somewhere.

Mr. RICHMOND could account for the gentleman's satisfaction with the report as it stood. It gave Rensselaer a senator, with a large deficit, while Albany, with a larger population, was connected with Schenectady.

Mr. SIMMONS thought the number of which the senate and assembly should consist, should be determined without reference to the arrangement of the districts—and that this should be left to the legislature. His idea was that if we intended the senate to be a check upon the assembly, we should have an eye to the proposed change in regard to its judicial functions. As now constituted, men were elected to the senate with reference to their qualifications as members of the court of errors. If we stripped it of these functions, its number could well be increased and the term reduced to two years. He should prefer forty senators with a two years term—making it a more popular body, and the more numerous the less liable to be tampered with. Indeed, the assembly from its greater number, was the safer body—it was in fact the conservative branch, rather than the other. But he could vote for no system which contemplated this sort of chequer board mode of election—one-half the state alternating with the other in choosing senators. There would be too much room and motive for colonization in such a system. If we could have biennial sessions of the legislature, then the term of a senator should be four years. His object would be to prevent this excessive legislation and change of laws. He wanted to see it made more difficult to change laws.

Mr. SWACKHAMER urged briefly, single districts, biennial sessions, and an increase of the senate and assembly.

Mr. JORDAN opposed the striking out of the words thirty-two, if as seemed to be the case, the object was to increase the number. If that was a reform which the people had called, he had never heard it. The expense of such an increase was a serious objection. And upon the supposition that seven senators were added, there must be 28 members more in the Assembly; which taking the ordinary length of the session, would increase the legislative expenses \$15,000 annually—a sum which if laid aside on interest every year, would in twenty years amount to more than a million of dollars—to say nothing of the expense of enlarging the Assembly chamber and knocking out the walls of this Capitol. And if 128 were not enough to pre-

vent corruption, neither would 150 be—so that if safety was the object of an increase, we must go on until the number of representatives should reach that of half the adult population of the state. If there was not wisdom and virtue enough in 128, neither would there be in 150.—The greater the number also, the more divided the responsibility. And so with regard to the Senate—if a majority of a small body could be corrupted, so could the majority of one a little larger. And if we must act upon any such principle in fixing the number of the two bodies, better have no government at all. Besides, the great object of a popular branch—a branch which shall represent the interests, wants, and wishes of all parts of the state—did not depend so much on their number, as on their proper apportionment throughout the state. And as for the Senate, whose chief purpose was a check upon unwise legislation, a small body of 32 could perform that function as well as one of 48. Again, the idea of equalizing representation by increasing the number of representatives, was all a fallacy—for by this means you only increase the importance of fractions. Double the number of your Assembly, and you would then find that a fraction of 8000 would produce as great inequality as a fraction of 16,000 now.—Absolute inequality of representation could not be attained without dividing counties, towns and perhaps school districts—nor was it essential that the people should vote every year for senators, so long as they were represented every year. But whether we had single, or double, or quadruple districts, he was for retaining the present term of four years for a senator, as well for the purpose of making the senate the more permanent body, as to secure there a sufficient knowledge of previous legislation, and of public affairs generally and to secure stability in the laws.

Mr. PERKINS urged that the number of Senators would depend in some degree in their term of office—that is, if they were elected for four years, we should have a number that would divide by four, and so on. But it did not follow that if the senate was increased a little, the house must be also.

Mr. CHATFIELD followed chiefly in reply to Mr. JORDAN, urging that equality of representation in the senate was a matter of great importance, and that could not be effected by the number proposed by the committee, we should endeavor to hit on some other number that would produce that result. Mr. C. went on to criticize the apportionment proposed—speaking of the large excesses and deficiencies—when

Mr. W. TAYLOR remarked that the excesses and deficiencies were very nearly equal in the aggregate.

Mr. CHATFIELD insisted that the inequalities were such that it would leave 25,000 voters unrepresented, estimating one voter to every five inhabitants. Mr. C. went on to point out the inequalities, as respects Albany and Rensselaer, Monroe, Erie, Onondaga, &c. The expense of increasing the senate, he regarded as a matter of no moment compared with the great object of equalizing representation. But he insisted, that by shearing the senate of half its functions, and

limiting the sessions to three months instead of five or six, there would be no additional expense growing out of this increase. The expense of a census periodically might as well be objected to—for its only object was to equalize representation. And if this was to be the principle, we might as well adopt at once an apportionment for all time to come, and say, that though a rotten borough system might be the result, it should remain, like the laws of the Medes and Persians, unalterable. Mr. C. went on to draw an argument from the increase of the state in wealth and population, in favor of an increase of representation; and to urge the greater safety of larger bodies, compared with smaller; from the greater difficulty of tampering with the former. He went for such a representation as should be a fair reflection of the popular opinion. If justice could be done by single districts, he went for it—if not, for double districts.

On motion of Mr. STOW, the committee rose and reported progress.

Leave was granted to sit again, and the Convention took a recess.

AFTERNOON SESSION.

Mr. MURPHY offered the following, and demanded the previous question on it:—

“Resolved, That when this Convention shall be resolved into committee of the whole on the report of committee number one, members engaged in debate shall not be allowed to speak more than five minutes on any one question.”

Mr. CHATFIELD insisted that it was not in order.

The PRESIDENT ruled otherwise, it having relation to the pending business.

Mr. CHATFIELD still differed with the Chair—but moved ten minutes instead of five.

The previous question was considered, ayes 61, noes 33; ordered to be put, ayes 54, noes 42; and Mr. MURPHY's resolution adopted, ayes 59, noes 43.

Mr. CHATFIELD then offered the following:

“Resolved, That this Convention do now finally adjourn without delay.”

Mr. STEPHENS called for the ayes and noes on the resolution.

Mr. WORDEN moved to lay on the table—at the same time asking the mover to withdraw it.

Mr. CHATFIELD, after expressing his surprise and regret that the Convention should have adopted so stringent a rule in regard to debate in committee of the whole, and his views of the importance of the pending question—withdrew his resolution.

Mr. BAKER then offered the following:—

Resolved, That the committee of the whole having charge of the report of committee number one, be instructed so to settle said report, that the Senate shall consist of — members, to be elected in — districts, and for a term of — years.”

Mr. B. said this would enable the Convention to come to a vote on these several propositions, as to the number of senators, their term, and the size of the districts, and still allow every member to present his proposition and have a vote on it—even though the previous question should be moved here.

The resolution was received, and the question being upon filling the first blank, Mr. BAKER

moved to fill it with 50, by request; Mr. CHATFIELD 48; Mr. BASCOM 46; Mr. WORDEN 40; Mr. RICHMOND 39; Mr. WHITE 36; Mr. ST. JOHN 32; Mr. RUSSELL 42.

The question recurred on the highest number.

Mr. TAGGART spoke at length in favor of an increase of senators, though he thought fifty too many. He was for leaving the number of senators to be increased hereafter by the legislature, whatever number might be fixed upon now. He objected to thirty-two, as creating too many and too great excesses and deficits. Still, he admitted that it would be impossible to apportion senators by single districts, without dividing counties, and get rid of inequalities.—But he thought a plan might be devised more equal than that of the committee, and by single districts, by increasing the number of senators. Mr. T. ran over an apportionment he had made on such a basis—saying, that from a thorough examination of all the plans for single districts, none presented fewer inequalities than his. He went on to urge an increase of representatives in the Senate and Assembly, as necessary to secure to the agricultural districts their fair representation—which he asserted would in time be encroached upon by the commercial counties, having within them the large cities and villages. And he adverted to the several apportionments heretofore made, to show that this would be the tendency under the present limited and fixed representation. His number was thirty-nine, for the Senate now, and then either fixing the number absolutely in 1855 and 1865, or leaving it to the legislature. He would also increase the Assembly in the same proportion, and adopt the same principle there also.

Mr. KIRKLAND insisted that the plan of the gentleman from Genesee instead of producing equality, would result in most glaring inequalities. In a single case only it left an excess of 17,000 in one county, and a deficiency in an adjoining county of 11,000. The one plan was as bad as the other, unless you resorted to dismemberment—and that he regarded as entirely out of the question. But the real question here was not how the state should be districted; but whether the number of senators and representatives should be increased. And on that question he was prepared to vote now. He denied that the people had called for this increase. If they had, the call had never reached his ears.—Besides, we should no doubt strip the senate of all judicial power, of nearly all its voice in matters of appointment—and where the necessity or propriety, whilst thus diminishing the powers and duties of that body, of adding to its number? Again, this increase of number, instead of shortening sessions and diminishing expense, would have directly the opposite tendency. He trusted the Convention would pause before they adopted a plan which must enhance the expense of legislation to no good purpose, and which the people did not contemplate or desire.

Mr. TALLMADGE also took ground against any increase of the senate or assembly. Raise the number of senators to 40, and of assemblymen to 165—and we should add to the expense of legislation in the next 20 years, to the amount of a million or more of dollars. For one, he should vote for no increase beyond the present

numbers, 32 and 123—believing that the people had not the most distant idea of such an increase and would be dissatisfied with it. Again, all saw the difficulty of settling these districts. We could not arrange them to our own satisfaction—and who did not see that it would be throwing into the instrument an item at which every mathematician in the state would be carping? and the result would not be otherwise than unfavorable to the adoption of our work by the people. All seemed to agree on the propriety of separate assembly districts. But we had no time to arrange these districts. That must be left to the legislature—and if so, why not leave the legislature also to form senate districts out of the assembly districts? In that way, equality, as far as practicable, could be brought about.— But he repeated, he adhered to the present number, thirty-two, and he washed his hands of any increase of it.

Mr. MARVIN went for an increase of the number of senators. He assumed that the senate was to be a legislative body only, without judicial power—that it was a fundamental principle of a representative government that the representative should sympathize with the people and be intimately acquainted with all their wants, wishes and interests—and that it was impossible that in this great state, destined as it was soon to contain a population of five million—that a body of 32 members only could thus sympathize with the constituent body. It was too large for a court, but too small for a safe legislative body. Forty-nine senators would give one representative in that body for every 50,000. And would any one contend that that was too small a number for one man to represent? He insisted that the demand for the single district system arose mainly out of this disproportion of representation and population—and from the impossibility now of the electors knowing who they voted for for senator, or of the candidates knowing a hundredth part of them—much less their varied interests and wishes. The people desired to have representation brought home more nearly to them. He would have 48 senators and 144 representatives. That would allow a senatorial term of 4, 3, or 2 years—and this increase would give a fair and full representation of districts and localities which the people so much desired.

Mr. W. TAYLOR criticised Mr. TAGGART's plan of apportionment, pointing out its excesses and deficiencies, and insisting that its inequalities were greater under that plan than under that of the committee. He then alluded to Mr. CHATFIELD's plan for 48 senators—showing its large excesses and deficiencies in eight counties. He said he did not suppose the gentleman had Otsego on his mind, but it happened that Otsego came out exactly even.

Mr. CHATFIELD supposed the gentleman did not think of Onondaga when he made out his apportionment.

Mr. TAYLOR defied the gentleman to place Onondaga with any other county around it, without making an excess of some 25,000.

Mr. CHATFIELD said Onondaga was happy in its locality.

Mr. TAYLOR.—Certainly. Nature put us there, and we have no wish to get away from it.

Mr. T. went on to say that under any plan of single districts there must be inequality, unless you divided counties. He said that the Albany and Schenectady district had been objected to. But he was permitted by the gentleman from Albany (Mr. HARRIS,) to say that he had tried to arrange that district differently, and could not better it.

Mr. STETSON replied to the objection as to the additional expense which would follow from an increase of the senate and assembly. He had made an estimate, supposing the senate to be increased to 40 and the house to 150, and adopting the proposition for a 90 days' session, and he found the increase would not be over \$11,000 a year. As to the farther objection that an increase would require an enlargement of these rooms, Mr. S. thought the great question of popular representation was not to be prejudiced by such a flimsy argument. This was a confession that better arguments were not at hand. He would submit to the members of the Convention, whether a population of 16,000 was not large enough for any man to represent faithfully? This was as many as formed the basis in 1821. And were not 60,000 enough for the ambition of a senator? This was a question in which the people were interested. It might be wise to spend nine days in the discussion of the question whether the Governor should be 30 years of age, and then throw out this proposition as unworthy of consideration. But such was not the opinion of Mr. S. He trusted this Convention would consent to a limited increase of legislative representation. The people did want single districts, but to accomplish that, they did not want a violation of every principle of harmony. He objected to the plan of the committee that it would lead to monstrous frauds in New-York by colonizing. He would increase the number to 40, make double districts, and have one senator elected every year.

Mr. FORSYTH, in reply to the gentleman from Oneida, who had inquired when and where the people had demanded an extension of the number of Senators, said he would admit that this might not have been demanded in terms, but that the people have insisted that the Senate should be popularized none would deny. Difficulties had been urged in the way of accomplishing this, but he trusted they would not be found to be insurmountable. Looking at the history of the Senate, we should find that it had never been a popular body. No system could be devised, no number fixed upon, that would not present irregularities which could not be remedied, unless we disregarded county lines. He had figured until he was tired, and had not been able to fix upon any number that could avoid that difficulty. He could discover a sound reason for an increase in the number of Senators. In the early history of our Republic, it was thought necessary to interpose that body as a barrier between the property holders of the state and the great body of the people. This was the reason that that body was constituted of a small number. It was necessary for that object that it should be small. But now that the doctrine of checks and bits and bridles upon the people was no longer tolerated, the time had come when this body must be made more representative and

more assimilated to the wants of the people. Mr. F. found that the number of 32 was first fixed upon in 1801, when it was increased to that number from 24, the number fixed in 1777. He would not do the men of 1801 the injustice to suppose that they acted without reference to some principle. It was because 32 were then enough, taking into consideration the then population of the State, and the interests which they were to represent. If 32 were enough now, then the number was infinitely too great in 1801. Was a body large enough to represent the people 45 years ago, a sufficiency for a population of 3,000,000? The idea is absurd. If the Senate was to have any reference to the interests of the people, the number must be increased. There was another consideration in the fact that in numbers there was safety. The principle of safety is to give the right of suffrage to every man. He would extend equal privileges to all. He did not believe that any class should exist which had interests adverse to another class.—For the very reason that would lead him to increase the number of electors, he would increase the number of representatives. It would never be found by reference to history that any bulwark of freedom had been secured by an oligarchy. Every small body tends to an oligarchy and to the promotion of exclusive feelings. It was easier to be corrupted. He believed with the gentleman from Essex (Mr. SIMMONS) that this assembly, notwithstanding the torrents of abuse which had been heaped upon it, had been the true conservative body, and that the people had the greatest amount of safety in the Assembly. The Senate now represented nobody. It did not represent the whole people, for they did not vote for it. It did not in fact represent the districts, for the four senators represented diverse interests. There was not only no congruity of feeling between them, but they might be adverse to one another. They did not possess the public confidence. No one county felt that it was represented, hence it turned to its member of assembly, and the senate was left without care. There was one body in this Union, which, amid all the strifes of party and political zeal, had maintained its integrity, and the confidence of the people. This was the Senate of the United States. And what was the reason? Its constituency is singular, and the principle is one which we should measurably imitate. Its numbers increase with the increase of the states. Every new interest and constituency introduced into the Union immediately had its two senators in that body. Mr. F. considered this a sufficient argument in refutation of the absurd position that our senate should be thirty-two because it had always been thirty-two.

Mr. BAKER believed we were prepared to vote, and he therefore moved the previous question, but withdrew it at the request of

Mr. WORDEN, who desired to answer briefly an argument which had been urged. If the people had demanded any one reform more than all others, it was that there should be single Senate and Assembly districts to equalize their representation in the legislature. The present constitution provided that each county, no matter what might be the population, should have one member of Assembly. By this provision there

was an inequality of representation more odious than any now in existence in Great Britain.—There were now counties, which sent one-eighth of the members of Assembly, and yet have less than 70,000 electors. While on the other hand, there were other eight counties, which had only the same number of representatives, with double the number of electors. This was a fact known and understood by the people, and that argument induced them to demand single districts. How did this inequality creep into the constitution? How came the provision to be adopted that each county was to have a representative, no matter what its population might be. It was because the President of the Convention of 1821 was himself the representative of a county, which had not half the population necessary to entitle it to a representative. Mr. W. would ask gentlemen if they were willing to go to their constituents, endorsing the further continuance of the gross inequality by which a minority could continue to elect a majority of the representatives? If so, he could tell them their course would not be sanctioned. Representation must come as directly from the people as possible. The idea that the Senate was to be the great conservative body, representing the moneyed interest, had long since been exploded. It should be increased that it might be more adapted to represent the wants of the people. But we were told this cannot be done without dividing counties. What objection was there in that? The people have suggested to us how this whole matter may be arranged. Divide the state up into 144 single Assembly districts, irrespective of county lines, which are only imaginary. The mode of electing and making returns could easily be arranged by law. Then make every three districts constitute one Senate district, and the whole work is done. He again repeated that it would not do to allow the unequal representation of the last 25 years to remain. The people would rise in their majesty and condemn the continuance of so gross an outrage upon their rights.

Mr. BERGEN renewed the motion for the previous question, and it was seconded, 46 to 36.

Mr. BAKER withdrew his proposition for 50.

The first question was upon filling the blank with 48, and it was *lost*, as follows:—

AYES—Messrs. Angel, Archer, Baker, Bascom, Burr, Chatfield, Crooker, Forsyth, Gardner, Gebhard, Graham, Hawley, Kennedy, Marvin, Morris, Nicoll, O'Connor, Patterson, Peuniman, Russell, Shaver, Simmons, W. H. Spencer, Stephens, Taft, Taggart, White, A. Wright, W. B. Wright—29.

NAYS—Messrs. Ayrault, H. Backus, Bergen, Bouck, Bowdish, Brown, Brundage, Bull, Cambreleng, D. D. Campbell, R. Campbell, jr., Candee, Clark, Clyde, Conely, Cook, Cornell, Cuddeback, Dana, Danforth, Dodd, Dubois, Flanders, Greene, Harris, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jones, Jordan, Kemble, Kingsley, Kirkland, Loomis, McNitt, Maxwell, Miller, Murphy, Nellis, Nicholas, Parish, Perkins, Powers, President, Rhoades, Richmond, Riker, Ruggles, St. John, Salisbury, Sears, Shaw, Sheldon, Shepard, Smith, Stanton, Stetson, Stow, Strong, Tallmadge, J. J. Taylor, W. Taylor, Tilden, Townsend, Tuthill, Ward, Warren, Waterbury, Willard, Witbeck, Wood, Worden, Yawger, Young—78.

Mr. WORDEN moved a reconsideration.—Table.

On filling the blank with 42, there were ayes 23, noes 84, as follows:—

AYES—Messrs. Archer, Bascom, Chatfield, Crooker, Danforth, Gardner, Gebhard, Hawley, Jones, Marvin, Morris, O'Connor, Patterson, Penniman, Perkins, Russell, W. H. Spencer, Stow, Taft, Taggart, Worden, A. Wright, W. B. Wright—23

NAYS—Messrs. Angel, Ayrault, H. Backus, Baker, Bergen, Bouck, Bowdish, Brown, Brundage, Bull, Burr, Cambreleng, D. D. Campbell, R. Campbell, jr., Candee, Clark, Clyde, Conely, Cook, Cornell, Cuddeback, Dana, Dodd, Dubois, Flanders, Forsyth, Graham, Greene, Harris, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kennedy, Kingsley, Kirkland, Loomis, McNitt, Maxwell, Miller, Murphy, Nellis, Nicholas, Nicoll, Parish, Powers, President, Rhoades, Richmond, Riker, Ruggles, St. John, Salisbury, Sears, Shaw, Sheldon, Shepard, Simmons, Smith, Stanton, Stephens, Stetson, Strong, Swackhamer, Tallmadge, J. J. Taylor, W. Taylor, Tilden, Townsend, Tuthill, Vache, Ward, Warren, Waterbury, White, Willard, Witbeck, Wood, Yawger—84.

Mr. RUSSELL moved a reconsideration.—
Table.

On filling the blank with 40, the vote was—

AYES—Messrs. Angel, Archer, Ayrault, Baker, Bascom, Burr, D. D. Campbell, Chatfield, Conely, Crooker, Danforth, Dodd, Dubois, Forsyth, Gardner, Gebhard, Greene, Hawley, Jones, Marvin, Miller, Morris, Murphy, O'Connor, Patterson, Penniman, Richmond, Ruggles, Russell, Salisbury, Shaver, Simmons, Smith, W. H. Spencer, Stetson, Stow, Swackhamer, Taft, Taggart, Tilden, Townsend, Willard, Worden, A. Wright, W. B. Wright, Young—47.

NAYS—Messrs. H. Backus, Bergen, Bouck, Bowdish, Brown, Brundage, Cambreleng, R. Campbell, jr., Candee, Clark, Clyde, Cook, Cornell, Cuddeback, Dana, Dorlon, Flanders, Graham, Harris, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kennedy, Kingsley, Kirkland, Loomis, McNitt, Maxwell, Nellis, Nicholas, Nicoll, Parish, Powers, President, Rhoades, Riker, St. John, Sears, Shaw, Sheldon, Shepard, Stanton, Stephens, Strong, Tallmadge, J. J. Taylor, W. Taylor, Tuthill, Vache, Ward, Warren, Waterbury, White, Witbeck, Wood, Yawger—63.

On filling the blank with thirty-nine, there were ayes 42, nays 67, as follows:—

AYES—Messrs. Angel, Archer, H. Backus, Baker, Bascom, Bergen, Bowdish, Bull, D. D. Campbell, Conely, Danforth, Dodd, Dubois, Gardner, Gebhard, Harris, Kemble, Marvin, Miller, Morris, Murphy, Nellis, O'Connor, Patterson, Penniman, Perkins, Richmond, Ruggles, Russell, Salisbury, Shaver, Smith, W. H. Spencer, Stow, Strong, Taft, Taggart, Townsend, Worden, A. Wright, W. B. Wright, Young—42.

cer, Stow, Strong, Taft, Taggart, Townsend, Worden, A. Wright, W. B. Wright, Young—42.

NOES—Messrs. Ayrault, Bouck, Brown, Brundage, Burr, Cambreleng, R. Campbell, jr., Candee, Chatfield, Clark, Clyde, Cook, Cornell, Crooker, Cuddeback, Dana, Dorlon, Flanders, Graham, Hawley, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jones, Jordan, Kennedy, Kingsley, Kirkland, Loomis, McNitt, Maxwell, Nicholas, Nicoll, Parish, Powers, President, Rhoades, Riker, St. John, Sears, Shaw, Sheldon, Shepard, Simmons, Stanton, Stephens, Stetson, Swackhamer, Tallmadge, J. J. Taylor, W. Taylor, Tilden, Tuthill, Vache, Ward, Warren, Waterbury, White, Willard, Witbeck, Wood, Yawger—67.

Mr. RICHMOND moved a reconsideration.
Table.

The motion to fill the blank with thirty-six was also lost, ayes 44, noes 62.

Mr. PERKINS moved a reconsideration.—
Laid on the table.

The question now came back to filling the blank with 32, the present number of senators.

The vote was as follows:—

AYES—Messrs. Angel, Ayrault, H. Backus, Bergen, Bouck, Brown, Brundage, Burr, Cambreleng, R. Campbell, jr., Candee, Clark, Clyde, Cook, Cornell, Cuddeback, Dana, Flanders, Graham, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jordan, Kennedy, Kingsley, Kirkland, Loomis, McNitt, Maxwell, Murphy, Nicholas, Nicoll, Parish, Patterson, Powers, President, Rhoades, Riker, Ruggles, St. John, Sears, Shaw, Sheldon, Shepard, Stanton, Stephens, Strong, Tallmadge, J. J. Taylor, W. Taylor, Townsend, Tuthill, Ward, Warren, Waterbury, White, Witbeck, Wood, Yawger—63.

NOES—Messrs. Archer, Baker, Bascom, Bowdish, Bull, D. D. Campbell, Chatfield, Crooker, Danforth, Dodd, Dorlon, Dubois, Gardner, Gebhard, Harris, Hawley, Hoffman, Jones, Kemble, Marvin, Miller, Morris, Nellis, O'Connor, Penniman, Perkins, Richmond, Russell, Salisbury, Shaver, Smith, W. H. Spencer, Stetson, Stow, Swackhamer, Taft, Taggart, Tilden, Vache, Willard, Worden, A. Wright, W. B. Wright, Young—43.

So the Convention resolved that the number of senators should remain unaltered.

Mr. CHATFIELD moved a reconsideration.
Laid on the table.

The Convention then at 7 o'clock, adjourned to 9 o'clock to-morrow morning.

THURSDAY, JULY 23.

Prayer by the Rev. Mr. HITCHCOCK.

Mr. TUTHILL presented a petition from citizens of Orange county, on the subject of railroad companies, which, on his motion, was read.

Mr. T. moved its reference to the committee of the whole having in charge the report of the Seventeenth standing committee.

Mr. RICHMOND moved that it be printed.

Mr. BROWN said it was a subject which was of great moment to his constituents, and to the people of the state. He alluded to the power which the legislature had given to railroad companies, to take private property, and he contended that it should never be done but by the intervention of a jury.

After some discussion, the petition was referred to the committee of the whole having in charge the report of the Eleventh standing committee. The printing of it was negatived.

TERMS OF SENATORS.

On the motion of **Mr. JONES**, the unfinished

business, the resolution under consideration at the adjournment last night, was taken up.

The **PRESIDENT** having ruled that the Previous Question, which had been sustained by the Convention, cut off propositions to fill the blanks as to the senatorial term.

A long and confused discussion ensued.

Messrs. **PERKINS** and **NICHOLAS** appealed from the decision of the Chair. Finally, however, it was proposed to take the question on the resolution, without filling the blanks, the Chair having suggested that the committee of the whole would have full control of the question.

Mr. CHATFIELD called for the yeas and nays on the resolution. He thought gentlemen would discover that the true course (cries of order) would be the straight-forward, manly course, (renewed cries of order).

The yeas and nays were then ordered, and being taken resulted thus—yeas 76, nays 45. So

the resolution was adopted without filling the blanks.

Mr. BAKER then moved that the vote filling the first blank with 32 be reconsidered, in order that the question might be settled this morning.

Mr. PERKINS moved to lay the motion on the table, and it was carried by a majority of one—50 voting in the affirmative, and 49 in the negative.

Mr. LOOMIS offered the following resolution.

Resolved, That the committee of the whole having in charge the report of committee No. 1, be instructed to fill the blank for the term of office with three years.

Mr. CAMBRELENG submitted to the gentleman from Herkimer the propriety of offering his resolution in blank, and thus give every gentleman an opportunity to offer the number he preferred.

Mr. LOOMIS said they had already instructed the committee to leave the term in blank, and hence such a resolution would not be in order.

Mr. CAMBRELENG then moved to strike out three and insert two.

Mr. PATTERSON did not see any good and substantial reason why a senator should not be made accountable to his constituents as often as once a year. If they were brought more frequently before their constituents, they would be better senators.

Mr. JONES preferred the amendment of the gentleman from Suffolk. It was undoubtedly true that there were sometimes unfaithful representatives, and that might be owing to the great extent of the districts and the long term of service, the senator being in the one case unacquainted with the interests of his constituents, and in the other too independent in his responsibility.

Mr. LOOMIS modified his amendment by striking out three years and inserting "one month."

Mr. JONES was opposed to the proposition of the gentleman from Chautauque. He thought there should be some slight difference both as to districts and terms between members of the two branches of the legislature. If however the object were to have them for precisely the same term he would propose the simple mode of electing a larger number to the assembly, and when they arrived here they could divide themselves into two bodies and send one portion to the other House. Thus the object of the gentleman from Chautauque could be accomplished.

Mr. A. W. YOUNG differed with the gentleman from Chautauque in his idea of a senate.—That gentleman's plan was contrary to the fundamental principles on which our senates have been established. He referred to the term of service in the U. S. Senate and in the senates of other states.

Mr. RUGGLES moved to strike out "one month" and insert "four years." He did so on the ground that if the term under the present organization were too long, that objection would be in a great measure if not entirely removed when the power of appointment shall have been taken away from the senate.

Mr. WORDEN was of opinion that the true conservative body in this government, was the people. If this were true, they had a plain rule to guide them in the formation of this constitu-

tion. He conceded that the popular mind might be in error. For sixteen years of the last twenty, he had been proclaiming that the majority of the people were wrong on all the great questions of politics and the public interest. He had not been a flatterer of the people, but he had not, nevertheless departed from the great principle with which he set out. If the people were in error, the people themselves must correct that error. He would bring the senate within the immediate action of the public will. The gentleman from Dutchess proposed a term of four years; but could not that gentleman carry his mind back to a memorable instance when the senate of this state, relying on the party in power and on its influence, and not on the public will, committed a high outrage on human rights? Now would the Senate have dared to do that if they had been obliged to go home immediately and put themselves on the judgment of their constituents? He might cite other instances, for they were abundant, where the public will and the public interest had been disregarded; and doubtless because the day of reckoning was far removed. They had carried out the behests of political cabals rather than the public sentiment on great questions of momentous importance to the people of the state. He had now only to say that if the Convention would give them a senate with a sufficient number to represent fully and truly the public will, he should go for one year; for he agreed with the gentleman from Essex, that the true conservative body was the House of Assembly. That body always more truly reflected the public sentiment. Its members considered themselves responsible to their constituents for every act they do. He could not approve the suggestion of the gentleman from New York (Mr. JONES) to elect one body and divide them because the people desired to designate their representatives in the senate.—And in reply to the gentleman from Wyoming who referred to the U. S. Senate, he said that body was organized on no principle like the senate of this state. It was a body representing sovereignties, and not the people in a subordinate capacity, as they were represented by members in Congress.

Mr. LOOMIS said on this question he considered most of the permanency and value of legislation depended. It was not a small, but a great question. It was one which had been deemed worthy of the consideration of the best writers on political economy. It had been regarded with deep attention by the constitution making power of every government, both on this and the old continent. The law making power was divided into two branches, and for what purpose? Why not adopt the principle which was established at the French Revolution, and have one general Assembly? Because it was designed to guard against improvident legislation—against legislation under the influence of passion, and feelings of excitement, and the impulse of the public for the moment, without deliberation, without time for reflection, without careful consideration. It had been deemed wise that the various branches of the legislature should be elected for different terms, and by different constituencies, and that one body should go out in rotation. We have three branches of the law

making power—the two Houses and the Executive—the one elected for a short term of one year in small districts, to represent localities and to express more immediately the popular judgment; the other branch it was desirable should represent larger districts, and be elected for a longer period, that they might express the more deliberate judgment of the people. The term of the Governor was two years, and as that term and also that of the Assembly would probably be unchanged, the term of the Senate should be longer to give to each a different character. He should be content to see the term of the Senate fixed at three years, the Governor being two and the Assembly one. Thus they would secure a system of checks and safeguards which have been considered essential in a republican government. They would be to us what monarchies and aristocracies were in the governments of the old world: they were safe and prudent, and secured caution in action.—Some gentlemen preferred four years and others two years. He had no serious objection to either of them, but on balancing the matter he thought three years was a just and proper medium. He alluded to the terms of service in the general government, and then briefly replied to the remarks of Messrs. JONES and WORDEN. He denied that the popular voice had called for single senate districts, and held that the proposed elections in alternate senate districts would give opportunities to ambitious, unscrupulous partisans to colonize and corrupt, and give a wrong direction to the popular opinion.

Mr. CHATFIELD replied, and contended for annual elections by the people of one-half the senate each year—24 districts to elect each one senator annually, whose term of service shall be two years, thus constituting the body of 48 senators, with small fractions of but 4000, and securing experience with accountability. He did not believe that small representative bodies were desirable in a republic.

Mr. TALLMADGE spoke in opposition to the amendment to fix short terms for the Senate. He said he was not a democrat—he was not a Jacobin—he was a republican. He referred to French history, where democracy ran mad, and to the instructive lesson it presented; and said that if these amendments should be adopted it would be the breaking up of the whole theory of our government, and the commencement of a revolution.

Mr. CAMBRELENG replied to the speech of the gentleman from Dutchess.

Mr. NICHOLAS after briefly replying to the gentleman from Suffolk, spoke to the subject under discussion and contended that we should preserve the permanent character of the Senate, and not weaken its influence by shortening too much its term of office—that if practicable, the Senate districts should be single; and that—though this was of less importance than the other positions—the number of senators should be increased.

Mr. PERKINS advocated a three years' term for senators, and great caution in making changes in that body, where experience was so necessary.

Mr. STRONG, after a few remarks on the propriety of terminating this debate, moved the

previous question; but the Convention refused to second it, yeas 30, nays 73.

Mr. BRUCE then replied to remarks which had been made, denying that the popular voice had called for single senate districts. He asserted warmly that the demand had been made by the people. It had also been deemed unwise to dispense with experience in the Senate. In reply to this, he alluded to scenes which occurred in the Senate during the last winter, when men, though nominally young, but old in experience, had been the cause and the active participants in conflicts discreditable if not disgraceful.—By long continuance in political life, there was danger that men would become corrupt; and this was another reason why he desired frequent changes.

Mr. BASCOM said that having taken some part in preparing the public mind for a revision of the constitution through a convention, he could not be silent under the congratulations we had heard from a leading member of this body, that two months of the session had gone by, and nothing done towards changing the organic law. These congratulations came with propriety perhaps from that quarter, along with the epithets of jacobinism and radicalism and democracy, which had been applied so liberally to those who came here, like himself, with the honest intention of carrying out the reforms that had been so loudly demanded by the people. But he could tell that gentleman, and all others who might be disposed to use these terms as a reproach, that these epithets and all the bug-bear reminiscences of the French Revolution, that they were without effect upon him, and would be quite as ineffectual with the masses—who perhaps had not forgotten that conservatism slaughtered more at St. Bartholomew than were slaughtered in the darkest days of revolutionary France. He commenced his career with that gentleman and the People's party, and he had not seen occasion to change his views since.—Mr. B. went on to say that the distinction between the popular branch and the other, had been too long kept up. It was time that both branches had become popular branches. That could only be done by making small districts, and as many districts as senators, their election and term to be annual. There was no danger that the people would not see to it that men of the requisite experience were put there. Nor did it follow that there would be no re-elections.—The people of Vermont elected their supreme court judges every year, and yet re-elected them, when they served them well. He denied that the people only desired that the Senate should be stripped of their judicial functions. They had complained of the Senate since 1824, when 17 men undertook to stand between the people and their rights. They had not forgotten more recently when 17 men in that body deprived them for one year of half their representation in the U. S. Senate. Nor had they forgotten the kind of law reform which the senate gave them a few years ago. He insisted that we must have a senate which should feel its responsibility to the people. It might be called radicalism and jacobinism, to insist upon these and other real reforms; but the people would be content with nothing short of them. They had

none of these fears, lest in rooting out tares, we should destroy some of the wheat also. They desired to see the good conserved, and the bad eradicated, and so long as we kept within that limit, we had nothing to fear for ourselves or for the people.

Mr. NICOLL desired to get at the question of the number of Senators, under the motion to reconsider, and for that purpose he hoped the pending question would be laid on the table.—The matter of apportionment and the terms of senators depended on the number agreed on, and this ought to be definitely settled first. If we had thirty-two senators, the term of three years was out of the question—but we must have a term of two years or double districts. It would be exceedingly unwise to have a term of two years and have the whole Senate go out at the end of the two years. Better have half go out each year. No doubt there was a great desire to have the term shortened, and diminishing the size of the districts; but he did not believe that the people desired to have both branches come entirely anew every two years. There should be some stability in the Senate, and he presumed all would recollect instances when but for the check of the Senate upon a large majority of the house, the people would have been sufferers.

Mr. WORDEN asked the gentleman to state an instance.

Mr. NICOLL alluded to the passage of bank charters by the house.

Mr. RUSSELL:—Twenty bank charters passed here in one year which were killed in the Senate.

Mr. WORDEN:—How many bank charters passed the senate, that were killed here?

Mr. NICOLL continued his remarks upon the importance of a check in the senate upon the caprices of the moment—insisting that there had been and would be occasions, when the importance of this safeguard had been and would benefit.

Mr. MARVIN here came forward with a compromise between the conflicting opinions as to the term of office and the number of senators. He was for increasing the senate, but was willing to yield something. He proposed 42 senators, term three years—the assembly to consist of 126 elected annually—the state to be divided into 126 assembly districts, each choosing a member—no town or ward to be divided, unless it shall be entitled to two or more members—three assembly districts to form a senate district, choosing a senator each year. If gentlemen would go with him to enlarge the senate, he would go with them to reduce the assembly, and for a term of three years.

Mr. TILDEN thought the term should be first fixed, in order intelligently to dispose of this whole subject. If we adopted a term inconsistent with the number thirty-two, then we must reconsider that number—for the number must depend mainly on the term. He believed the sense of the convention was in favor of a larger term than one year. He thought we should have two years. Possibly there was a strong disposition also to diminish the size of the districts. There was a strong repugnance also against excluding half the people from the elections for

senators, when the elections come round. He did not want to increase the Senate much; but to attain other objects, he would increase it to 48, if necessary. But the term of office was the key on which the system depended; and he hoped that question would be determined first. He did not think the compromise of the gentleman from Chautauque bettered the matter at all. It still left but one third of the electors to vote annually, and this third scattered all over the state. He was for adhering to the usage under which the people of the whole state voted for senators every year—and the beauty of our system was that whilst the assembly was elected anew annually, a portion of the Senate, experienced in the detail of legislation, and familiar with its policy, remained. As to the popular demand for single districts, he did not dispute that there had been a strong disposition to diminish the size of the districts, as far as that could be done consistently with the principles on which that body could be constructed—though that sentiment, he presumed, was more prevalent in other districts than his own. His constituents had not demanded single districts. If he was committed at all, it was to the other principle, that the whole people should vote annually for senators. To that principle he was committed by public expression made before his election. By adopting forty or forty-eight senators, you could accomplish all these objects, shorten the term, and increase the number.

Mr. TALLMADGE explained, in reply to Mr. CAMBRELING, that he did not utter the sentiment imputed to him by that gentleman—that seventy years ago our system of government was rendered perfect. But he might say that the government had been republican in its theory and construction, whatever may have been the abuses that had grown up in its administration, under the strong circumstances of controlling necessity which then conspired to produce these abuses. Gentlemen who now alluded to these abuses in such strong terms, were not born early enough to know what it was to have no bank circulation in the state, an empty treasury—when members of the legislature were paid one dollar a day—when a large portion of the state was a wilderness, and when necessity compelled so many to emigrate to what was then the great West—when the policy was to people and subdue those parts of the state, and as part of that policy, to facilitate the means of intercommunication, and to bind distant parts of the state together in bonds of interest and feeling. Then it was that, to encourage post-routes between remote sections of the state, bounties were given in the shape of monopolies, excluding competition altogether. Gentlemen would find, on looking into the early history of legislation, bounties for a one-horse mail between the cities of New-York and Albany; and the exclusive privilege of a stage-coach line between the two cities—then some two or three weeks apart by water. What might be regarded now as abuses, were then regarded as acts of the noblest patriotism, having in view the binding together of remote sections of the state by facilitating intercourse. So in earlier times, ferry privileges were granted in perpetuity. That between Red-

Hook and Esopus was held under a grant in fee from Charles II. to Peter Radcliff, the ancestor of Judge Radcliff. So the ferry between Newburgh and Fishkill was owned by Mr. Powell, under an exclusive grant from George III., and was at this moment of very great value. But enough of these reminiscences. Mr. T., after replying to Mr. Bascom as to the use of the terms Democratic and Jacobinical, which had been applied rather to things than to persons—went on to express himself favorable to single Senate and Assembly districts, and to combat the objection to a system under which we could not vote for senator every year.

Mr. TILDEN said that was not his position—but that the whole people might vote at senatorial elections, when held.

Mr. TALLMADGE had no objection to that system, provided the whole legislature was not to be changed at every election. There must be some stability in the senate. Else every election would be a revolution.

Mr. CAMBRELENG congratulated himself and the Convention that he had misunderstood the gentleman from Dutchess, and that he did not think our constitution so perfect as Mr. C. thought he did, from the gentleman's frequent allusions to the wisdom of our ancestors, as authority for us. He congratulated the Convention also on these colonial reminiscences—and for these authorities for monopoly and privilege which formed the very basis and fabric of the British government. He hoped these reminiscences would be often repeated, as nothing could better serve to convince this body of the necessity of reform in regard to the power of the legislature to grant these special privileges—and he trusted that the practice under Charles II would be always brought forward when we were about reforming the constitution.

Mr. RICHMOND rose under calls for the "question" from all quarters, to say a few words in reply to the gentleman from Dutchess, who he said had been well designated as the connecting link between this body and the Convention of 1821, of which that gentleman, and one other member here (Mr. NELSON) were members. Mr. R. had a respect for that gentleman's opinions. He did not believe the gentleman would derive the people of their rights; but his regard for antiquity and for what had formerly been done, might perhaps be too strong for the people of the present day. Mr. R. did not participate in that gentleman's fears lest we should get into the situation of revolutionary France—for he did not believe there was any more reform spirit here than was for the good of the people. Mr. R. went on to show what was done by the legislature in the sagacious times alluded to so often—to the perpetual bank charter which got through under the guise of a project to supply the city of New York with pure and wholesome water—to another bank charter the terms of which were that they should loan a favorite family a large sum of money to supply the city of New York with pure and wholesome milk, &c. &c. Again, as to the idea that we must have a permanent body in the Senate to check the freaks of the Assembly—Mr. R. alluded to the bill of 1841 for continuing the enlargement—which he said passed the Assembly

first and came back from the Senate with an increase of the appropriation by two millions.—Again the denunciations of radicalism came, he said, with a singular grace from one who in a report made to this body had proposed a greater infringement on private rights than had ever been attempted before. He alluded to the power proposed to be given to private corporations to take private property in case the public good might require it. Mr. R. said the Anti-renters claimed that the public interest required—and no doubt it was so—that they should own in fee the land they now lease. And if it was right to take private property in one case, it was in the other—and as right to have an anti-rent jury to assess the value, as to have a rail road company's tribunal to assess for them.

The Convention then took a recess.

AFTERNOON SESSION. TERMS OF SENATORS.

The unfinished business of the morning was announced.

The question being upon filling the blank in Mr. Loomis' resolution with four years—the motion was lost—ayes 17, nays 78.

AYES—Messrs. Brundage, Cornell, Hunt, H. Huntington, E. Huntington, Jordan, Kemble, Kennedy, Nelson, Nicholas, O'Connor, Rhoades, Ruggles, Shepard, Smith, Stephens, Tallmadge—17.

NOES—Messrs. Angel, Ayrault, H. Backus, Bascom, Bergen, Bouck, Bowditch, Brown, Bruce, Bull, Burr, Cambreleng, D. D. Campbell, R. Campbell jr., Candee, Chatfield, Clyde, Conely, Crooker, Cuddeback, Dana, Danforth, Dubois, Flanders, Forsyth, Gardner, Graham, Harrison, Hart, Hawley, Hotchkiss, Hunter, Hutchinson, Hyde, Jones, Kernan, Loomis, McNitt, Marvin, Maxwell, Morris, Murphy, Nellis, Parish, Patterson, Penniman, President, Richmond, Riker, St. John, Salisbury, Shaver, Shaw, Sheldon, Simmons, E. Spencer, W. H. Spencer, Stanton, Stetson, Stow, Strong, Taft, Taggart, J. J. Taylor, Townsend, Tuthill, Warren, Waterbury, White, Willard, Wood, Worden, W. B. Wright, Yawger, Young, Youngs—78.

The question was then taken upon filling with three years, which was also lost—ayes 42, noes 61.

AYES—Messrs. Angel, Bergen, Bowditch, Brundage, Bull, D. D. Campbell, Conely, Cornell, Dodd, Graham, Greene, Harrison, Hoffman, Huner, E. Huntington, E. Huntington, Jordan, Kemble, Kennedy, Kernan, Loomis, Marvin, Morris, Murphy, Nellis, Nelson, Nicholas, Nicoll, O'Connor, Penniman, Perkins, Powers, Rhoades, Ruggles, Shepard, Simmons, Smith, E. Spencer, Stephens, Taggart, Tallmadge, Young—42.

NAYS—Messrs. Ayrault, H. Backus, Bascom, Bouck, Brown, Bruce, Burr, Cambreleng, R. Campbell jr., Chatfield, Clyde, Crooker, Cuddeback, Dana, Danforth, Dubois, Flanders, Forsyth, Gardner, Harris, Hart, Hawley, Hotchkiss, H. Huntington, E. Huntington, Hyde, Jones, Kingsley, Kirkland, McNitt, Maxwell, Miller, Parish, Patterson, President, Richmond, Riker, St. John, Salisbury, Shaver, Shaw, Sheldon, W. H. Spencer, Stanton, Stetson, Stow, Strong, Taft, J. J. Taylor, Townsend, Tuthill, Warren, Waterbury, White, Willard, Wood, Worden, W. B. Wright, Yawger, Youngs—61.

The blank was then filled with two years—ayes 80, noes 23.

AYES—Messrs. Ayrault, H. Backus, Bergen, Bouck, Bowditch, Brown, Bruce, Brundage, Burr, Cambreleng, D. D. Campbell, R. Campbell jr., Candee, Chatfield, Clyde, Conely, Cuddeback, Dana, Danforth, Dodd, Dubois, Forsyth, Gardner, Graham, Harris, Harrison, Hart, Hotchkiss, E. Huntington, E. Huntington, Hutchinson, Hyde, Jones, Jordan, Kemble, Kernan, Kingsley, Kirkland, Loomis, McNitt, Marvin, Maxwell, Miller, Morris, Murphy, Nellis, Nicoll, O'Connor, Parish, Penniman, Powers, President, Richmond, Riker, St. John, Salisbury, Shaver, Shaw, Sheldon, Shepard, Simmons,

E. Spencer, W. H. Spencer, Stanton, Stephens, Stetson, Stow, Strong, Tait, J. J. Taylor, Tuthill, Ward, Waterbury, White, Willard, W. B. Wright, Yawger, Young, Youngs—80.

NOES—Messrs Angel, Bascom, Bull, Cornell, Crooker, Flanders, Greene, Hawley, Hoffman, Hunt, Hunter, Kennedy, Nelson, Nicholas, Patterson, Perkins, Ruggles, Rhoades, Smith, Taggart, Tallmadge, Townsend, Warran, Wood—22.

Mr. KEMBLE moved a reconsideration of two years; Mr. HAWLEY of three years; and Mr. KENNEDY of four years—Which motions lie on the table.

Mr. WHITE now moved this amendment to Mr. LOOMIS' resolution:—

Resolved, That the committee of the whole, having in charge the report of committee number one, be instructed so to settle said report as to provide that senators shall be elected in sixteen districts.

Mr. RICHMOND moved to amend by striking out 16 and inserting 32.

Subsequently, Mr. W. modified his amendment so as to instruct that two senators be elected in each district—and Mr. R. his proposition, so as to require that one senator shall be elected in each district.

The question was on the latter proposition.

Mr. STOW earnestly appealed to the convention against the single district system—which he insisted, without dividing counties, would do great injustice. He did not expect to see mathematical equality carried out in the arrangement of the districts, nor should he complain of any general rule, if a good one, though it might injure incidentally his constituents. But he appealed to the sense of justice of the Convention, not to adopt a system which, in reference to single counties which in no contingency deemed them to have increased a single one in population until that population had doubled. As no county was to be divided, those that were grouped together in districts would have all the advantage of an increase upon a new apportionment, whilst the single counties must double before they could get an additional member. The representation should be equalized either by dividing counties, or by double districts, that the whole state might vote at the same time, and that we might never have an entire change of the senate in a single year. He would endeavor hereafter, and he believed he could satisfactorily show, that it would be better for the whole state to have double districts, and he certainly desired to avoid this injustice to the county which he represented.

Mr. SHEPARD, so far as his own city was concerned, believed that the single district system for the senate would be unwise; especially if only half of the people of the state were to vote at each election. The convention having decided against biennial sessions, what was his favorite plan, he went for the double district system as the next best thing. When colonization could be so easily practiced as in New-York, the single district system, with half of the people only voting for senators at each election, was out of the question. Besides there should be two classes of senators elected by the votes of the whole people, and going out in alternate years—and for obvious reasons.

Mr. PATTERSON supposed when he came here, that if there was any one question which was settled in the minds of the people, it was

that there should be single senate districts; and this mainly for the reason, that now, they were compelled to vote for candidates living miles off—for men of whom they knew nothing and cared less—of whom they had heard nothing until his name was announced in the newspapers. A word in reply to his friend from Erie (Mr. Stow), who had spoken as though he believed the county of Erie was to be trodden under foot, and her interests disregarded. This report gave to Erie county a senator to represent it by itself, with a deficiency of 6,000. Yet Erie county is trodden under foot and her rights disregarded! The county of Erie has a population of 63,671, which with a representation of four members on this floor, makes a deficiency in the ratio.—Chautauque county, with 45,983 in population, and a large excess over the ratio of about 12,000, had but two. And Wyoming county, whose population was 31,000 and over at the last census, had but a single member. He could not see what reason the gentleman had for complaint, and he would not say a single word further.

Mr. CROOKER said he had no apology to make for rising to take part in this debate. He had heretofore occupied but a very small portion of the time of the Convention. The question now under discussion was one most deeply interesting to the people of Cattaraugus. Their district, as gentlemen would perceive by looking at the map, embraced a single range of counties, commencing with Chenango and ending with Cattaraugus. With an average breadth of about forty miles, the length was not far from two hundred and thirty. In shape it resembled a piece of ordinary shirting stretched to its utmost limit. The people of Cattaraugus had for a series of years, been compelled to vote for senators of whom they knew nothing. He ventured to assert that nineteen-twentieths of the people of that county, in every three cases out of four, had never heard of their candidate for senator until they found his nomination in the newspapers. Such, with all his advantages and knowledge of men in the district, had been his own condition. And for all practical purposes of representation, Cattaraugus might as well have been connected with Suffolk and the counties on Long Island. There was no communion of feeling between the people of Cattaraugus and Chenango. There was no union of interest between them except upon those great questions that affect and interest the state as a whole.—The people of these counties on questions of a local character, often the most deeply felt, were antipodes of each other. If there was any one question upon which the people of that county were unanimous, it was in demanding the single district system. The expression of their opinion had on this subject been universal.—They desired the privilege of knowing the candidates for the senatorial office. And they demanded it as a right of this Convention.—But the gentleman from New York (Mr. SHEPARD) raises, as also other gentlemen, objections against the district system. His first objection was that if the senators should be divided into two classes, and one-half elected annually, then but one-half of the districts would have a senatorial election each year. He also urges that in the city of New-York the colonizing system

would be practiced to a great extent. Sir, there is great force in these objections. I can never consent to engraft upon the constitution a provision like that reported by the committee. The provision that the people shall vote in one-half of the districts in one year, and the other half in the next, I cannot subscribe to. It is not only absurd but dangerous. I can very easily imagine that there are many thousands of unmarried voters in the city of New York who would change their residence from one district to another to enable themselves to vote every year for senators if that plan is adopted. This class are mere boarders, and in many cases would only have to cross the street to reach another district. All parties are ready to resort to colonizing. This is an evil that must be overcome. But, sir, both of these objections of the gentleman from New York are easily obviated. Let the whole people vote in the same year. Let us have annually a full and free expression from the electoral body. To accomplish this object, and to avoid both the objections of the gentleman from New York, we must elect the whole senatorial body at the same election. Let them be elected for one or two years, and let them all go out of office together. Let them come into and go out of office with the other state officers. And with every new administration let us have an entire new senate fresh from the people. But it is strongly urged that we ought to have a long term of office for senators in order to avail ourselves of their experience in legislation. I ask the Convention to look at the New England States. In Massachusetts, Connecticut and Vermont, aye, and in democratic Maine and New Hampshire, the Senate and Assembly are elected annually, and severally hold their offices for a single year. In Rhode Island also, the same principle prevails. But Rhode Island has so far swerved from the democratic line, that I will not hang much of weight upon her example. In the states of North Carolina, Georgia, and even in Tennessee, the prolific mother of presidents, the same principle obtains. The Senate and Assembly are elected for equal terms of office. They come in and go out together. I appeal to the recollection and candor of gentlemen to say whether any portion of our Union is better governed than New England. Have not their laws been as wise and well considered as our own. Have gentlemen heard of any outbreaks or outrages committed by their legislators upon popular rights. If they have, then they have been more fortunate than myself. So far as my information extends, there is no portion of our Union that has been governed by wiser laws, or where the rights of the people have been better regarded or maintained. Many gentlemen on the other side of this question insist that we must have experienced legislators in the senate. Sir, but a few days ago, the same gentlemen professed great and unlimited confidence in both the intelligence and virtue of the people. From the little experience that I have had in legislation, I am of opinion that it is more desirable to get rid of that very experience for which gentlemen contend. I should prefer a legislature fresh from the plough, the workshop and the body of the people, to most of your experienced members of

the Senate. They acquire but little of useful knowledge here. They learn, it is true, the quips and quirks of legislation on rules and questions of order, by which they are enabled to overreach and defraud the junior members. This I submit is an intelligence and experience that are neither useful nor desirable, but better lost than gained. But, sir, I have no doubt that the people are competent to select senators that will be capable of discharging their legitimate duties. If they should fail to do so; if they should be incapable of discharging the duties of their station when they get here; then let them employ some itinerant lecturer upon legislation and questions of order and parliamentary law to instruct them. Let him take his place in the speaker's chair and school them in legislation. There is no more necessity for this experience in the Senate than in the Assembly. We have got along without it in the latter body for years. What we have lost by the want of experience is more than made up by an honesty of purpose fresh from the body of the people. I feel a deep solicitude for the result of the vote upon the question before us. I strongly hope the amendment in favor of single senate districts will prevail. If it does prevail, that vote will cheer the hearts not only of the people of Cataugaus but of the state at large.

Mr. STOW, in reply to Mr. PATTERSON, said he had not complained of the inequality which Erie county now suffered; but he had complained, that while all other counties in the state were allowed for their increase in population, those composing single districts were not allowed at all, unless that increase was sufficient to entitle them to two members. This was unjust, and in spite of all the gentleman had said, he still declared its injustice. In Erie county there were enough aliens naturalized since the last census, to more than overbalance the deficit under the ratio. A fair calculation, he believed, would give to Erie county an excess instead of a deficit. In five years it had increased 16,334; and he believed that an increase of population should always be taken into consideration in fixing prospective representation—representation should increase with population. Chautauque in the same time had decreased one thousand. If the gentleman desired to take the mathematical view of this question, he would inquire of him how Chautauque would be entitled even to her two members, if she went on decreasing for the next five years as she had for the five previous? Erie county would number 95,000 taking that ratio, Chautauque but 43,000. But he would allow that gentleman to take either the mathematical or the common sense view of this matter.

Mr. KIRKLAND, in reply to Mr. Stow, asked, if injustice was done to Erie under the present apportionment, what was to be said of Oneida? Erie with the same representation here, had 10,000 less population than Oneida.—And yet Oneida asked for single districts and was urgent for it. Nor could he understand how Erie was to suffer prospectively, if she increased enough to have two senators, any more than if it were two or more counties, and they all increased to that amount. He repudiated the gen-

tleman's argument in favor of double districts, though Oneida was worse off than Erie.

Mr. STOW did not argue in favor of double districts; but to show that you could not have single districts without dividing counties.

Mr. KIRKLAND said that did not follow: but every consideration required single districts, even though there might be a little inequality. Mr. K. proceeded to urge the necessity of single senate districts, as the only way to bring the representation home to the constituency. This was an overpowering argument in favor of single districts. The voter would know his representative. We had heard much about the absurdity of voting for senators only once in two years. Why, practically we only voted once now in four years. What interest had the people in Cattaraugus in the man who lived in Chango, or the elector in Jefferson of the candidate in Oswego? Better vote for your own man once in two years, than to go through the idle form of voting for the candidates of others three out of every four years. It was objected that this would operate badly in New York on account of colonizing. This would be remedied by adopting the principle presented in the report of another committee—and provide for the sixty days residence. But if this was so very objectionable, then adopt the suggestion of the gentleman from Cattaraugus, and elect the whole senate every two years.

Mr. MORRIS went for single districts both for the Senate and Assembly. The great cause for calling this Convention was that the constituency were misrepresented by those they sent here. They gave pledges which they never redeemed—made promises which they never kept—but they came here and used the power given them to put money into their pockets or to advance the interests of aspirants for popular favor. And how had this happened? Because their constituents did not know them—but were compelled from the constraint of party organization, to vote for them, without knowing them or their principles. Now we in New York would be exposed to the mischief of colonization whether you gave us single or double districts. And instead of shrinking from carrying out a just principle because fraud might defeat it, the true course was, if possible, to guard against the fraud and save the principle. New York had seen in the habit of sending 13 representatives here, and yet it had so happened that it was an extraordinary thing if 100 persons in New York knew personally all their delegates. Mr. M. knew a young man being sent here from New York, whom they supposed there when they were voting for him that they were voting either for his uncle or his grand father. They never discovered their mistake until the delegation got together, when they found they had elected a very clever boy of 21, instead of a man of experience. [Laughter.]

Mr. RICHMOND: The mistake was not discovered until he came here to be sworn. I was here then.

Mr. MORRIS continued:—When a number of members were to be elected, by the same constituency, these members must of necessity almost be unknown to the constituency; and they were selected for the purpose of performing

other services than mere legislative duty. The time came round for instance, when a flour inspector, or a beef inspector, or a tobacco inspector was to be appointed. One wanted judge, another notary public, another master in chancery, another commissioner of deeds, and so on; and they clubbed together, each man picked out his own friend, and by a combination for office and office alone, they packed your committees, controlled your conventions, made your nominations, and elected your delegates. It was this conduct which, so far as regarded New York, made them cry aloud for a Convention, and when they called, they called also for single districts, and they sent us all here instructed.

Several of the New York delegation, Mr. TILDEN, Mr. KENNEDY, and others, expressed dissent from this statement.

Mr. MORRIS continued:—First the 15th ward instructed. Second, Tammany Hall, by her resolutions. Then the committee by a printed circular.

Mr. KENNEDY denied that he was instructed or pledged to single districts.

Mr. MORRIS (in reply to some of the delegation) said he received a circular calling on the delegates to sustain single districts.

Mr. KENNEDY:—Yes, but I did not say I was in favor of it.

Mr. TILDEN stated his interpretation of the letter addressed to the delegates. It was whether they would go for senators' being elected in districts, so that one senator should be elected in each every year.

Mr. MORRIS asked whether a circular was not sent to us not only enquiring, are you in favor of single districts—but saying in effect, *yes*, you shall go it?

Mr. TILDEN:—Senate districts?

Mr. MORRIS:—Single districts.

Mr. JONES said he had a copy of the circular, and, if the gentleman would allow him, he would read the interrogatories. [Cries of "read it."]

Mr. MORRIS:—Is it in print or in manuscript?

Mr. JONES said it was a correct copy addressed to one of the delegates, not to himself. It was, "Are you in favor of senate and assembly districts, to elect one member each at each election?"

Mr. MORRIS.—That's it, sir. That was the substance of the enquiry—adroitly drawn to meet the views of a committee who were loud in the demands for single districts. Adroitly drawn, he repeated, so that one man might read it one way, another another. It was claimed that that was not a pledge—but merely asked a question. Mr. M. knew that. But he asked, what intelligent, honest democrat, when his constituents put a question to him to answer, did not understand what they wanted him to say and do? And what honest democrat would not, if opposed to the project contemplated, say so plainly and aboveboard, before his nomination—that his constituents might select some other who could and would represent their wishes? The circular he received was precisely in the words read, and they conveyed to his mind what he believed his constituents intended—and that was that they demanded single districts, and for the rea-

sons he had stated. He had known persons here of the central power, sending down to New-York, saying you must elect this man—and he had known the constituency to be perfectly hoodwinked with the idea that they were nominating the man they really desired. And at last they resorted to pledges. For they found that they might nominate the cleverest fellow in the world, and yet when he came here, they found him going point blank against their wishes.—We in New-York, as the Convention was aware, from the defects in the report of committee number five—did not always write exactly as we intended—and the pledges we sometimes drew were so porously drawn, that there were holes where some might creep out at; and men did make promises to the ear and break them to the hope. This single district system would cure all these difficulties. And though it might result, instead of sending sixteen members here all one way in having a somewhat divided delegation in point of party. But why should not the fair majority in a district have a voice here? What reason was there for swelling up their voice in the aggregation of the majority of voices in a great city? Districts that were called whig to-day, might be democratic to-morrow—and *vice versa*. He believed the great mass of the people, call them what you would, were democratic—and that this would be demonstrated by the vote on the new constitution, if we made it as it should be, democratic from the heart to the extremities. For the reasons he had stated, he went for the single districts—and he should have been glad to have increased the Senate so that the districts might be smaller and the candidates brought nearer home to the electors, and they would have no need of exacting pledges for the honesty and fidelity of representatives.

Mr. TILDEN spoke of the unfair presentation that had been made by his colleague of the mode of conducting political affairs in New-York, and of the imputations cast by implication upon the constituency. Abuses and evils there were undoubtedly, but not to the extent described by his colleague, nor to any extent that marked out New York as the peculiar object of this infliction. Towards the close of the last session, Mr. T. said, he did receive a letter similar to that read. He certainly understood from it that the matter about which the nominating body were particularly solicitous, was that the whole people should vote at every senatorial election. He supposed his constituents would expect, in case we should adopt the two years, we should have double districts, if the three years term, treble districts, &c. The city of New York was not particularly solicitous to reduce the senatorial term, at all events not to bring it down to one year. It seemed to be generally understood that one of the purposes for which the Convention to revise the city charter was called, was to make one of the boards of the local legislature elective for a longer period than one year, and to insert a two-third veto instead of the mere majority veto that existed now. When he answered the letter in question, he stated that he should probably vote against single assembly districts—that his predisposition of opinion, so far as he had formed one, was averse to single senate districts

—and it was with a full knowledge of these facts that he was sent here. He stated this to remove the impression that seemed in a very vague and general way to have been created by his colleague, that those of the delegation who opposed the single district system were violating their pledges to their constituents. If he should be convinced by discussion here that it was wise to depart from the old organization of the state, so far as to establish single senate districts, he should vote for it—not without. If the principle of single districts was adopted, in its full latitude, without regard to county lines, the representation in the two houses would be completely at the mercy of the accidental majority that had the apportionment to make at the end of every ten years. An increase of the senate to 48, a term of two years, and double districts, would, in his judgment, secure all the objects gentlemen had contended for here. But to break up county lines and throw open the whole representation in both houses to a scramble every ten years, and you would do more mischief than you proposed to remedy.

Mr. SALISBURY said that when he assented to this report, he did not feel that he was bound to follow out every particular which it contained. There were some of the items to which he was opposed. But the portion which he approved and advocated was the proposition to divide the state into single senate districts. As to the details of the plan, he felt less solicitude. He was willing to hear the suggestions of others, and if any better plan could be presented, he would vote for it. His colleague objected that great injustice would be done to Erie. Mr. S. should justify himself before his constituents first because, if he had understood their language, they had instructed him to do this very thing. If he had misunderstood them, he had acted in good faith. As a member of the committee he had endeavored to carry out their will. But according to his colleague, we were proposing to do our immediate constituents gross injustice. But it had never occurred to him that Erie county could come here, and with a good grace complain of this arrangement. Perhaps at the next enumeration, we might have a large excess. But Mr. S. could only say that this was the best system which presented itself to the committee. The proposition of his colleague seemed like saying to our constituents that they did not understand this matter as well as we did after we arrived in Albany. We knew better than they and would allow them to vote for two senators instead of four ~~at~~ heretofore.

Mr. STOW had not advocated double districts; he only proved that single districts could not be made, without dividing counties, if we were to have any thing like equal representation.

Mr. SALISBURY was satisfied with the explanation. He repeated, he was not wedded to the details of this plan. He was prepared to assent to any alteration that might better it. It was impossible to have an equal representation in the Senate or Assembly, without dividing counties. At present his constituents would have their full representation. As to any in

crease, he could not see how this or any other plan could guard against injustice.

Mr. TAGGART should vote for single districts, with an express reference to disregarding county lines.

Mr. O'CONOR moved to adjourn.

Mr. RUSSELL demanded the ayes and nays, and the House refused to adjourn, ayes 28, nays 77.

Mr. RUSSELL advocated the three years' term for senators—saying that on that point he had changed his views, and had for the first time come to agree with his colleague (Mr. PERKINS). If we were to have a higher branch, the term should at all events be longer than one year. The stability and character of the U. S. Senate, which he attributed in a high degree to the long term of six years—he confessed had impressed him with a strong inclination towards a similar principle in our own senate. And when we could accomplish this, by increasing the number of senators and forming double or treble districts, it seemed to him that we should comply with the general wish in regard to small districts, and still retain the desirable feature of securing in a portion of our body some experience and familiarity with the affairs of this great state.

Mr. RICHMOND reminded the gentleman that the Convention had fixed on the term of two years. The only question was on single districts.

Mr. RUSSELL was aware of that, and that 32 was to be the number of senators, unless these votes were reconsidered—and he trusted that the body would see that it was impracticable to have any thing better than a rotten borough system, under this principle of single districts, and 32 senators. And he insisted that when we came to carry out the plan, (as we ought, if we adopted the principle) that we must abandon that system. It was an iron-bedstead rule, that could not be carried out into detail, without gross inequality and injustice. He insisted that we might adopt some compromise—either abandon the single district system or increase the number of senators. His plan was 40 senators with double districts—each electing one every year. Or he would agree to 39, and

single districts—or to 48 with a three years term and 16 districts—any thing indeed but a practical absurdity. As to breaking up old county lines, he was utterly opposed to that plan. But if we must have 32 senators, he should vote for double districts.

Mr. RICHMOND could have wished for an increase of senators—but that having been voted down, he did not feel at liberty to abandon also the single district system; nor, from the best calculation he could make, did he see that double districts would create any greater equality.—And if absolutely necessary, some few counties might be divided, and the details of the single district plan very much improved.

Mr. STRONG spoke briefly in reply to Mr. RUSSELL.

Mr. St. JOHN moved the previous question. Mr. CHATFIELD moved to adjourn. Lost, 44 to 62.

The previous question was not seconded, 46 to 55.

But there being no further disposition to debate, it being nearly 7 o'clock, the convention proceeded to vote, and the motion of Mr. RICHMOND in favor of single Senate districts, was agreed to, as follows:—

AYES—Messrs Archer, Ayrault, H Backus, Baker, Bascom, Bouck, Bowditch, Burr, Cambreleng, D D Campbell, R. Campbell, jr., Candee, Clark, Clyde, Cook, Crooker, Dana, Danforth, Dodd, Dorion, Flanders, Forsyth, Graham, Greene, Harris, Harrison, Hotchkiss, Hunter, E. Huntington, Hutchinson, Hyde, Jordan, Kernan, Kingsley, Kirkland, McNitt, Marvin, Maxwell, Miller, Morris, Nellis, Nelson, Nicholas, Parish, Patterson, Penniman, Powers, Rhoades, Richmond, Riker, T. John, Salisbury, Sears, Shaver, Shaw, Sheldon, Simmons, Smith, E. Spencer, W. H. Spencer, Stanton, Strong, Swackhamer, Taft, Taggart, Tallmadge, J. J. Taylor, W. Taylor, Townsend, Ward, Warren, W. Erbury, Willard, Witbeck, Wood, Worden, W. B. Wright, Yawger, Young, Youngs—79.

NOES—Messrs Angel, Bergen, Brown, Bull, Chatfield, Conely, Cornell, Cuddeback, Dubois, Hart, Hoffman, Hunt, A. Huntington, Jones, Kemble, Kennedy, Loomis, Murphy, Nicoll, O'Conor, Perkins, President, Ruggles, Russell, Shepard, Stephens, Steason, Tilden, Tutthill, Vache, White—31.

Mr. SMITH moved a reconsideration. Table. Mr. CHATFIELD moved to adjourn. Agreed to.

Adj. to 9 o'clock to morrow morning.

FRIDAY, JULY 24.

Prayer by the Rev. Mr. HITCHCOCK.

Mr. TALLMADGE presented a petition from Madison county, for the prosecution of the enlargement of the unfinished canals. Referred.

SENATE DISTRICTS.

Mr. TAGGART laid on the table the following:—

“Resolved, That the committee of the whole having in charge the report of committee number one, be instructed to report to this Convention a provision that senate districts shall be composed of contiguous territory, in as nearly as practicable a compact form, and shall contain as nearly as may be an equal number of inhabitants; but if the formation of senate districts, no town or ward shall be divided, unless such town or ward shall be entitled to more than one senator.

EXPENSE OF REGISTRATION.

Mr. TALLMADGE offered the following:—

Resolved, That the Comptroller of the city of New York, report to this Convention copies of the bills which make up the items of \$4,748 24 set forth in his former statement as paid for printing and posting of registry and maps of districts, for registration expenses of election of November 1840; and also copies of bills which compose the item of \$3,319 19, set forth in said former statement as paid for printing and posting lists of registry and maps of districts for registration expenses of election of April 1841; also copies of the bills which composed the item of \$3,099 39 set forth in his former statement as paid for said registration expenses of November election of 1841.”

Mr. NICOLL enquired the gentleman's objection.

Mr. TALLMADGE replied, that certain statements of expenses had been received from New-York, which required explanation. These expenses were urged as a bar to a registration of voters. He wanted the items, whereby it was made out that \$4000 was expended for printing maps, which he would undertake to do for \$1000.

Mr. NICOLL said he should be satisfied with the reasons, if he thought there was any foundation for them.

Mr. KENNEDY hoped his colleague would withdraw all objections. He was satisfied, that when they got the information, the gentleman from Dutchess would be perfectly well pleased, as well as his political friends—if, by the way, the gentleman had any—for a few days ago he had disowned all political friendships. Those who were once associated with him, were the persons who had pocketed the whole amount of the funds. Mr. K. was anxious that the gentleman should get the information.

Mr. TALLMADGE begged to say that he did not say he had no political friends, for he had many. He had said that no corrupt party would own him, because he would tell the truth. This habit, which some men had, of constantly misrepresenting what was said on this floor, bespoke the habits of early life. It was a practice that was only worthy of mere creatures of party, third-rate lawyers, and bar-room politicians, who misquoted for the purpose of hanging a speech upon it.

Mr. TOWNSEND called the gentleman to order. He was using language which in his cooler moments he would regret.

Mr. TALLMADGE was through. He took nothing back; but had plenty more of the same kind, whenever gentlemen saw fit to call it out.

At the request of several members the resolution was again read.

Mr. TALLMADGE again explained. His purpose was to meet objections which had been raised to a system of registration. If the returns he called for showed the expense to be so burdensome, and if they were not a sufficient defence of registration, he should abandon it.

Mr. WORDEN thought the enquiry foreign to this Convention. He rose to move to lay it on the table, but coming as it did, from his venerable friend, he felt great reluctance to do so. With great deference to that gentleman, however, he would again say that the Convention could have nothing to do with the facts that might be elicited.

Mr. TALLMADGE repeated that he should be glad to see a system of registration; but if the expense as set forth in the report before them, was well founded, they ought none of them to thing of registration. But if it should turn out to be a cover for great abuses, it was proper perhaps that they should know. He called for the yeas and nays on his resolution.

Mr. TOWNSEND apprehended when the gentleman got the information, it would assume a different aspect. There was one particular item of \$4000 for printing, which certainly appeared large, but the Convention should understand that New York was divided into about 90 districts, in which the officers had to have maps; these formed a large item, besides the large a-

mount of printing which was absolutely necessary. There were many persons employed to accomplish a very extensive duty, and though the amount seemed large, he doubted not it would be satisfactorily accounted for.

Mr. HARRISON begged to call the attention of the Convention to some remarkable circumstances connected with this report. It would be observed that in the election of April, 1840, there were various charges for the same services that were rendered at the election in the November following, and that there was a remarkable discrepancy between them, as made for the elections of 1840 and 1841. At the November election in 1841, at which the Registration act went into operation, there was a charge for marshals of \$3,232. The charge for peace officers at the April election was but \$346.—Now he wanted, and he presumed that was the object of the gentleman from Dutchess, to understand the cause of this difference. The services were probably the same under one as the other. The next charge to which he wished to call attention, was for commissioners for dividing the wards into election districts. For the April election the charge was \$93 75, but in November it was \$4,500. Some explanation in relation to this extraordinary charge was necessary. There were charges for room hire amounting to \$1393; and if gentlemen would take the trouble to review this report, they would find similar discrepancies between the April and November election. He hoped the resolution would be adopted, that the people might compare the advantages with the cost.

Mr. KENNEDY had no disposition to prevent the passage of this resolution. As to the epithets used by the gentleman from Dutchess (Mr. TALLMADGE) Mr. K. knew not whether the gentleman intended to apply them to him; but if it was intended to designate him as a lawyer or a bar-room politician, the gentleman was entirely mistaken in his man. Mr. K. made no pretension to either of these characters. He was here as a citizen of New-York, and as one, was deeply interested in her welfare. He repeated, he had no objection to the enquiry into the items of expenditure under the system of registration in that city. He had desired if possible to avoid bringing any question of politics into this body. He was particularly anxious that it should be avoided, and any thing else that would have that tendency; but when the gentleman from Richmond (Dr. HARRISON) introduced his proposition to provide for a registration, he offered the enquiry which drew out the information alluded to. He had merely called for aggregate amounts, that the aggregate expense incurred might be seen; but he had no objection to have the details called for. It was evident however that the gentleman from Richmond did not, as he himself confessed, understand the matter from the positions he had assumed. He (Mr. HARRISON) had contrasted the expense of laying out the wards into districts in 1840, with the expense incurred in November in registering the votes! and he had asked with apparent astonishment, how such a difference could exist as that between \$93 and \$4500. For the gentleman's information, he would say that three commissioners were appointed by

the legislature to divide the city map, for which they charged \$93 75. This was simply for dividing the city map into election districts; but the \$4,500 was incurred by commissioners—three in each of the 17 wards—who sat for a number of days, more than a month, he thought for more than two months, to receive the registration of voters, and having done that, to arrange their names, together with their residences, occupations, &c., and publish and post them at the corners of the streets in their respective wards, to give the people a chance to examine the lists and to challenge. They sat again to receive the challenges and to revise the registration; and there were seventeen times three of them, and their labors were much greater than those of the three gentlemen who simply divided the map of the city. Perhaps the gentleman would now see there was some reason for the disparity.

Mr. BROWN thought before they called for such voluminous information they ought to know if there was any necessity for it. He therefore moved the reference of this resolution to the committee on the elective franchise—Agreed to.

LEGISLATIVE DEPARTMENT.

The Convention resumed the unfinished business of yesterday, the pending question being on Mr. Loomis' resolution in regard to the terms of senators.

Mr. STETSON moved to amend Mr. WHITE's amendment by adding thereto the following:

"And so that all the electors of the state shall be allowed to vote at every election of senators."

So that when amended it would read thus:

"And the said committee be also instructed so to settle said report as to provide that one senator shall be elected in each district [and so that all the electors of the state shall be allowed to vote at every election for senators]"

Mr. TOWNSEND said he would like to hear the gentleman from Clinton (Mr. STETSON) explain the object of his amendment.

Mr. STETSON said his object was to have the whole Senate elected at one time, every two years; so as to avoid the "ride and tie" system recommended by the committees, by which one-half the Senate would be elected every year in alternate districts if the odd and even members and the electors of all the districts be biennially disfranchised. He did not like either mode, but he thought his plan the better of these two alternatives now left to us. He (Mr. S.) had voted against four years, and also against three years, in settling the duration of a senator's term. He had voted for a term of two years. He voted also in favor of an increase of senators to forty. By thus increasing the senate, we could make twenty double districts, and approximate to the popular demand for single districts without being compelled, as we now are, to adopt a system grossly unequal in representation; and incapable of being made equal, for we must take county lines as we found them, and they could not be moved to meet equality in the division of representation. By the double district plan, too, we could secure the desirable feature of *stability*, by electing one half annually and permit every elector to vote at every election, which in his opinion was indispensable in any wise plan. These were the

advantages which he had hoped to have preserved by an increase of senators and double districts. But yesterday the Convention had decided by a strong vote to stand upon the number "thirty-two" and by a still larger vote not to elect them in double, but in single districts.—All hopes of forming districts with any degree of equality in representation, were then entirely gone: this unequal system of immense excess in some districts and immense deficiency in others, was to pass into the new constitution.—He could now only choose between a biennial election of the whole body, which he did not like, and the mode which he had ventured to christen '*ride and tie*,' and against which he had made war from the time he first heard of it. In his judgment it was the worst of all the modes suggested. What was it? Why, the *single* senate districts were to be numbered from one to thirty-two inclusive, and sixteen senators were to be elected annually; in one year, only the electors in the districts bearing the odd numbers of one, three, five, and so on, were to vote and fill up the Senate; the next year the districts having the even numbers would vote and the districts of odd numbers would remain respectively silent and so on alternately. One year the electors of the odd districts were to exercise the exclusive power of popular sovereignty in the Senate, and the even districts in the same year were to hold the reins of *stability*. The next year they would exchange places, but the voice of the whole people could never reach the annual accessions to the Senate, nor would the *stability* which any intended to be secured by this alteration have any relation to the will of *all* the electors of the state, unless from accidental coincidence of majorities between districts which would, and districts which would not vote.—But there were other and greater objections. If he was not mistaken, it would produce in its practical working more corruption of the elective franchise than any system he ever heard suggested. Indeed to him it looked like an invitation from us to the electors to operate on the elections by means of corruption, frauds and also by colonization. In New York there would be four districts, and two of them only would vote annually. It would be hardly possible, with the present election laws relating to county and ward residence, to prevent voters in the silent districts from changing their residence so as to vote every year. He would admit that this objection had been partially met by the suggestion to change our election laws; but that would be imposing great inconvenience upon electors, and would too often unjustly work a forfeiture of their right of suffrage. But the other objection was the one to which he wished to draw the attention of the Convention—he had not heard any reference to it—the probable use of corruption funds within the districts which would vote. He would endeavor to show how it would work practically. First, it was quite possible that there would be great amelioration of partisan feeling hereafter; but he would not deceive himself with the belief that the people would not hereafter be divided into parties of some kind. All public questions of interest naturally resolved themselves into affirmative and negative positions—

as much so as did different plans for the construction of a house, or other work. In the end it came to the division of those for, and those against. This showed that new parties would spring up, even if present ones ceased to exist. We were then to have political parties; and he begged gentlemen to look ahead, and see the position in which parties would be placed, in order to acquire or retain the power of that body, if the "ride and tie" system prevailed. Sixteen senators would hold over; and we will suppose them divided equally, or very near equality, in political sentiment. Sixteen are to be elected in the districts of odd members—he meant one, three, five, and so on. Of these sixteen, twelve may be supposed to be divided in politics equally, and to have a fixed political character, that could not be changed; but the remaining four districts are known to be doubtful and uncertain. These then would be the keys to the power of the Senate; and it would be known all over the state, long before an election, which were the uncertain and doubtful districts and how many of them a party would have to carry to secure the power. Is it not plain that, as by your "ride and tie system" you will take away from the other half of the districts the right to vote and thus decide this question of power, you will create a motive in them, or with politicians at least, to bring improper and corrupt influences upon the doubtful districts which do vote? The mode too, helps to designate the very place where the election is to be carried. Indeed, said Mr. S., is it not easy to foresee plainly as though it were written in letters of living light upon the walls of this chamber, that a few uncertain, small single districts will, under the "ride and tie" system, always be the Palo Alto, and Palm Ravine of all future contests for power in the Senate? It seemed plain to him, and if he was in error, he hoped to be enlightened. If this objection was not obviated, he did not see how he could vote for the single district system at all; but he believed the Convention would consent to make it more acceptable by adopting his amendment to elect the body together once in two years.

Mr. RHOADES contended that as the character of the senate would be changed by depriving it of the appointing power and the judicial functions which it now possessed, there would be less danger than was apprehended from alternate elections in districts.

Mr. SIMMONS thought the amendment ought to be adopted. Annual elections were on the side of safety. That system was found to work well in the Eastern States, and in our assembly. Much, however, might be said in favor of biennial sessions, making the term of the assembly two years and the senate four. This would prevent the continual confusion attendant on the making and unmaking of laws; and the turmoil and cabals of political elections and party strife, and would restore peace to the counties. He wished, however, to have the terms of the two bodies of our legislature so freed as that in different ways they might collect public sentiment, and have a double guarantee of what the sentiment of the people was, as contradistinguished from local and temporary excitement.

Mr. A. W. YOUNG urged briefly the system of alternate elections. If they adopted the 60 days' residence qualification, as had been proposed, he thought many objections would be obviated.

Mr. CROOKER urged the adoption of Mr. Stetson's amendment. In reply to Mr. RHOADES, he insisted we were safe enough with senators elected every two years. There was check enough against excesses, while there was the advantage of a clearer reflex of the popular will. If, however, experience was so essential, they might hire some old senator as a drill sergeant. How did the history of the Senate of this state support the argument of the gentleman? Why it was a demagogue factory, wherein they learned how to trepan each other. He would point the gentleman from Onondago to the last session of the Senate in particular, which was spent by senators in scandalizing each other and singing pæans to their own praise. He wanted to get rid of the senate as a body, once at least in two years, and he would elect them at the same time with the Governor.

Mr. RUGGLES said the plan now proposed, he was of opinion, would be the worst of all possible plans. If they elected the two houses every year, they gave up the idea that the Senate was a continuous body. He contended too that experience was necessary to make our senators acquainted with the affairs and condition of the state—its finances, its literary institutions, its schools, &c., &c. It had been argued that, as in the eastern states, the people would reelect their Senators, and thus secure the experience on which so much reliance had been placed; but he doubted if this would be the case if two years were the term to be fixed. He preferred one year to two, for he was satisfied re-elections would be more likely to occur with a one year's term.

Mr. JONES differed with the gentleman from Dutchess. In the Assembly he had found more knowledge of our state prisons, state finances, and state institutions than in the Senate. In the Assembly our most valuable reports on these subjects had originated.

Mr. SWACKHAMER continued the argument in favor of Mr. STETSON'S amendment.

Mr. HOFFMAN agreed with the gentleman from Clinton that there were great evils to be apprehended from the "ride and tie" system of elections. So of the other system of electing the whole Senate in a lump. He desired a system which should represent the united, solid judgment of the people, maturely made up, and such as they would abide by for a long term of years—that in the Senate, there should not only be experience, but that the member when elected should know that his term of service was such that if he devoted himself to a great subject, he might be able to bring it fairly before the legislature and the public, and if it had merit to perfect its details and make it part of the abiding system of legislation. This was the great use of the Senate. Vascillating and unstable legislation would be the result of an annual election of both bodies. If a senator were elected for three years, his chances of doing good were greater than if elected for a shorter term. He attributed the inefficiency of the Se-

nate for some years to the possession of the appointing power, and to the duties attendant on the Court for the Correction of Errors. If then they would have judicious legislation and a perfect system of laws, they must fix the senatorial term at three years. But from the position in which the question now stood, there seemed to be no alternative but to go for electing the whole Senate at once.

Mr. TAGGART rose to illustrate the position which had been taken, by a reference to his own district, in which he said there never had been an instance of a member not being re-elected if he desired it, except in case of death. There was then no danger of a want of experience in the Senate, nor of so much as was necessary to a correct understanding of the business of the Senate.

The ayes and noes were then taken on Mr. STETSON's amendment, and it was carried, ayes 100, noes 12, as follows:—

AYES—Messrs. Angell, Archer, Ayrault, H. Backus, Bascom, Bouck, Bowditch, Brown, Bruce, Brundage, Bull, Burr, Cambreleng, D. D. Campbell, R. Campbell, jr., Candee, Chamberlain, Chatfield, Clark, Clyde, Cook, Cornell, Crooker, Cuddeback, Dana, Danforth, Dodd, Dorion, Flanders, Forsyth, Gardner, Gerhard, Graham, Greene, Harris, Harrison, Hart, Hawley, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kennedy, Kernan, Kingsley, Kirkland, Loomis, McNitt, Maxwell, Miller, Morris, Murphy, Nellis, Nelson, Nicoli, Parish, Patterson, Penningman, Perkins, Powers, President, Richmond, Rider, Russell, St. John, Salisbury, Sears, Shaver, Shaw, Sheldon, Shepard, Simmons, Smith, W. H. Spencer, Stanton, Stephens, Stetson, Stow, Strong, Swackhamer, Taft, Taggart, J. J. Taylor, Townsend, Tutill, Vache, Van Schoonhoven, Ward, Warren, Waterbury, White, Willard, Witbeck, Wood, Worden, W. B. Wright, Yawger, Young, Youngs—100.

NAYS—Messrs. Bergen, Conely, Dubois, E. Huntington, Jordan, Marvin, Nicholas, O'Connor, Rhoades, Rugles, E. Spencer, Tallmadge—12.

Mr. CROOKER called for the yeas and nays on the resolution as amended, instructing the committee of the whole to make 32 single senate districts—term of office two years, all the senators to be elected at once,—and it was adopted, ayes 92, noes 19.

Mr. BROWN moved that the Convention go into committee of the whole on the report of committee number one.

The motion to go into committee prevailed, and Mr. PATTERSON resumed the chair, and announced that the article would be amended in accordance with the instructions of the Convention.

Mr. HUNT moved to make members of the Assembly elective "biennially." Lost.

Mr. TAGGART moved to make the members of Assembly 136 in number.

Mr. PENNIMAN moved 144.

Mr. MURPHY 148.

The question was taken on the highest number first, and the amendments of Messrs. MURPHY and PENNYMAN were rejected.

Mr. CONELY moved 140 members. Lost. The proposition for 136 was also lost.

Mr. W. Y. YOUNG moved 130. Lost.

Mr. SWACKHAMER, with a view of establishing biennial sessions hereafter, moved to insert the word "biennial" as the term of service of the assembly. Lost.

Mr. SIMMONS moved a substitute for the section, to provide that the Senate shall consist

of 32 members, who shall be chosen for four years, and the Assembly of 123 members, who shall be elected for two years; that the senators shall be elected by double districts, and that the legislative sessions shall be held every second year.

The CHAIR ruled the substitute out of order, as inconsistent with the instructions given to the committee.

The fifth section was then taken up, as follows:—

Substitute the following for section five:

§ 5 The State shall be divided into thirty-two districts, to be called Senate districts, each of which shall choose one Senator. The districts shall be numbered from one to thirty-two inclusive.

District No. 1 shall consist of the counties of Suffolk and Queens

District No. 2 shall consist of the counties of Kings and Richmond.

District No. 3 shall consist of the first, second, third, fourth, fifth and sixth wards of the city and county of New York.

District No. 4 shall consist of the seventh, tenth, thirteenth and fourteenth wards

District No. 5 shall consist of the eighth, ninth, and fifteenth wards

District No. 6 shall consist of the eleventh, twelfth, sixteenth, seventeenth and eighteenth wards.

District No. 7 shall consist of the counties of Westchester, Putnam and Rockland.

District No. 8 shall consist of the counties of Dutchess and Columbia.

District No. 9 shall consist of the counties of Orange and Sullivan.

District No. 10 shall consist of the counties of Ulster and Greene.

District No. 11 shall consist of the counties of Albany and Schenectady.

District No. 12 shall consist of the county of Rensselaer.

District No. 13 shall consist of the counties of Washington and Saratoga.

District No. 14 shall consist of the counties of Warren, Essex and Clinton.

District No. 15 shall consist of the counties of Washington and Saratoga.

District No. 16 shall consist of the counties of Herkimer, Hamilton, Fulton and Montgomery.

District No. 17 shall consist of the counties of Schoharie and Otsego.

District No. 18 shall consist of the counties of Delaware and Chenango.

District No. 19 shall consist of the county of Oneida.

District No. 20 shall consist of the counties of Madison, and Oswego.

District No. 21 shall consist of the counties of Jefferson and Lewis.

District No. 22 shall consist of the county of Onondaga.

District No. 23 shall consist of the counties of Cortland, Broome and Tioga.

District No. 24 shall consist of the counties of Cayuga and Wayne.

District No. 25 shall consist of the counties of Tompkins, Seneca and Chemung.

District No. 26 shall consist of the counties of Steuben and Yates.

District No. 27 shall consist of the county of Monroe.

District No. 28 shall consist of the counties of Orleans, Genesee and Niagara.

District No. 29 shall consist of the counties of Ontario and Livingston.

District No. 30 shall consist of the counties of Allegany and Wyoming.

District No. 31 shall consist of the county of Erie.

District No. 32 shall consist of the counties of Chautauque and Cattaraugus.

Mr. JORDAN moved to substitute for the first sentences, the words—"the legislature shall at their next session divide the state into thirty-two senatorial districts, to be composed of contiguous territory, in as near a compact form as may be without dividing counties."

Mr. J. said this amendment was for the purpose of avoiding a lengthened discussion on the apportionment of members.

Mr. R. CAMPBELL briefly opposed the amendment.

Mr. STOW moved to strike out the words "without dividing counties," and insert "without dividing assembly districts."

Mr. TAGGART followed, and was just entering upon the substantial part of his argument, when

The CHAIRMAN announced the expiration of his allotted five minutes.

Mr. WORDEN moved that the gentleman be allowed to proceed.

Mr. KENNEDY inquired if the committee could give the gentleman leave to proceed in opposition to a rule established by the Convention.

The CHAIRMAN replied that it could only be done by unanimous consent.

Mr. SIMMONS (emphatically)—That rule must be altered, or I shall cease to be a member of this body. [Laughter.]

Mr. WORDEN inquired if the Convention could impose such a rule on this committee?

The CHAIRMAN supposed it could.

Mr. RICHMOND moved that the committee rise and report, with a view of reconsidering that rule in Convention.

Mr. TAGGART said with great earnestness, and on that I call for the yeas and nays. [Laughter, and cries of "oh, you can't have the yeas and nays in committee?"]

The CHAIR put the question on rising, and it was lost.

The question then recurred on the amendment.

Mr. HOFFMAN hoped it would be lost. It never would do to send this apportionment to the legislature.

Mr. TAGGART inquired if the rule would preclude him from going on now.

The CHAIR supposed it did.

Mr. TAGGART inquired if a member could only speak once in committee of the whole.

The CHAIR replied, but once to the same question.

Mr. TAGGART desired the Chair to read the rule.

The CHAIR read the rule, as follows :

"When the Convention shall be in committee of the whole on the report of Committee No. One, the members engaged in debate shall not be allowed to speak more than five minutes on any one question."

The CHAIR construed this rule as restricting members to five minutes on any question.

Mr. CHATFIELD appealed from the decision.

Mr. CLYDE said perhaps he might be indulged for a few moments. [A voice, "Oh you can talk all day on that."] He had no desire to talk all day, nor even five minutes. He was one of the number that voted the other day for what was called "the gag." He had not occupied the floor himself, and there were at least ninety others there who had not occupied the floor one hour of the eight weeks of the session. Perhaps many of the ninety were as capable of occupying the floor as many of those who had consumed so much time, but they had been silent listeners; they had sat here to be instructed.

The CHAIR interposed. The only question was, "shall the decision of the Chair stand as the judgment of the committee?"

Mr. CLYDE only desired to say that he was willing the "gag" should be removed, but he hoped the gentlemen who should hereafter consume the time would be held responsible, and not the convention. He wished the people to understand that.

Mr. TAGGART had entirely misunderstood the application of the five minute rule. He was not aware that those gentlemen who had occupied two-thirds of the time for the last five or six weeks, intended or designed—for it was those gentlemen who had adopted this rule—to bind others up to five minute speeches, with no opportunity to speak again on the same question. He had merely intended to make a statement by figures, and to say that half of the representatives on the floor were brought here by 1,061,000 persons, while the other half was brought here by a population of 1,333,000.

Mr. STRONG and Mr. KENNEDY called to order

Mr. TAGGART insisted that the point of order should be put in writing.

Mr. KENNEDY'S point of order was read. It was that the gentleman from Genesee was debating the subject matter of the apportionment, when the pending question was an appeal from the decision of the Chair, on a point of order.

The CHAIR ruled that the gentleman from Genesee was not in order.

Mr. WORDEN (to Mr. TAGGART) : Appeal from that. [Laughter.]

The CHAIR again said, the question is on the appeal.

Mr. RHOADES (who had just entered the House) desired to know what the decision was from which the appeal was taken.

The CHAIR recapitulated the circumstances.

Mr. RHOADES enquired if in speaking they could adopt the "ride and tie" system. If so, perhaps the gentleman from Genesee, having exhausted his 5 minutes, could get a colleague to continue his argument for 5 minutes more, and then another for 5 minutes more, and so on.

Mr. WARD sustained the chair; but he would take occasion to remark that the time to which gentlemen were limited was much too short.

Mr. TILDEN : That is not in order. [Laughter.]

The CHAIR so ruled.

Mr. WARD was satisfied that he was not.—But he hoped the gentleman from Genesee might be allowed to go on and complete his speech.

Mr. HARRIS said if he had occupied the chair, perhaps he should have felt constrained to make the same decision; but he should vote against sustaining the Chair, nevertheless—for the rule was abused. It was a self-censure on this body. He was for a strict construction of the rule, as limiting the entire body to five minutes discussion on every question. Such a rule should receive such a construction, and no other. He was one of those to whom the gentleman from Columbia (Mr. CLYDE) had alluded—who had not occupied one hour of the time of the

Convention. He had listened, and with some pain, day after day—

The CHAIR:—The gentleman is not in order. [Laughter.]

Mr. HARRIS asked to be indulged a moment—[Cries of "No, no,"]—but the opposition ceasing, went on to say, if he must return to the subject immediately before the committee, that he could not make the remarks he desired to make there; but he did desire to say a word or two on those frequent lectures—

Mr. WORDEN:—Oh, we know what you would say.

Mr. HARRIS said he was persuaded, with this "gag" upon them, they could not proceed with their business. He thought they had better rise and report back to the House, that there they might retrace their steps. Having made a silly rule, they should at once rescind it.

Mr. JONES said he did not vote for this rule, and therefore was not responsible for it. He was however sorry to hear the remarks of the gentleman from Albany, denouncing the rule as absurd and silly. It was a reflection on the majority that passed the rule.

Mr. KENNEDY remarked that they deserved such reflections.

Mr. JONES regretted also to hear the gentleman from Albany say, because he believed the rule was silly and absurd, that he should vote against sustaining the Chair, and thereby put the Chair in a wrong position. There was another mode of correcting the evil. It was to return to the House, and if the rule was silly and absurd, reconsider and reject it. The Chair had decided correctly, under the rule; and could not have decided otherwise. It was for the committee to say if the Chair had not decided correctly. He hoped the decision would stand.

Mr. STETSON said he had nothing more to say, for the gentleman from New-York had just uttered what he desired to say. He thought the Chair should not be made the "scape goat" in this matter.

Mr. WORDEN said whatever they might heretofore have thought of this rule, they would now see that it would not work well. It was not calculated to promote progress in their business,—that they could all see. [A voice—aye, that's the rub.] But he respectfully asked the gentleman from Otsego to withdraw his appeal.

Mr. TALLMADGE hoped it would not be withdrawn. He hoped the vote would be taken upon it. He voted against the rule in the house, for the reason that he deemed it indiscreet. The parliamentary rule required them to consider propositions in committee of the whole, and then the convention passed a law which prevented their executing the rule! He was against the rule, though in favor of sustaining the decision of the Chair.

Mr. VAN SCHOONHOVEN had no doubt the rule had acted beneficially, for by this time it must have convinced them—

The CHAIR interposed. The gentleman was not in order. [Laughter.]

Mr. VAN SCHOONHOVEN had supposed that the whole merits were involved; but he felt bound to say that the CHAIR was right, for the rule undoubtedly cut off every man at the end of five minutes, and they had already seen

the impropriety, not to say the injustice, of such a rule. [Cries of order.] He thought censure upon the gentleman from Albany unjust. Did it follow simply because the rule was adopted by this Convention, that it was not a silly rule? Might not the Convention adopt a silly rule?—[Loud cries of "Order."] He hoped they should go back to the house and rescind this rule. He moved, with that view, that the committee rise and report.

Mr. NICHOLAS (with some warmth) said he scarcely ever called for the previous question, but he was inclined to do it now. [Laughter, and cries of "Oh! you're in committee of the whole"]

The motion to rise was then put and lost.

Mr. MURPHY said he was reluctant to say anything on this occasion, but he should be wanting in duty to himself if he did not do so, as he voted for this rule, and if he permitted the gentleman from Albany to pass unnoticed—

Mr. VAN SCHOONHOVEN: Is the gentleman in order?

Mr. MURPHY: I am replying to the gentleman from Albany.

The CHAIR: The gentleman from Albany was called to order.

Mr. MURPHY: But I am replying to him as far as he was in order. [Laughter.]

The CHAIR reiterated his statement.

Mr. MURPHY was speaking of the censure which the gentleman from Albany had given those gentlemen who voted for this rule.

The CHAIR could not know that a gentleman would be out of order until the disorderly words were uttered.

Mr. MURPHY thought if gentlemen would hear what he had to say, they would not think him out of order. He concurred in the view the CHAIR had taken of this rule. [A voice—"That's in order."] He could not vote to reverse the decision of the CHAIR. He trusted there was no gentleman on that floor that would. In the Convention they had the previous question, was that a "self-censure" on the Convention? The committee had no previous question, and hence the adoption of some such rule by the Convention was the proper way to put some restriction on debate. [Loud cries of "order" and "question!"]

Mr. SIMMONS rose amidst loud cries of "question," and said he should vote against any decision by which the liberty of speech was taken away. He held that a five minute limitation was the same thing. This rule was invalid—it was unconstitutional [Laughter]. The CHAIR had no right to enforce any such rule. [Renewed laughter]. The CHAIR ought to hold the rule to be a nullity.

Mr. HAWLEY: I rise to a point of order. [Laughter.]

Mr. SIMMONS (with great earnestness): Well, put it in writing.

Mr. RICHMOND (with some vehemence): Yes, I insist that the gentleman shall put it in writing. [Renewed laughter].

Mr. KENNEDY desired to ask what construction the Chair would put on the rule if his decision should be reversed on this appeal?

The CHAIR replied, that all the members of

the committee could not speak more than five minutes.

Mr. KENNEDY:—That is that the whole debate on every question will be restricted to five minutes?

The CHAIRMAN:—Yes.

Mr. KENNEDY:—I thought so. [A voice—“oh, but the constitution guarantees the liberty of speech.”]

Mr. SIMMONS said the existence or non-existence of a rule on which the Chair had decided, was a question of fact. [A voice—“that’s a fact.”] It was not denying the expediency of the rule; but he denied the power of the Convention to make such a rule, and he denied therefore that such a rule was in existence. [Laughter.]

Mr. JORDAN called to order. [Laughter.] They could not reach this matter in this way.

Mr. WORDEN:—Reduce it to writing.

Mr. SIMMONS:—You may always impeach a record if it does not exist. [Laughter.] Now he again asked, can the Convention pass a law that would cut off all but a dozen members who speak pretty fast from participating in debate? He thought it very strange that a Convention like this should be required to transact the important business of making a constitution without debate. He never was more surprised than when he heard of this rule, except perhaps when he heard that no reasons were to be given with reports. [Laughter—cries of “order.”] Well, I’ve just got through. [Renewed laughter.]

Mr. LOOMIS said his construction was that it limited all debate on each question to five minutes. He thought that was the strict literal construction of the rule. [Laughter.] But the next question was does it apply to the members or to the speech? [Renewed laughter.] If to the speech, a member could speak as often as he could get the floor for five minutes each time. Did it mean that the member or the speech should be five minutes long? [Roars of laughter.] He believed the object was to limit each speech to five minutes, but they must take the rule according to its strict construction.

Mr. SWACKHAMER spoke in support of the decision of the CHAIR. He hoped it would be sustained, and that thus the gentleman from Albany be rebuked.

Mr. WORDEN did not think it was so stringent a rule as gentlemen imagined. He thought gentlemen by being a little technical could avoid it. The rule provides that no member shall speak more than five minutes *to the subject*, but after speaking five minutes *to the question*, they could talk as long as they pleased “on matters and things in general.” [Laughter.]

Mr. BRUCE desired to say that he was glad this appeal was taken. He believed it would have a good effect. They were there, as he viewed the matter, adopting the Homœopathic system. [Laughter.] They were endeavoring to cure long speeches by making short ones.—[Renewed laughter.]

Mr. CHATFIELD had taken the appeal because from his reading of the rule he was satisfied it was this, that no one subject should receive more than five minutes discussion, and, therefore, the gentlemen who first got the floor would have all the debate to himself. Taking

that construction, he could not agree with the Chair that every gentleman could make a single speech of five minutes length.

Mr. SALISBURY enquired if the gentleman was in order? [Laughter.]

The CHAIR supposed he was in order.

Mr. CHATFIELD did not intend to be out of order.

Mr. SALISBURY said the gentleman was discussing the *merits* of the question, and that is out of order *here*. [Laughter and cries of “yes, always.”]

Mr. CHATFIELD replied, concluding with the remark that the appeal had worked out what he desired, and now he withdrew it.

The question was then put on rising and reporting, which was lost—40 voting in the affirmative and 43 in the negative.

The CHAIRMAN then stated the question to recur on the amendment to the amendment (Mr. Stow’s).

Mr. RICHMOND did not want to take up much time—[Several voices, “You can’t!”]—and he rose rather to say that it was impossible for any man to say all that it might be desirable to say on this most important of all the questions that had been before this body, in the short time allowed to each. He denounced the rule which made this impossible, as designed to shut out from public view the gross injustice and partiality of the system sought to be forced on the people of this state—a system which his colleague (Mr. TAGGART,) had shown gave to a minority of the whole people the election of a majority of the legislature. And this was a subject on which the majority here had voted there should be no debate, after having allowed the widest range on a subject in regard to which the people of the state had not expressed the slightest interest: he alluded to the subject of the qualifications of a Governor. This was a course, he insisted, which would have shaken the strongest monarchy in Europe. [Whilst proceeding in this manner, the Chairman’s hammer announced that the gentleman’s five minutes were up.]

The CHAIR stated the question to be on the amendment of Mr. Stow to that of Mr. JORDAN, the latter proposing to refer the matter of restricting the state to the legislature without dividing counties—the former to prohibit only the division of Assembly districts.

Mr. RUGGLES urged that the committee should not pass upon this amendment without first going over this arrangement of districts, and seeing whether some of these inequalities could not be adjusted. He adverted to the inequalities in the first and eighth districts, and suggested a mode in which one at least of these might be remedied. In order to afford time to look over this arrangement in detail, he moved that the committee rise and report progress.

The committee rose, and had leave to sit again.

THE FIVE MINUTE RULE.

Mr. WARD now moved a reconsideration of the five minute rule.

The rule forbidding this, without notice.

Mr. KENNEDY offered a resolution rescinding the rule in question.

Mr. R. CAMPBELL vindicated the motives of those who had voted with him for this rule. He intended no censure on any member in particular; but he felt that too much time had been taken up in debate, and that the few were disposed to put the gag on the many by occupying the time themselves. He honestly believed that there was a disposition to consume time—and little for business. It might have been a mistake in him and others, who like him were inexperienced in parliamentary proceedings, to suppose that the rule would expedite business—but that such was their object, he had no doubt; and for one he repelled the imputations that had been thrown out upon the motives that induced the majority to adopt it.

Mr. CLYDE also voted for the rule in good faith—and with no ill feeling towards any member of the Convention. He felt with the gentleman from Steuben, that a great deal too much time had been occupied in debate—and more than members engaged in it were aware of themselves, under the interest they seemed to put in the questions before us. His desire was to get along with business as fast as possible, and to give the people a little time to look at the new constitution, that they might vote understandingly on it. He was convinced however, that the rule would not facilitate business, and he was willing it should be rescinded. But he would not promise that he would not hereafter vote for another gag if he found it necessary; and he should do it conscientiously and fearlessly.

Mr. WORDEN, in reply to remarks by Mr. JONES in committee, said he did not see in the remarks of the gentleman from Albany, (Mr. HARRIS) anything implying disrespect for this body: and knowing that gentleman as well as Mr. W. did, knowing his uniform courtesy of manner and propriety in debate, he knew that no such disrespect was intended. He only understood the gentleman to intend to express his judgment that the rule was indiscreet and unwise. And perhaps the gentleman was right in saying that it was unwise; but that was not saying more than might be said even of deliberative bodies. Mr. W. was strongly inclined to vote for the rule himself, when it was offered; and if he had, he should not have inferred from the remarks of the gentleman, any intended offence. And he hoped that gentleman would understand that he was too well appreciated here to make it necessary for him to vindicate himself from the imputation of intending disrespect of the majority who adopted the resolution.

Mr. BURR was understood to say that he was satisfied the rule would not answer the purpose, and was therefore willing to rescind it—believing that when gentlemen were bent on delaying the progress of business in such a body, they would find the ways and means to do it, adopt what rules you would.

Mr. JONES inferred from the remarks of the gentleman from Ontario, that he (Mr. J.) had used language implying a charge that the gentleman from Albany had some bad motive, or wrong intention in what he said of this rule.—Mr. J. was not in the habit of doing that.

Mr. WORDEN disclaimed any intention to convey such an idea.

Mr. JONES repeated, that he was not in the habit of imputing wrong intentions to fellow members—much less to the gentleman from Albany, whom he had found uniformly courteous in debate, and elsewhere. He did say that he regretted to hear that gentleman apply the words silly and absurd to a resolution of this body.—But it was far from his intention to impute to the gentleman a desire to reflect on the character of that body.

Mr. HARRIS never allowed himself, in a body like this, to use language of a personal character, and was never willing to understand others as using language of a personal character towards himself. He did not so understand the gentleman from New York. He did say in committee, what he said when he came in the other day to those around him, and found that such a rule had been adopted, that it was absurd and silly. He did not retract it. He repeated it now. And he appealed to the recollection of the house to say if it had not proved to be so. It had no sooner been adopted than a resolution was offered which took the whole subject in debate from the committee of the whole, and left the debate to go on in Convention without restriction. Mr. H. went to argue against all rules restrictive of debate. He did not regard the time we had spent in discussing the cardinal principles of government, (though it had led to no result except to show that the old constitution, so far as we had it under review, could not be improved) as time lost. On the contrary, he should regard it as time well spent, if it resulted in recalling public attention to the great principles of the free government under which we lived, and should have led to a proper appreciation of their value. Nor did he believe that these gag rules ever had the effect to curtail debate. No man ever yet labored long with a speech which he desired to make in a deliberative body. You might choke him down by the previous question, but rely upon it he would find an opportunity, pertinent or impertinent, in order or out of order, to relieve himself of it. All the time spent in making rules to stop debate or to enforce them, was so much time lost. The only proper restraint in such a body was that restraint which every man felt called upon to put in force upon himself, in view of his responsibilities.

Mr. MURPHY said he proposed this rule because he was a friend of discussion, and because he was a friend of the objects of this Convention. He knew that if we continued to make no greater progress than we had made, that no better plan could be devised to defeat the objects for which they had convened. Knowing that we were pressed for time to get the new constitution before the people, he wanted to see our labors terminated as soon as possible. He wanted the new constitution to be discussed not only here but by the people; and for one he was willing to make an equitable distribution of time, and give some portion of it to the people as well as ourselves. But he put it to gentleman here to say whether they believed it was possible to get through with this constitution, as we were going on, in time to give them that opportunity? Gentlemen talked about gag—and yet made no complaint of the previous question,

which was a more stringent rule than this. That did not apply in committee of the whole—And unless we could restrain debate there, how were the people to have time to re-discuss and review our labors? He was a friend to discussion among the people as well as here, and as such he should insist on some such rule as this, so long as the disposition existed to monopolize all the time here, and leave no chance for it elsewhere.

Mr. WATERBURY explained his object in voting for this rule—which he confessed was to stop this eternal discussion, which he thought was calculated to wind up the convention without doing any thing. He was willing to believe now, with Brother HARRIS, that he was fool enough to try to stop what could not be stopped—and to retrace our steps and try again, though he could not see where it was to end.

Mr. KENNEDY hoped the excuse of the gentleman from Delaware would be taken as the excuse of all the rest, and that we should now come to a vote.

Mr. SWACKHAMER moved an adjournment.

Lost—35 to 45. [Loud calls for the "question."]

Mr. SALISBURY said he was one of those who had had exhibited so little wisdom as to vote for this rule which had been so severely commented on by the gentleman from Albany. He only rose to say that he had no pardon to ask for a vote given in perfect good faith, and which he believed had thus far had a salutary effect. It showed at all events to the people that there was a majority here who were willing to go forward and do the business we were sent here to do, and they were not to be driven to hear speeches here all the year round about matters and things in general, to the defeat of the objects of the Convention. He trusted the majority here would not be frightened from the pursuit of these objects; but when necessary would repeat this rule, until discussion was brought within some reasonable limit.

Mr. CROOKER demanded the ayes and noes on the resolution. [Cries of "no," "no," "question," "question."]

Mr. SIMMONS called for the ayes and noes. He wanted to see who was in favor of the liberty of speech ["No," "no," "question."]

Mr. O'CONOR called for the ayes and noes. ["No," "no."]

Mr. LOOMIS, the house being very thin, moved an adjournment. [Lost, and cries for the "question," "question."]

The ayes and noes were then called, and stood, ayes 61, noes 15, as follows:

AYES—Messrs. Angel, H Backus, Bascom, Bouck, Brown, Bruce, Burr, Cambreleng, Candee, Chatfield, Conely, Cook, Cornell, Crooker, Gebhard, Graham, Greene, Harris, Harrison, Hoffman, Hunter, Kemble, Kennedy, Kirkland, Loomis, McVitt, Marvin, Miller, Morris, Nellis, Nelson, O'Connor, Parish, Patterson, Penniman, President, Rhoades, Richmond, Kuggles, Shaver, Shaw, Shepard, Simmons, W. H. Spencer, Stanton, Stephens, Stetson, Stow, Taggart, Tallmadge, Tilden, Tutthill, VanSchoonhoven, Ward, Warren, Waterbury, White, Willard, Wood, Worden, Yawger, Young.—61.

NOES—Messrs. Bergen, Clyde, Dubois, Flanders, A. Huntington, Hyde, Jordan, Kingsley, Maxwell, Murphy, St. John, Salisbury, Sears, Swackhamer, J. J. Taylor.—15.

So the rule was rescinded.

The Convention then took a recess.

AFTERNOON SESSION.

The committee of the whole, Mr. PATERSON in the chair, again took up the report of committee number one.

The question recurred on Mr. JORDAN's amendment, as follows:—

To strike out all after the word "senator," in the third line, and insert as follows: "The legislature shall, at its next session, divide the state into 32 senatorial districts, to be composed of contiguous territory, as nearly in a compact form as may be, without dividing counties."

And first on Mr. Stow's amendment, to strike out "without dividing counties."

The amendment was rejected.

Mr. CAMBRELENG suggested that before striking out, as moved by Mr. JORDAN, it would be better to make the effort to amend the section and make it satisfactory. If not, we could then impose that duty on the legislature. He hoped, as suggestions had been made which would improve the section, that they would be repeated now.

Mr. PERKINS had looked on this apportionment; and, with two or three corrections, he thought it as satisfactory an apportionment as could be made by any body of men that could be sent here. Indeed, he thought it could be more impartially made by a convention like this than by any other body. So far as he had been able to discover, there was very little of party here, certainly as little disposition to further party ends as could be expected to be found in any legislative body. He thought we could arrange these districts without much loss of time, and without much debate, and much more satisfactorily than any legislative body.

Mr. R. CAMPBELL, in the absence of the Chairman, [Dr. TAYLOR was confined to his room by indisposition,] said that there were inequalities which might be corrected, and he felt authorized from what he knew of the Chairman's views, to propose one or two alterations. At the same time it was obvious that though we should make the apportionment, now to a mathematical certainty, yet that in five years as great inequalities would present themselves as any presented now—and hence that it was not a matter of great importance that the present arrangement should be exact. Indeed the principle of apportioning deficiencies among the increasing counties was the only true rule; and that must of course lead to present inequalities. Mr. C. concluded some general remarks, by moving to take Richmond from Kings and annex it to Suffolk and Queens.

Mr. HARRISON opposed this motion, as at war with the true principle of apportioning districts according to contiguity and continuity of territory, and the natural associations and relations of counties. Besides, he insisted that this change would leave a deficiency in the 2nd district nearly as large as now existed in the 1st.

Mr. BERGEN insisted that if the principle of contiguity was to be carried out, Richmond would naturally go to New-York. Between the two there was a regular ferry. There was none between Kings and Richmond. The people of these counties hardly know each other. Besides, there was quite as much connection

between Richmond and Suffolk and Queens, as between Richmond and Kings. Again, Kings was a rapidly increasing county—its increase during the last five years being 66 per cent—a greater ratio of increase than any other part of the state. Whereas the counties of Richmond, Queens, and Suffolk, were about stationary, taken together.

Mr. NICHOLAS moved that the committee rise and report progress, with a view of referring this apportionment of the districts to a select committee of one from each senate district. Lost.

Mr. CHATFIELD suggested that the committee pass over this section, and take up section 7.

Mr. JORDAN withdrew his amendment.

The motion to annex Richmond to Kings, Queens and Suffolk, prevailed.

This vote was however reconsidered.

Mr. HARRISON denied that Richmond was a decreasing county—its increase since the last census being proportionably a large one. He denied that the communication between Richmond and Kings was so unfrequent as was represented, saying that it was more frequent than with Queens or Suffolk. The people of Suffolk in fact were as little known to the people of Richmond as the people of Chautauque. Again, Richmond and Kings had for many years been associated in the same congressional district, and the association was a natural one. But he should not object to this arrangement were it necessary to produce equality—but it would not do this, as he had already shown. There was a deficiency now of 16,000 in the 1st district. Put Richmond to it, and it would leave the 2d with a deficiency of 13,000.

Mr. BERGEN insisted that Kings county had increased sufficiently since the last census to bring it up to the ratio. Besides, if we were to follow the principle of the communications and business relations of counties, Richmond ought to go to New-York—if the nearest territory, it should be set off to New-Jersey.

Mr. MURPHY regarded the question as settled, though reconsidered to enable the gentleman from Richmond further to present his views. The committee had in fact recommended this change and the convention had sanctioned it. He recapitulated the positions taken by Mr. BERGEN in regard to the contiguities and connections in that region of the state. He adverted in addition to the large ratio of increase in Kings—to its increase in the number of buildings erected last year in Brooklyn alone, amounting to between 900 and 1000—whilst in New-York it was between 1100 and 1200. Besides, the increase of Kings in the last five years indicated that at the end of five years more it would be entitled to two senators. While Richmond, Queens and Suffolk would not probably exceed the present ratio in ten years.

Mr. NICHOLAS here renewed his motion to pass over this section and proceed to the 7th.—Agreed to.

ASSEMBLY DISTRICTS.

The 7th section was then read for amendment, as follows:—

§ 7. The members of Assembly shall be apportioned among the several counties of the state, as nearly as

may be, according to the number of their respective inhabitants, excluding aliens, paupers and persons of color not taxed, [and shall be chosen by districts. The legislature, at its next annual meeting, shall divide the several counties of the state into as many districts as each county respectively is now by law entitled to members of Assembly, to be called Assembly districts, and shall number the same in each county entitled to more than one member, from No 1, to the number such county is entitled to members inclusive, each of which districts shall choose one member of Assembly. Each Assembly district shall contain as nearly as may be, an equal number of inhabitants, and shall consist of contiguous territory, and no town or ward shall be divided in the formation of an Assembly district, except such town or ward may be entitled to two or more members.] An apportionment of members of Assembly shall be made by the legislature at its session after the return of every enumeration; and the Assembly districts in the several counties of the state shall be so altered as to conform in number to the said apportionment, and shall be constituted as herein before directed; and the apportionment and the districts shall remain unaltered, until another enumeration shall have been taken. Every county heretofore established, and separately organized, shall always be entitled to one member of the Assembly; and no new county shall hereafter be erected, unless its population shall entitle it to a member.

Mr. CHATFIELD moved to strike out in the 4th line the word "paupers." Agreed to.

He then moved to strike out from the word "taxed," in the 4th line, down to and including the word "members," in the 15th line, [included in brackets].

Mr. WORDEN suggested another proposition as a substitute, which he read.

Mr. CHATFIELD objected to it, as covering more ground than he intended. He desired to raise the distinct question of single Assembly districts.

The CHAIR remarked that it would be in order, first to amend or perfect the matter proposed to be struck out—and a refusal to strike out would adopt the clause as it stood.

Mr. COOK moved, as an amendment to this amendment, to strike out, in the fifth and sixth lines, the words, "the legislature, at its next annual meeting, shall divide the several counties of the state," and insert, "the board of supervisors in each of the counties in this state shall, on the first Tuesday in June next, divide their counties."

Mr. HARRIS thanked the gentleman from Saratoga for his suggestion. It was new to Mr. H., but struck him more favorably than any he had heard. It brought the subject home to those most familiar with it, and would relieve the legislature of a great burthen.

Mr. SHEPARD suggested that this division should be made as early after the adoption of the Constitution as possible. In New-York it would be a long and laborious process.

Mr. CHATFIELD enquired if the gentleman had prepared other matters of detail to carry out his plan?

Mr. COOK had another amendment prepared—but it would not be in order now.

Mr. CHATFIELD said he should like to know how the gentleman proposed to establish the districts, furnish proof of them, and give them the force of law—for the proposition struck him as a peculiar one. He was opposed to it *in toto*, for several reasons. We had already an apportionment for the counties, and there was no need of incurring this additional expense of special meetings of boards of supervisors all over

the state. But the more serious objections were that you would get up 59 gerrymandering bodies, to cut up counties with reference rather to party objects than any thing else—that the election of supervisors would turn on this question of cutting up counties so as to procure certain party objects—and instead of diminishing corruption and base political conduct of men in office, you would in fact offer a premium for it?

Mr. SWACKHAMER did not suppose this proposition would be seriously entertained—or he should oppose it strenuously. He would only remark now that if gentlemen supposed the people favored the idea of having as many little local legislatures as they were counties, they were entirely mistaken. In Kings county they were fairly ridden down with local legislation. Besides, there was nothing like equality of representation in the board of supervisors. One of the five towns in Kings (exclusive of Brooklyn) had a population of nearly double that of the other four—and yet had but one supervisor to their four. This was too important a matter to be entrusted to a little knot of men elected for other purposes. It was a matter they had nothing to do with, and should not have, if his vote would prevent it.

Mr. STRONG had confidence in the board of supervisors and believed they were a great deal more competent to divide up these counties than the legislature. They too were more immediately responsible to their constituents. Every thing they did was done right under the eye of their constituents; and he believed they would make a more equitable and fair division than any other body. We entrusted to them the important duty of equalizing towns, and who ever heard of their abusing that trust. He thought the amendment a good one, and should vote for it.

Mr. SWACKHAMER'S objection to the board of supervisors was the rotten borough system of representation under which it was constituted. He preferred the legislature to any such body of men to make the division. And if it happened that the delegation from any county was divided on any such a question, we should then have an impartial body of men from all the rest of the state to settle the question.

Mr. TAGGART, in order first to test the question of single assembly districts, suggested prefixing to the section, these words:—"The state shall be divided into 123 districts, to be called assembly districts, each of which shall elect one member of assembly."

Mr. CHATFIELD withdrew his proposition.

Mr. CROOKER suggested that the object could be attained by adding the word single before districts, in the fourth line—and then by moving to strike out "and shall be chosen by single districts." He should vote against such a motion, but in order to test the question, he would move to strike out.

This motion by consent, was substituted for the pending question.

Mr. CHATFIELD took ground against single districts. He could not perceive what the advocates of this measure desired, or what great good was to be accomplished by it. If the object was to correct the action of political parties, he submitted that that was a matter beyond our

province, unless some great evil was to be remedied by it. But would this do it? Divide counties into districts; and yet in all probability your nominations for the Assembly would be made by county conventions, as now. He could foresee great evils from this system. Our counties were all entireties—distinct political identities—having each an individuality of interest, so far as they could be represented here, or so far as it was desirable to have them. Again, your boards of supervisors were a board of administrative officers for the whole county—not to guard the interests of one section of it, but to supervise the affairs of the whole county. Why break up this identity of interest in the representation on this floor? Must not the interests of counties suffer by having a divided delegation here—some of the members refusing to act with others upon a county question, and holding themselves responsible only to their particular districts? If the people had demanded this reform he had never heard it. It was a subject that was never brought to his attention until he came here. No expression in favor of it had emanated from any convention in his county. He did not believe, as a general thing, that the people had demanded it. He therefore turned the tables on its advocates, and asked them if the people had not asked for it, why impose it on them? We had better pause before we break up county lines—making mincemeat of your counties to accomplish political ends. He thought he could see the object of all this manoeuvring—see where it tended—divine its origin and trace out its objects—and he was here to play second fiddle to no such project.

Mr. A. W. YOUNG thought it was the province of this body to correct the action of political partisans; nay, he thought it the duty of this body to guard, as far as we could constitutionally, against evils resulting from party spirit and action—for no man could deny that they affected for good or for evil the people of the whole state. The rights of minorities were entitled to some attention; and he concurred fully in the magnanimous sentiment, in that respect, of the gentleman from New-York (Mr. MORRIS,) Mr. Y. contended that there might be a great diversity of interest in a large county—a greater diversity often than between different counties. He conceded that the people had not been entirely unanimous in favor of single Assembly districts, yet the expression was sufficiently clear to prompt him to make an effort for it.—He should not dare to return to his county without having made the effort. He had seen among the proceedings of a county convention in Cayuga, which nominated the members from that county, a letter addressed to them, which they answered affirmatively in favor of single districts. He could not say to what extent such expressions had gone—but the general expression in favor of single senate districts, carried with it a strong argument for single Assembly districts—for the one was as essential to equality of representation as the other.

Mr. PERKINS concurred that it was our duty to guard against the results of party spirit in the formation of the constitution. We had already county lines cutting up the state into convenient localities for business without respect to party.

If we put into the constitution any thing having a tendency to induce the legislature or the supervisors of a county to disregard these municipal divisions, we held out direct inducements to a re-formation of counties on party principles. And the great evil which he apprehended from these single assembly districts was that it would be the entering wedge for county divisions, and that instead of 56 counties you would have 100, and the people would have to incur the expense of new county buildings, and of all the machinery of a new county organization. It was inevitable that divisions for political purposes would lead to divisions for county purposes. And one of the greatest evils of past legislation had been the division of counties. He had confidence in the board of supervisors—but no man would deny that the intrigues originating in boards of supervisors in the appointments now given to them, had called for the taking away of this power and giving it to the people direct. Yet, here was a proposition equally calculated to introduce political intrigues and partialities into boards of supervisors as any powers they had ever been clothed with.

Mr. TAGGART suggested that the gentleman was not discussing the question.

Mr. PERKINS said this division must be made either by the legislature or the board of supervisors. He was opposed to the division of counties by either—believing that the results would be equally mischievous.

Mr. WATERBURY was willing to send this matter home to the supervisors of Delaware.—He believed they would settle the matter amicably. He liked this plan of single districts—Many a man had come here from Delaware that would not have come, had he stood alone. Mr. W. was for having every tub stand on its own bottom—and here was an opportunity for those who talked so much about the dear people, to come right down to them. We had entrusted a great deal of power to boards of supervisors, and we had had no reason to regret it. It was as safe a body to leave the matter to as could well be selected, and he was for it decidedly.

The committee now rose and reported progress, and the Convention

Adjourned to 9 o'clock to morrow morning.

SATURDAY, JULY 25.

Prayer by the Rev. Mr. HITCHCOCK.

Mr. DORLON presented a petition from colored citizens of Oswego county on the subject of suffrage. Referred to the committee of the whole having that subject in charge.

EXECUTIVE DEPARTMENT.

The Convention, Mr. PATTERSON in the chair, resolved itself into committee of the whole on the report of committee No. One, and resumed the consideration of the seventh section.

The question was taken on striking out the words "shall be chosen by single districts," in the 4th line.

The motion was negatived; 21 in the affirmative and 50 in the negative.

Mr. KENNEDY moved to insert after the word district, in the fourth line, the words "except in the city of New-York." Lost.

Mr. COOK, of Saratoga, moved to strike out from the 5th and 6th lines the words—"The legislature, at its next annual meeting, shall divide the several counties of the state," and insert, "The board of supervisors in each of the counties of the state shall, on the first Tuesday of June divide the counties into."

Mr. CHATFIELD moved to strike out "the 1st Tuesday of June," and insert "at their next annual meeting."

The amendment was discussed by Messrs. PERKINS, BASCOM, KENNEDY, RUSSELL, COOK, SHEPARD, CROOKER, HARD, TAGGART, MARVIN, MANN, MILLER, SHAVER, BERGEN, FORSYTH, RHOADES and SWACKHAMER. On the one side, it was urged that the want of local knowledge would make it difficult to divide equitably the several counties here; and on the other, that to entrust the power to the board of supervisors would be to give cause for "log rolling" combinations,

which would be the source of trouble and discord in the several counties.

Mr. CHATFIELD modified his amendment so as to substitute January for June.

Mr. COOK accepted the amendment.

Mr. JONES moved to amend by striking out and inserting "until the enumeration and apportionment as provided by this section, such districts shall be and remain as follows" Mr. J. explained the purport of his amendment. He said that the boards of supervisors were elected as partisans, and therefore it was peculiarly proper that the districting should be done by the Convention, which was less governed by party impulses.

Mr. RHOADES, Mr. MARVIN, and Mr. BERGEN continued the debate.

The amendment was then negatived.

Mr. BASCOM moved to amend so as to provide that the board of supervisors shall meet on the day of January next, and proceed without adjournment, except from day to day, to district the several counties," &c.

Mr. ANGEL contended that the boards of supervisors had not been elected with reference to this duty.

Mr. TALLMADGE said they had heard much said in the course of this debate of the honesty of individuals. All knew that this House was honest. No suspicion to the contrary could be entertained. And they were also satisfied of the honesty of the legislatures past and to come.—As to the supervisors, it had been the pride of his life to maintain the purity of them. Living so near their constituents, they dared not be dishonest, because their constituents would hold them responsible. Well, now his purpose was to say that he had made no motion—that he did not intend to make any motion—respecting the districting of the state into senate and assembly

districts, or the apportioning of members to the inhabitants of each county. He had however some anxiety lest the public should misunderstand the difficulties here. If they did not arouse themselves in some reasonable time and come to some fair conclusion, he feared the public might think they did not desire to come to any conclusion. Now instead of running their heads against each other, if this body would agree to district the state for the members of assembly to be elected to the next legislature, he would undertake to say, if they would refer the districting of each county to the delegates here present from each county, it could be done by Monday morning. He would volunteer, to have Dutchess county districted by 9 o'clock on Monday morning. There was no reason why they should continue running their heads against each other in the dark, some running out through the door and others escaping by the window. But if gentlemen were not willing to have it done by Monday morning free of expense, he would undertake to say, if they would send it down to New York, there they could get that county districted at an expense of \$17,000, without any enquiry into the propriety of the items. If gentlemen could not get back from their parties of pleasure so as to do this work by Monday morning, they could complete it by Tuesday or Wednesday.—But if they would not consent to this, he asked that it might go to the boards of supervisors of the counties, which consisted of honest men, chosen for their capacity, and before the party drum could have been beaten to call politicians to action to gerrymander the counties. He thought however, that it could be done here by Monday morning at 9 o'clock. He would undertake to be ready by that time on behalf of Dutchess or consent to stand in the pillory in case of failure. He thought they ought not to divide towns, but report them according to the census. They had fixed the number of senators at thirty-two, after a week's discussion, respecting which he would not attribute blame to any body; but he would remark, that some gentlemen had expressed much alarm lest they should have a thousand population more or a thousand less in some districts. Now the people would laugh at such fears. It would be a hiss and a bye word through the state. Now, let us understand if we intend to make the districts here. Four times 32 is 128, therefore four assembly districts would make a senatorial district. He desired the counties to get districted without dividing county lines if possible, but if that would be inconvenient, they could take a district from an adjoining county. He would not however, he repeated, divide a town. He made these remarks for the purpose of expressing his views, and he hoped it would be referred to the delegates to apportion the counties.

The amendment offered by Mr. BASCOM was carried.

The question then recurred on the amendment as amended, which was discussed by Messrs. STETSON, CHATFIELD, RICHMOND, and LOOMIS.

Mr. TALLMADGE sent up a resolution to refer to the delegates from the counties the subject of districting their counties into Assembly districts, without any division of towns. He

said he hoped he should not be misunderstood. He went for any thing that would bring us to the end of this subject. He went for this reference to the delegates, believing that it could be done by Monday or Tuesday morning, without any expense. If gentlemen preferred sending this to the boards of supervisors, he was willing to do it without waiting for the new boards to come in. Some gentlemen wanted the old boards and some the new; but he should be satisfied with either. A gentleman from New-York had said the first error committed there was in agreeing to the district system. Now, permit him to say to his worthy and respected friend, that he was not prepared to dispute that at all. But they should not bring a man to the brink of a precipice, give him a push, and then blame him for falling. There were gentlemen who had come here instructed to go for single districts—they were pledged, and dared not go any other way. We had here, speech after speech on the glorious right of election. Be it said to their honor, there was no party feeling here: they were all working for the "dear people." He had never gone for single districts in his county; he should never have dared so to outrage public opinion there. But he would ask, if they were to go on debating, and when they were on the point of voting, when their breath was all exhausted, to have the yeas and nays called—thereby get breath, debate again, until they were exhausted, and then adjourn?

The CHAIRMAN informed the gentleman from Dutchess that his resolution was out of order, for it was not competent for the committee of the whole to refer any matter to a select committee.

Mr. TALLMADGE gave notice that he should offer it in the Convention, and call for the yeas and nays upon it.

Mr. HARRIS would not impugn the motives of gentlemen who undertook to lecture this body, and far be it from him to impugn the motives of the gentleman from Dutchess; but he yesterday made some remarks which he hoped would have the effect of preventing these lectures for the future. He was satisfied that they were futile. Why this pending question might have been asked and disposed of while the gentleman from Dutchess was making his remarks, if he had seen fit to withhold them. He believed every gentleman was ready to vote on this proposition; he believed nothing could be said to enlighten the members of the committee. He hoped the question would now be taken, and that the subject would be settled in a sensible democratic manner, by referring it to the board of supervisors.

The amendment was then adopted.

Mr. NICOLL moved to strike out the words "or ward" in the 14th and 15th line, so as to admit of the division of wards. With this power, and without the division of assembly districts, perfect equality could be obtained in the city of New York.

The amendment was agreed to.

Mr. SWACKHAMER moved to strike out the prohibition against dividing towns.

Mr. KIRKLAND hoped not.

Mr. SIMMONS hoped it would be stricken out. Why make a distinction between city and

country? If you divide wards, why not towns? Otherwise you lose all the advantage of single districts, if you desire equality of representation.

The committee refused to strike out.

Mr. COOK, in order to perfect the section, moved to strike out so much of it as directs an apportionment of members of assembly to be made by the legislature after every enumeration, and insert a clause providing that an apportionment shall be made of members of Assembly by the board of supervisors of each county, at their first annual meeting after the return of every enumeration, and requiring such apportionment to be filed in the office of the county clerk and the Secretary of State, with an enumeration of the assembly districts, the number of inhabitants residing therein, &c.

Mr. JONES suggested that this would take from the hands of the legislature future apportionments, and give it to the board of supervisors in the respective counties. This could only be done by the legislature, or some body which could adjust the fractions.

Mr. J. J. TAYLOR also suggested another difficulty as to the time when the boards of supervisors were to meet.

Mr. PERKINS suggested that there should be special meetings of the boards of supervisors, on the earliest day after an apportionment by the legislature.

Mr. WARD suggested that the object could be attained by providing in the 19th line, that the districts shall be so altered "by the respective boards of supervisors" as to conform them to future apportionments. As to the filing of these certificates, that could be provided for by the legislature.

Mr. HARRIS said he had drawn up an amendment in conformity with the suggestion of the gentleman from Westchester.

Mr. COOK withdrew his amendment and Mr. HARRIS proposed to insert in the 18th line, requiring the boards of supervisors to conform the districts to new apportionments—and it was adopted—51 in the affirmative.

Mr. LOOMIS moved an amendment designed to make the provision applicable to counties entitled to more than one member. Agreed to.

Mr. STRONG moved to strike out the word "heretofore," towards the close of the section, and insert "hereafter"—saying that as the section stood, Hamilton and Fulton would each have a member. They were both established, separate counties.

Mr. HUTCHINSON proposed an amendment, which the CHAIR ruled out of order.

Mr. KEMBLE remarked that Mr. STRONG'S amendment would take away from the counties not having 27,000 inhabitants their member. It would prevent the small counties from sending a member here at all.

Mr. WOOD asked if the gentleman intended to deprive the small counties of a member? If so, he wanted the Convention to understand it.

Mr. A. W. YOUNG thought the amendment unnecessary. Hamilton was not separately organized.

Mr. STRONG insisted that this would depend on the construction given to this language. Both these counties were separately organized. They

were joined together in electing a member of assembly, but in a lot other respects they were as much organized as any other county.

Mr. KIRKLAND remarked that the effect of the amendment would be to send home several members. It disfranchised Putnam, Franklin, Rockland, Sullivan, Richmond and some other small counties. The gentlemen representing these counties, he suspected, would not be so summarily disposed of.

Mr. DANA gave a similar interpretation of the effect of the amendment.

Mr. JORDAN was aware that Hamilton county was not separately organized for the purpose of representation; but he believed it had a county seat, a sheriff, a county court, &c. If so it was organized, and the constitution, as it now stood, would entitle Hamilton to a representative. There could be no mistake about it. The difficulty might be obviated by saying—every county heretofore established and separately organized for the purpose of representation, shall be entitled to a member. As it read, Hamilton would have a member by the constitution.

Mr. STRONG withdrew his motion.

Mr. HUTCHINSON moved to amend by inserting this clause—

"For the purpose of electing a member of Assembly, Hamilton county shall be considered part of Fulton county, until otherwise provided by law."

Mr. PERKINS remarked that the constitution of 1821 provided that no county should be organized unless it had population enough for a member. Hamilton had been organized since, had its board of supervisors, with directions to meet and levy taxes, judges of courts of common pleas, and every attribute of a county.—The organization of that county was a legislative declaration that she had population enough to entitle her to a member, and the very fact of her organization entitled her to a member, and for the last five years she had had as much right to a member as the city and county of N. York.

Mr. W. B. WRIGHT remarked that this motion was considered in committee—and that it was understood that this very clause was put in to meet the case of Hamilton in 1821. If this was so, the gentleman from St. Lawrence was entirely mistaken. But as the proposition from the gentleman from Monroe had been withdrawn it was unnecessary to say more.

Mr. RUGGLES, in reference to Hamilton, remarked that it was set apart in 1816, but was never formed into a county until 1833. Of course, as the Constitution now stood, Hamilton was never entitled to a member, and was not now.

Mr. HARRIS was quite sure that the act constituting Hamilton a county, expressly provided that it was not to have a member until it had the requisite population.

Mr. PERKINS said that was so—but the provision was against the Constitution, beyond all doubt.

Mr. KIRKLAED proposed to add at the end of the section:

"For the purposes of this article, the counties of Fulton and Hamilton shall be considered as one county."

Mr. LOOMIS:—Say, shall be one county.—That county was got up as a mere matter of land speculation, and had been ever since so.

Mr. PERKINS thought before we deprived Hamilton of her rights we should look a little into the matter. The constitution of '21 declared that the 4th district should consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, &c. It also declared that "every county heretofore established, and separately organized shall always be entitled to a member of Assembly." If she was a county separately organized, she was entitled to a member. But it was claimed then that she was not separately organized. She was part of Montgomery, though there was a line drawn on the map indicating what might be Hamilton. In 1838 the legislature passed a law organizing Hamilton with all the machinery of a county, except that they assumed to deprive her in violation of the constitution of a right to a member. And he insisted, that if we did any act depriving Hamilton of her rights, we divested her of rights secured by the constitution of '21 and the law separately organizing her.

Mr. RUGGLES thought there could be no doubt about this. We had first a positive provision of the constitution that no new county should be organized unless it should have the requisite population to entitle it to a member. Now, it was admitted that Hamilton was not organized for the purposes of representation. It had then as now, less than 2000 inhabitants. In 1830, it had only 1324; in '35, 1600; in '40, 1700; in '45, 1882. It had never set up a right to a member. It never had any such right under the old constitution. And if the legislature had undertaken to give it that right, it would have been manifestly unjust and against the constitution. This Convention could not be asked to give that county a member with less than 2,000 inhabitants. If the legislature had done it, it would have been unauthorized.

Mr. LOOMIS moved this substitute for the last clause of the section, and it was agreed to:

"Every county heretofore represented in the Assembly by one or more members, shall continue to be entitled to a member; but no county shall be hereafter created or entitled to a member, unless its population shall be equal to the votes of population."

Mr. BASCOM moved to insert, after the word "taxed," as follows,

"So long only as persons of color shall not be permitted to enjoy the right of suffrage on the same terms as white persons."

Mr. B. explained that as this question of suffrage was to be submitted separately, there was no other mode of making provision for the contingency of the admission of colored citizens to the right of suffrage.

The amendment was lost.

Mr. BERGEN moved to strike out "excluding aliens and persons of color not taxed." Lost.

Mr. A. W. YOUNG moved to amend so as to except from the general rule of division, according to the number assigned to counties by the last apportionment. His amendment, he said, had reference to Wyoming, to which several towns had been annexed since the apportionment bill had passed—which fairly entitled Wyoming to a member over the county having the largest fraction. The bills annexing these towns was urged forward before the passage of

the apportionment bill, to avoid this injustice; but the latter was passed first, and Wyoming was told to appeal to the Convention. That appeal he now made.

Mr. TAGGART hoped we should adhere to the last apportionment or do entire justice by apportioning according to population throughout the whole state.

Mr. YOUNG said he omitted to state that Wyoming had 30,000 and Genesee but 23,000—and yet the latter had two representatives, Wyoming but one.

Mr. RUSSELL said that these two counties together had a less population than several counties having but three members. If Genesee was willing to give one of its members to Wyoming he had no objection, but he objected to giving Wyoming another at the expense of other counties. Clinton with one member had nearly the population of Genesee with two.

Mr. YOUNG replied that the member would come from Genesee, not from other counties.

Mr. RICHMOND insisted that if we abandoned the last census we should have to go over the whole ground again, for Kings and Erie and Albany had gained immensely since. If we were going to equalize all round, he went into it; but he was not willing to take a man from Genesee and give him to Wyoming. Wyoming should have one more, but he would not rob Genesee to do it.

Mr. YOUNG replied that Wyoming was justly entitled to this on the last apportionment.

The amendment was lost.

Mr. TAGGART offered a substitute, providing for 123 single assembly districts, without reference to county lines. Lost.

The seventh section was then passed over.

The ninth section was then read, as follows:—

§ 9. The members of the legislature shall receive for their services and compensation to be ascertained by law, and paid out of the public treasury, which compensation shall not exceed the sum of three dollars a day, and after the year 1847, shall not exceed the sum of three dollars a day for the period of nine days from the commencement of the session. When convened in extra session by the Governor, they shall receive such sum as shall be fixed for the ordinary session. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, on the most usual route. The Speaker of the assembly shall, in virtue of his office, receive an additional compensation equal to one-third of the per diem as member.

Mr. NICHOLAS moved to strike out the words "and after the year 1847, shall not exceed the sum of \$3 a day for a period of ninety days from the commencement of the session," and to insert, "the legislature shall pass no law increasing the compensation of its members beyond the sum of \$3 a day." Mr. N. said, as the section read now, the legislature could increase their pay after ninety days—which was no doubt the reverse of the intention of the committee reporting it. If it was desirable to limit the length of the sessions, it should be done by a direct provision; not by indirection, and in a mode that conveyed an imputation that members had prolonged sessions for the mere purpose of getting their \$3 a day.

Mr. DANA did not think that under this section, after the year 1845, a member could get

more than \$270 the session, let them sit as long as they pleased.

Mr. CROOKER disliked this section—especially as it seemed to undertake to do something indirectly which it did not dare do directly. He believed members of the legislature were as poorly paid as any persons in the state—and he was the last to stand up there for a reduction, with a view to a little popularity at home. He doubted whether many members of the legislature made both ends meet at the end of a session. He had himself paid in postage alone, his entire per diem, as a member. Besides the section did not meet its object—as had been already stated, after 90 days the legislature could increase their pay to any amount—or they could adjourn and go home, after 90 days, and return and get \$3 a day besides their mileage. He insisted that the pay of members was low enough.

Mr. TOWNSEND agreed with the gentleman that the pay of members was low enough, and for one he was disposed to be liberal. He would

give members an annual salary, and leave them to sit as long as they pleased. He found by the report of the Comptroller that the average pay and mileage of members had been for a series of years about \$450. He thought \$500 would cover all expenses, and be no more than a fair compensation.

Mr. NICHOLAS disliked the principle of undertaking to restrict the length of sessions by withholding compensation.

Mr. TAGGART insisted that under the section as it stood, members could increase their pay to any amount after 90 days.

Mr. SWACKHAMER proposed to say \$1,50 per day after 90 days.

Mr. NICHOLAS thought that would be a direct reflection on the legislature. He varied his motion so as to strike out merely, as proposed.

The committee rose and reported progress.

Before the question was taken, the Convention Adj. to 9 o'clock on Monday morning.

MONDAY JULY 27.

Prayer by the Rev. Mr. KIR.

THE PREVIOUS QUESTION.

Mr. WARD from the committee on rules submitted the following, which was adopted:—

Resolved, That the previous question may be applied to the particular section of an article or other question under consideration, without including the whole article or main question.

LEGISLATIVE DEPARTMENT.

The Convention then went into committee of the whole, Mr. PATTERSON in the chair, and resumed the consideration of the ninth section, of the article reported by committee number one.

The pending question was upon the amendment of Mr. NICHOLAS to strike out the words "and after the year 1847, shall not exceed the sum of \$3 a day for the period of 90 days from the commencement of the session."

Mr. JORDAN was in favor of the amendment, for it would leave the constitution as it is. He did not know what the latter part of these words meant, unless to convey the idea that the legislature, as long as they had \$3 a day, would corruptly or at least improperly prolong the session for the sake of the pay; and that if they were restricted by the constitution to 90 days—a period long enough to do the business—and only allowed half pay afterwards, that they would feel indisposed to remain here after there had been time enough to do all the business, because they could not receive full pay. Now he would not by any vote of his, cast such a reproach on the representatives of the people. He believed that the people were honest—that is the majority of them; and he believed the same thing of their representatives. He believed in the virtue of the majority. There had certainly been a great clamor at the length of sessions of the legislature, but if the people of this state had no greater cause of complaint of any thing done in the halls of legislation than the length of time spent there, very little cause of complaint would exist. There was a good deal of legislation and a good deal perhaps that was unnecessary, but at no one session had there been

so much as had been called for. There was much business actually called for that was not acted upon at the close of the session. That might be an evil, but it was an evil for which the people were answerable, for they were the authors of it. The numerous applications made to members seemed to make it incumbent on them to consider a great variety of subjects, or the people would go away dissatisfied. There had been too much legislation: too much in regard to municipal corporations and other things, which he hoped this Convention would prevent for the future, and thus shorten the session by abridging the duties. He was unwilling to put himself on record as so far distrusting his fellow citizens, as to say that he would not trust them with \$3 a day for more than 90 days' legislation. He thought it would not be doing them justice. He did not think the people would elect men who were not so far trustworthy. He was unwilling to send out to the world in the constitution that they were afraid to trust the freemen of the state who shall represent us in the legislature, and that it was necessary to restrict them to \$1,50 a day after 90 days had elapsed. He should vote for the amendment.

Mr. NICOLL concurred with the gentleman; but he thought there were considerations that were worthy of attention. It was evident they could not restrict the session to ninety days—for there might be circumstances which might make it necessary sometime to remain in session for six months. And he submitted that it was not to be conceived that the legislature would prolong its session for the paltry purpose of receiving \$3 a day. But if it were, then might they not conclude that the legislature would adjourn at the end of ninety days, simply because they did not get their pay, and thus the public interests might suffer. The average length of sessions for the last five years had not been 100 days, and it came then to a paltry sum of \$253 or \$300 for each member, from which deduct their board bills, and how small an amount would remain. Would they then, for such a paltry

consideration, restrict the representatives of the sovereign people, and thereby impute to them such meanness?

Mr. TOWNSEND moved to strike out the entire section and insert as follows:—

“The members of the legislature shall, after the year 1847, receive for their services an annual compensation of four hundred dollars. The speaker of the assembly shall, after the year 1847, receive for his services an annual compensation of five hundred dollars.”

Mr. SIMMONS moved to strike out from 1847 to the end of the sentence, and insert, “the annual sessions shall not exceed the period of 90 days each.”

Mr. JORDAN suggested that instead of restricting the legislature to a 90 days' session, to fix the 2d Monday in February as the day of meeting, and he would guarantee that at the end of 90 days the members would be off.

Mr. SIMMONS preferred biennial sessions; but if he could not get that, he would secure the substance of the reform by a limit of the annual sessions. In Congress there was one short session ending on the 4th of March, and the other extending through the summer. He believed that as much real business was done at the short as at the long session. He liked the principle of the report of the committee in this particular.

Mr. SWACKHAMER advocated the report of the committee and replied to Messrs. JORDAN and NICOLL. He had no more confidence in the legislature than in any other 128 men in the state. As it was, sessions were prolonged, and a great part of the work done consisted in Governor making one year and President making three years in advance. He would do anything to stop this corrupt legislation.

Mr. J. YOUNGS sent up an amendment providing that travel fees should be only ten cents a mile, and the legislative sessions be limited to ninety days, except in time of war, insurrection or invasion.

Mr. W. TAYLOR regretted the necessity for his absence during the discussion of this report for the past few days. He was gratified, however, to find that it received in its principal features, the assent of the Convention. This question now under consideration, was not one which he very greatly favored; but it was generally felt by the committee that there was a necessity for adopting some measure by which the annual sessions of the legislature shall be limited to a certain term, and the only measure which came within their duty, for effecting this, seemed to be the clause adopted in this section. He did not know but the amendment of the gentleman from Essex would be a better way of effecting the end proposed. He thought, however, that one hundred days might be a better term than ninety, and suggested that the amendment should be so changed.

Mr. SIMMONS altered his amendment, by putting at the end of it the words “from the commencement of the session”; and at the suggestion of Mr. TAYLOR, he made the term 100 days.

Mr. RUGGLES hoped he would retain the original term of 90 days. He should move to amend by fixing that term unless it was retained.

Mr. MARVIN was in favor of striking out all

these restrictions upon the legislature as to the time during which they should hold sessions. He should not intentionally give any vote that would belittle the state of New York. The only mode in which the people could speak, was through the legislature. That was the very corner stone of our liberties. Through it the people could alone speak their wishes, their wants and opinions. The idea that you would restrict the period in which the people might thus make their own laws, seemed to him to be anti-democratic.

Mr. LOOMIS said if they would remedy a disease, they should first look to the causes. It appeared to him the language of this section, as reported by the committee, imputed wrong causes for long sessions of the legislature. It conveyed the imputation that they remained here for the sake of their pay. Now he was unwilling to concede or to believe that any such motive had usually influenced the legislature. But it had been for the purpose of discharging certain duties called for by individuals and by local interests—to promote private advancement and gain, and the advantage of localities. It was proposed, however, to remove these temptations to protract sessions, and he had no doubt that it would be done to a great extent. He was unwilling to concede, by any vote of his, through a constitutional section, that members of the legislature were influenced to remain here for the pay they received; yet such was the imputation conveyed by this section. His own preference would be to strike it out entirely. He would even strike out the compensation to be paid, leaving it to the legislature to fix, but providing that no legislature shall fix its own compensation.

Mr. WORDEN said that however desirable it might be to limit the sessions of the legislature, this particular mode of effecting it was objectionable. Let those who will, after reflecting upon the business which has thus far been accomplished here, censure the legislature for delays. He believed that the legislature was generally an industrious body, and the only surprise that should be felt, after examining the labor they did perform, was that they were able to accomplish so much. The only practical way of limiting the term of the sessions, would be to prohibit any member from rising on this floor for the first ninety days, and moving to fix the time of adjournment, for the purpose of making speeches upon it, and effecting capital at home, which he had not capacity to acquire in the business of legislation. This provision would be giving into the hands of a minority the power to defeat the passage of good laws. And there might be contingencies arising within a few days before the day of adjournment, which would require that the legislature should remain in session. There was a great deal too much said about long sessions, corrupt and mal-legislation. There could be no instances shown of such kind of legislation. We ought to be grateful to those who had preceded us for the wise laws which they have passed; and more wise legislation was to be found in no other country. He hoped the amendment of his friend and colleague (Mr. NICHOLAS) would be adopted.

Mr. SIMMONS could not agree with the gentleman. He believed that it was a mere accident that such a provision had been omitted in

other State Constitutions. It was a general rule that we should "look to the end." The terms and times of courts were now limited by law. He had occupied a seat in the legislature for three sessions, and knew how the business was piled up and accumulated towards the end of the session and then pushed through. He was sorry to see the view taken of this subject by the gentleman from Herkimer (Mr. Loomis) knowing and feeling his influence here.

Mr. WATERBURY commented on the accumulation of laws until even the wisest lawyers knew not what the law was. There was more law than justice, and as a consequence the poor could not obtain justice nor a settlement of affairs which they were obliged to put in litigation. They had acts passed to amend acts, bills piled upon bills, until in seeking for the object and purpose they got lost in a deep swamp. He advocated short sessions and less legislation.

Mr. STETSON had, uninvented, stated to his constituents in a written form, that he was in favor of a limitation of sessions, and no position that he could have taken was more acceptable to them. The opinions he had heard expressed were entirely in its favor. Standing then in that position it would be scarcely proper that he should allow this subject to pass without saying a word in its favor. He certainly was in favor of giving the legislature time to do up its business; but while the gentleman from Orleans had referred to their experience in justification of the preceding legislatures, if he had read the history of the legislative body aright, the early days of each session were more devoted to political discussions than to the business of the people. He would extend this observation beyond New-York and apply it likewise to the legislation of the nation. He asked if it was not so in Congress? Much, he knew, must be left to the legislature, yet a limitation of some sort would, he apprehended, from the necessity of the case be required. It had been said that if they limited the compensation to three dollars a day for ninety days, and a smaller amount afterwards, it would be a reproach on the honesty of the body, and would belittle the great state of New-York. Now he should regret exceedingly to give his vote in any way that would produce such a result; but were they not too tender on this point? Was not all human legislation founded on the idea that mankind are prone to error. Why were legislative bodies assembled here at all? Was it not an imputation on the liberty of mankind? But the point had been mistaken. No one could suppose that the legislature would remain in session for the sake of three dollars a day. When heretofore they adopted a sliding scale from three dollars to twelve shillings, it was to point out to them the positive loss they would sustain by staying here beyond the period of ninety days. He was in favor of a limitation of some sort.

Mr. HARRIS agreed that the country generally was afflicted with excessive legislation; and that it would be for the interest of this and other states and of the United States, if we had less. We have in the United States more minds engaged in legislation, more time devoted to it, than in all the world besides. To some extent perhaps that was unavoidable. The people here

make their own laws, and it required more time to be devoted to legislation than any other country, where the will of an Emperor, a King, or a nobility constitutes law. He nevertheless thought we were carrying this to an extreme, and if they could fix some limit to it, they should be doing great good. But he did not like the shape of this amendment, for by it they should be incorporating something like a reproach on legislation in the constitution. It occurred to him they could accomplish the same end in a little different form. They might incorporate the proposition to pay a salary instead of a per diem; and as \$300 would be an equivalent to a session of 100 days, it would perhaps be enough, with an additional allowance for travelling fees. Some such provision might accomplish the object they all desired to attain.

Mr. STETSON remarked that if a salary were fixed without reference to the time of service, they might adjourn in twenty days without transacting the public business.

Mr. HARRIS did not suppose that any legislature would take the responsibility of doing so; or if they did, they would probably thereby terminate their participation in public business for life.

Mr. KENNEDY was satisfied, that if they should fix any restriction here, the legislature would consider the limitation as the time prescribed for the duration of the sessions, and they would sit it all out.

Mr. STRONG was in favor of the proposition of the gentleman from Albany, and he trusted that a direct vote would be taken upon it.

Mr. ANGEL was unwilling that this amendment should be adopted and form a part of the Constitution. It was a dangerous proposition. It might be necessary to protract the session over 100 days, and he thought it would be improper to fix such a limitation; for their own experience must have taught them that there was always an accumulation of important business at the close of the session, which might be defeated by a minority with such a limitation. He adverted to the lectures sometimes read on that floor to this Convention for procrastinating its business, and said to them while legislating for the Senate and Assembly might properly be applied the reproof, "Physician heal thyself." He was in favor of a reasonable salary, such as had been proposed by the gentleman from New-York, (Mr. TOWNSEND.)

Mr. SIMMONS continued the argument in favor of his proposition, on which the question was taken, and it was negatived.

The amendment of Mr. NICHOLAS was also negatived, the vote being 33 in the affirmative, and 45 in the negative.

Mr. TOWNSEND withdrew his amendment.

Mr. HARRIS moved to strike out the first ten lines, and insert—

"The members of the legislature, after the year 1847 shall receive for their services \$500 a year, together with \$1 for every 10 miles of travel in going to and returning from the place of meeting of the legislature, except in the case of extra sessions, when they shall receive \$3 a day, with an allowance for travel as afore-said."

Mr. RICHMOND opposed the amendment. It would be nothing but letting out all legislation

by the job. If he should go into this business of jobbing, he would let it out to some competent man, and he believed that it could thus be done for \$2,500 a year! Here would be a saving of money of course. Whether the work would be as well done was another question.—He protested against any such principle.

Mr. TALLMADGE said there was an error in speaking of past legislatures, as doing but little during the first month of a session. The members came together from different parts of the state—they had to enquire amongst themselves, by personal intercourse, what was public sentiment—and thus more business was done off the floor of the two houses than could be done by long sessions. They thus made themselves acquainted with the grievances and evils that afflict the public, with a view to prompt action when they come together. At the hotel where he resided, there were 35 members of this Convention, and it was their pleasure to speak of things passing in this body and thus the opinions of the non-speaking members were obtained, and their views were better known than if they sat here without an opportunity for such intercourse. With respect to the pending amendment, he was content with the existing constitution. He had no objection to a salary of \$300, but if they adopted such a provision they would not be able to keep a quorum in the legislative houses. A great many of them had not habits of industry. They would rather play at tennis, or sit at their hotels, or take rides. For himself, he should prefer to be at Saratoga; and his word for it, if they gave this salary, they would not find a quorum present. But suppose the legislature treated itself as it treated the boards of supervisors, by giving them \$2 a day and requiring them to make affidavit of personal attendance on the days for which charge was made. If the gentleman from Albany would modify his amendment in that manner, and to require reduction for days of absence, Mr. T. would be well satisfied. He was one of those who thought that we have a great deal too much legislation; and he prayed God to spare us from any revision of the laws, for what with contents, chapters, indexes, references, &c., no human being could find out what the laws are.

Mr. KIRKLAND intended to offer an amendment to the effect that every day's absence should be deducted, unless a sufficient excuse could be rendered. He was in favor of the proposition for a salary, and thought the sum named to be about right.

Mr. WORDEN said the great evil was in the absence of members from the House. Last winter the session was prolonged more than three weeks on account of the want of a sufficient number to constitute a two-thirds quorum. He would provide in the constitution that when there should be no work, there should be no pay. He offered the following amendment:—

“The members of the legislature shall receive for their services a sum not exceeding three dollars a day from the commencement of the session; but such pay shall not exceed in the aggregate three hundred dollars for per diem allowance; and no member shall receive any compensation for the time he may be absent from actual attendance upon the legislature, unless such absence is occasioned by sickness.”

Some conversation ensued thereon between

Messrs. TALLMADGE, WORDEN and HARRIS, after which Mr. HARRIS withdrew his amendment.

Mr. WORDEN said he had no objection to the suggestion of the gentleman from Dutchess, for he believed that every man who received the public money should give some public evidence of his conscientiousness that he had earned it. He would therefore amend his amendment agreeably to his suggestion.

Mr. DANFORTH thought public sentiment would be some restriction on the length of the legislative sessions, but he had never been disposed to cast any censure upon them, for they were guided by the precedent of previous legislatures. He then proceeded to notice some remarks made by preceding speakers and to deprecate the insertion of any provision in the constitution which would have the effect of casting censure on the representatives of the people.

Mr. WORDEN briefly explained.

Mr. BASCOM said if evil had grown out of high compensation paid to the legislature, there was an open, manly and direct way of reforming the evil. If they had been paid so much money as to induce them to set here longer than the public interests demanded, the mode to meet that was to reduce their per diem compensation; but he doubted the propriety of limiting the term to a certain number of days.

Mr. SIMMONS opposed the amendment.

Mr. SHEPARD said he should vote against the limitation of either time or salary, but he should hereafter move an amendment to guard against excessive legislation, by making the sessions biennial.

The amendment of Mr. WORDEN was then adopted by a majority of 48 to 31.

Mr. CHATFIELD moved that in case of extra sessions, the pay should be \$3 a day. Agreed to.

Mr. DANA moved to make the pay of members \$2½ instead of \$3 a day. Lost.

Mr. KIRKLAND moved to strike out the following words:

“The speaker of the assembly shall, in virtue of his office, receive an additional compensation equal to one third of his per diem as member.”

Mr. KIRKLAND never could discern why the pay of the speaker should be more than of a member. The distinction itself was sufficient compensation without double pay. Besides, the labors of a speaker were less than those of members, instead of being greater, as was supposed.

Mr. DANA hoped the provision would not be stricken out; the anxiety and long continuous attendance to which the speaker was subjected, fully entitled him to this additional compensation.

Mr. CHATFIELD was in favor of retaining the provision as reported by the committee. The speaker incurred great expense for postage, which members were not called upon to bear. He said while he was speaker, his postage amounted to \$75, towards which he received an allowance of \$30 in the supply bill.

Mr. CROOKER moved to insert in lieu of these words, that the official postage of members of the legislature should be paid out of the state treasury.

Mr. SIMMONS opposed the amendment. He said it would be saddling the state with the franking privilege, and besides it was work for the legislature and not fit to be the subject of a constitutional provision.

The amendment was lost.

The motion of Mr. KIRKLAND to strike out was also lost.

Mr. CHATFIELD moved to reduce the mileage from ten to five cents per mile.

Mr. NICHOLAS said the disproportion in the mileage of distant members of the legislature and those living in the vicinity of the capital was more than balanced by the advantage of going home occasionally, to have an eye to their own affairs, which privilege members a short distance from their residence avail themselves of; whereas the distant members, if they are called home once during the session, it must be at much greater expense, and they generally remain there only long enough to see that their affairs will need their attention before their return home at the end of the session. In a pecuniary point of view, therefore, the distant members are the greater losers. The amendment for this reason should not be adopted.

The amendment was rejected.

Mr. W. TAYLOR moved to amend so that the limitation prescribed by the proposition of Mr. WORDEN should not apply until the year 1843. Agreed to.

The 10th section was then agreed to, as follows:

§ 10. No member of the legislature shall receive any civil appointment within this state, or to the Senate of the United States from the Governor, the governor and Senate, or from the legislature, during the term for which he shall have been elected.

The 11th section was then read, as follows:—

§ 11. No person being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, after his election as a member of the legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Some conversation ensued on this section, between Messrs. CHATFIELD, W. W. TAYLOR and STOW.

Mr. SIMMONS moved to amend the tenth section by striking out the words "or to the Senate of the United States," and addressed the committee in favor of the amendment, contending that this restriction was in virtual violation of the constitution of the United States. Mr. S. urged that if a person was elected a U. S. senator without regard to this section, he would be a senator under the U. S. constitution—and that it was inexpedient and unwise to put into the constitution, an inhibition which could not be enforced. He conceded, however, that it would be good policy, if you could enforce it. As a guide to the consciences of members, who would swear to support the constitution, it might be acquiesced in; but if a question were raised about its constitutionality, and a division should arise in the legislature on the question, a senator might be elected in direct opposition to it; there would be no way of preventing it, and it would only throw another bone of contention before the legislature.

Mr. STETSON argued that this was not a question between the U. S. government and our

constitution; but between members of the legislature and our own state. In a word, was it competent for the sovereign power of the state to direct its own legislature as to the manner in which they should exercise their duty? Could the legislature under their oaths to support the constitution, in the face of this prohibition, elect one of their own number to the U. S. Senate?—No man could do this without making himself an outlaw in the opinion of his constituents.

Mr. WORDEN said it would be strange indeed if the people of this state were so bound up by the constitution of the U. S., that they could not provide against a dangerous evil.—Such a construction of the U. S. constitution would be at war with the ordinary rule of interpretation, that instruments were to be construed in view of the end designed. If the power of electing U. S. senators had been given to the judges of the supreme court, it would be a strange rule of construction which would permit the three to choose two of their own number—or to appoint themselves. It would be plainly any thing but the intent or spirit of the grant of power, that the appointing body should elect a portion of itself to the office. That would not be an appointment, but a self selection.

Mr. STOW said he should be very glad to vote for such an inhibition, if he could do so consistently with the U. S. constitution. But that instrument having prescribed the qualifications of a U. S. senator, we could not superadd to those qualifications any other that would be recognized by the U. S. Senate, which was alone the judge of the qualifications of its own members. He quoted from Judge Story in support of his position that if we had a right to require any new qualification, we had a right so to extend these qualifications as to make it impossible for the legislature to elect any body; and such a principle, if followed out in other states, might prevent the election of any U. S. senators, and dissolve that body.

Mr. TAGGART took similar ground. He stated the case of a member of the legislature duly elected to the U. S. Senate, and admitted to his seat there—and a subsequent legislature declaring that election void and electing another. He asked which of these would hold the seat? He had no hesitation in saying that it would be the first. The prohibition could not be enforced, if the legislature should be of opinion that it was inconsistent with the U. S. constitution. This was a matter with which we had nothing to do, any more than we had with the matter of delivering up fugitives to foreign governments. That provision had been struck out, and he trusted this would be. It purported to impose a duty on the legislature which we had no power to impose, and being entirely nugatory, should not be there.

Mr. LOOMIS took the ground that the legislature, being the creature of the constitution, with the power only to act in subservience to it—the moment they departed from it, their acts ceased to be acts of the legislature. If a senator were elected by the legislature, not under its constitutional functions, the Senate of the U. S., looking into the matter, would declare that the election was not the act of the legislature.

Mr. SIMMONS : Suppose we should insert a restriction that they should not elect any ?

Mr. LOOMIS replied that the case was not applicable. The prohibition would not prevent sending a senator to Congress. In the case before us, the object was to secure to this government the services of persons elected to office.—To secure this, we had a right to say that persons elected to office, and accepting them, should not resign. He could not see the difficulty of reconciling this to the constitution of the U. S.

Mr. MARVIN insisted, the constitution of the United States having provided how the Senate should be constituted,—having prescribed the qualifications of senators,—having conferred the power on the state legislatures to elect them—that no state government could enact other qualifications or impose restrictions on the power of the legislature or appointing power. If gentlemen were right, what was there to prevent the state authorities from providing other qualifications than those required by the United States constitution—such as that no man should be elected who was under forty. And yet who believed that such a provision would not be nugatory ; quite as much as if we should provide that the legislature should never choose United States senators? And this mode of bringing the United States government to an end, was no new idea. Run out the argument of gentlemen on the other side, and you would find it running into nullification, or what was the same thing. If the power of the legislature under the United States constitution could be qualified, as some contended, it might be destroyed. He agreed that there was an impropriety in the legislature electing one of its own members, and if we had the power he should like to prohibit it. But we could not do it. If you could prohibit members of the legislature from being eligible, you could say that the chief justice should not be, because the people had a right to his services.—And thus you might go on until you extended it to the whole community.

Mr. STETSON urged that this was a question not of qualification but of eligibility, where the constitution of the U. S. was utterly silent. But were it a question of qualification, statesmen were not agreed in opinion that you could not even require members of the H. of R. to be of a certain age. He conceded the weight of Judge Story's opinion a matter of law ; but on constitutional questions, he must be permitted to choose another leader. He must be permitted to place quite as much reliance on Jefferson, in his correspondence, and Tucker on Blackstone. He asserted that the states had the right to prescribe other qualifications. And if upon the matter of qualification these high authorities took that ground, how much higher the authority on a question of eligibility where the U. S. constitution had no limitation? If we gave them a senator within the prescribed qualifications, we complied faithfully with the enactments and limitations of the U. S. constitution. We added no qualifications. All we did was to prevent those having the appointing power from abusing it by appointing themselves.

Mr. MARVIN :—You say that a certain class of persons, not excluded by the constitution of

the U. S., shall be included. That is a qualification.

Mr. STETSON replied that the mistake was in supposing that the constitution of the U. S. spoke on this subject, which it did not. The doctrine of Judge Story, sustained by gentlemen here, called on every one who felt the first emotion of state rights, to oppose this new enlargement of the doctrine by implication on the part of the general government. It would obliterate the states. What was the meaning of this extraordinary opposition to a wise provision? Did you wish to invite the legislature to send one of its own members to the U. S. Senate? Was it probable that nullification would grow out of such a provision? Was not three millions of people enough, out of which to make a selection?

Mr. MARVIN enquired whence the states derived the power to choose senators? Had the states a right to qualify that power?

Mr. LOOMIS :—They can define the time and manner.

Mr. MARVIN :—Does the gentleman from Clinton deny that the power to elect senators is derived from the U. S. constitution?

Mr. WORDEN :—I deny it.

Mr. MARVIN thought that a conceded point—that the legislature in choosing senators, acted under the authority of the United States government, as much as any officer of that government ; and that you could no more restrict the free action of the one than the other, in executing their constitutional power.

Mr. LOOMIS insisted that if we should prescribe that the vote of every member elected should be necessary to a choice of senator, the U. S. Senate would not receive a man elected by a majority. We certainly had a right to say that a man should not elect himself.

Mr. MARVIN replied that the case was not analogous. The legislature derived their power to elect senators solely from the United States constitution—that constitution prescribed the qualifications of senators, and the only qualifications which the United States Senate could insist upon—and hence any superadded qualifications imposed by our constitution, would be nugatory.

The committee here rose, and the Convention took a recess.

AFTERNOON SESSION.

Mr. RUGGLES thought the question pending was one that deserved previous consideration. It should not be decided without that reflection which was necessary to decide it aright. The questions of power, as between the general and state governments should not be disposed of without a thorough understanding of the principles which controlled them. The argument that the power to elect senators was derived from the U. S. constitution, amounted to nothing unless it was also established that the legislature, in the choice of senators, acted as the agent of the U. S. government, and not as the agent of the state. If it acted as the agent of this state, the people of the state had a right to control that agency. This power to choose senators arose out of the compact between the two governments. It was by no means a grant of power

from the general government to this. It was a reserved power; properly speaking, secured to the state by the compact, but in no sense was the state government the agent of the U. S. government in choosing senators. The state legislature was the constituent of the U. S. Senate. In doing that, it executed no mandate of the U. S. government. The power of electing senators belonged, by the U. S. constitution, to the state sovereignties—not to the legislature in any other capacity than as representing the state sovereignty—the legislature was, therefore, the agent of the state sovereignty—the creature of the state sovereignty. Its existence as such was recognised in the U. S. constitution. The power being recognized as in the state legislatures, as the constituencies of the U. S. senate, it was to be exercised in conformity with the U. S. constitution, subject to the rules prescribed at the will of the state sovereignty. He dissented entirely, from the position, that the state government could not prescribe other qualifications than those prescribed in the U. S. constitution. The states were in no way restrained in the exercise of that power except by the section of the U. S. constitution referred to. And if the state chose to say that it would not elect a senator under 40, they might do so. Certainly, if the state elected a senator over 40, the U. S. senate would not reject him. The legislature being the creature of the state sovereignty, and acting as the agent of that sovereignty in the choice of senator, the latter had the right to control its action, provided it did not contravene the constitution of the U. States. It might be true that we could not enforce the rules we might prescribe upon the legislature, so far as to control the action of the U. S. senate, in its power of judging of the qualifications of its members. But that was not the principle on which we proposed to act. We proposed to act upon our own agent—the legislature—not on the U. S. government. In many cases though the agent exceeded or abused his power, his act might be valid; and he would admit for the sake of argument, that though we might forbid it, and the legislature should choose one of its own members—yet that the U. S. senate might receive him. Still, we had the right to prescribe the rule and might enforce it against the legislature, by penalties upon any man voting for senator against our rule. We could make it a misdemeanor and punishable as such. We could not command them to choose a senator under 30 years of age. But any other rule not in conflict with the U. S. constitution, we could prescribe and make imperative on the legislature: we could enforce it on them by penalties. He would not go into an argument to show the propriety of such a rule as this, for that must be obvious to all.

Mr. MARVIN did not take the position that the legislature acted as the agent of the United States. True, the legislature acted on behalf of the state, and as its agent. But his argument was this—that the constitution of the United States had exhausted the power of prescribing qualifications—that no state could add to, or diminish those qualifications—and that if it could, all qualifications might be frittered away, and the United States government injured or impaired in its action. That was the whole extent of

his argument. He cited the case of a member of the house of representatives being elected, when residing in another district, against a prohibition of our state constitution—asking if the person thus elected, would not be a member? If gentlemen could satisfy him that we had the power to put this in the constitution and make it efficient, he should be glad to see it there.—But the difficulty was that we could not enforce it.

Mr. RUGGLES replied that we proposed to act here on our own agent—the constituency of the United States senator—not on the senator himself who might be elected.

Mr. ANGEL took the ground that those who went for striking out were bound to show when and where the states had granted away the power to prohibit the legislature from appointing one of their own number to the U. S. senate—inasmuch as all power not delegated by the states, nor prohibited to them, was reserved. It seemed to him that gentlemen on the other side were insisting on a latitude of construction which was opening the door wider to aggressions on state rights, by the general government, than any of the advocates of constructive power ever maintained. He insisted that the only qualifications on which the general government would insist were that a senator should be 30 years of age, a resident of the U. S. for 9 years, and an inhabitant of the state by which he should be elected—and that there was nothing in the U. S. constitution which prohibited us from preventing our legislature from selecting one of their number for the U. S. senate.

Mr. STOW did not doubt the policy or expediency of such an inhibition as this. His only difficulty was, that under the Constitution of the United States, we had no right to put such an inhibition into our Constitution. The question of state rights, so far as it could be said to be involved here, depended on the strict construction of the powers of the general government, for which he contended, and a conformity to them in their letter and spirit. And the question here was, what was the Constitution of the United States—and that having been ascertained, we, as citizens of this republic, were bound to conform to it. The government of the U. S. and of each state, were independent governments, each in its own proper sphere of action; and the U. S. Constitution, considering as it did qualifications for its senators, the fact itself was an inhibition, without any express prohibition, upon the action of the states in that particular. Mr. S. here read, in reply to Mr. ANGEL, from Judge Story, on this point. He differed also from Mr. RUGGLES, in the position that the state did not derive its power to elect senators from the U. S. Constitution, but under a reserved right. How came we to have a Senate at all but from the U. S. Constitution? If the legislature had had this power under a reserved right, it must have existed prior to the U. S. Constitution—which could not be pretended. That argument therefore destroyed itself. He differed also from that gentleman in the position that the legislature, in electing senators, did so in pursuance of no mandate of the U. S. Constitution. The language of that Constitution was mandatory; and members of the legislature, taking an

oath to support the Constitution, were bound to obey the mandate. If it was not mandatory, then one-third of the states, by refusing to elect senators, might overthrow the Senate, and with it the Congress. Mr. S. confessed to his utter inability to comprehend Mr. STETSON's distinction between qualifications and eligibility.

Mr. STETSON:—The United States constitution itself makes the distinction.

Mr. STOW continued:—Practically they were convertible terms. Whatever disqualified a citizen made him ineligible. Now if we could say that no member of the legislature should be eligible, we might extend the prohibition to all who had ever been members, and to all who ever held any office; and in this way, any election of senator might be defeated. Mr. S. continued further in reply to Mr. STETSON, contending that Mr. Jefferson, he was confident, had in effect retracted the opinion quoted from his letters, and that Mr. Tucker in fact supported his own view of the question.

Mr. WORDEN was not prepared to assent to the doctrine that this state could not provide in its fundamental law that no person elected to discharge a trust under the state government, should be eligible to any other office under the federal government. He regarded this however as essential to the preservation of state rights and authority in the state government. This prohibition was not at all in conflict with the qualifications prescribed for senators in the United States constitution. It did not vary or alter them in any respect.

Mr. RUGGLES did not mean to speak of this power as a reserved right, but as a power which stood on the same footing, in regard to its strength and stability. It was a right secured by compact between the two governments. He differed with Mr. Stow in his position that this power was exercised under a mandate of the United States constitution. He did not mean to say that it was not the duty of the legislature to exercise it. But it was a right to be represented, and it was not necessary to enforce the execution of the power, any more than it was to compel a voter to vote. As to the position that the States could prescribe no other qualifications for senators than those prescribed by the constitution of the United States, it amounted to this when followed out—that the legislatures of the several States could not exercise their own free privilege of choice. The legislature certainly could establish a general rule for its own action. They might agree that they would not elect a man under 40, or that they would not elect a member of their own body. If that were so the people of this state, through the constitution, could control their discretion by a general rule, provided that rule was not calculated to embarrass a choice, or to embarrass the general government. That certainly was not the effect or intent of the clause proposed to be struck out.

Mr. WHITE:—I rise very reluctantly, Mr. Chairman, to express my sentiments upon the important subject now under consideration: and the magnitude of the consequences which it involves, must plead my apology for trespassing upon the attention of the committee at this time. I may premise that I have uniformly maintain-

ed the principles of state rights, and I would be the last person in this assembly to surrender them. But I hold that this opinion, is perfectly consistent with another doctrine which I entertain, that the government of the United States possesses certain enumerated and limited powers, and that so far as those powers are delegated in the constitution of the United States; that the authority specifically granted by the states and people is *sovereign*, and carries with it all the means necessary and proper to execute its purpose. I think it will be conceded as a general principle that every government must have the means of providing for its existence and preservation, and the carrying into effect its own powers. It cannot be that matters involving that existence should be confided to any other authority or government. This is a principle that is well exemplified in the constitution of the United States, as a reference to its provisions will clearly establish and determine. The power regulating the election of senators is not exercised, as some gentlemen who have preceded me allege, by a mandate from the government of the United States, to the states in their sovereign capacity; but under a solemn compact into which this state has entered with the other states of this Union. Let us examine what the nature of that compact is. The constitution declares that—"The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years," and again it still further declares, that "no person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen." These qualifications, thus solemnly prescribed, in my humble judgment, can neither be increased or diminished by the action of this honorable body, without a violation of the constitution of the United States, which we are all bound to support and defend. And what are the powers that by the same instrument are conditionally reserved to the states? That "the times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the *place* of choosing senators."—From this provision of the constitution it must be manifest in what case the states can exercise their limited authority in respect to the election of senators, and it will be remarked that two of the powers granted to them are conditional, and dependent upon the action and legislation of the Congress of the United States; and that as to the other, the determination of the *place* of choosing senators is the only power reserved by the constitution of the U. States to the legislature of this state. In order to elucidate and illustrate the position I take upon this question, allow me to state the construction which has been given to this provision of the constitution by the House of Representatives of the United States. Many years since when I was a resident of Maryland, the legislature of that state passed an act dividing the state into election districts. It provided amongst other things that the city and county of

Baltimore should form one district, and be entitled to two members of the Congress of the United States—one of whom should reside in the city and one in the county of Baltimore.—Some time after this act become a law, there was a contest for the election of representatives in that district. Of the candidates at that election, two of the gentlemen resided in the county, one was a resident of the city of Baltimore. The election was determined by the return of the two candidates who resided in the county.—The unsuccessful candidate petitioned Congress against the return of one of the candidates who resided in the county, on the ground that he was not duly qualified to serve under the law of the State of Maryland. The petition was referred to the committee of elections in the House of Representatives, who reported unanimously that the member was entitled to his seat upon the ground that it was unconstitutional to add to the qualifications prescribed by the constitution of the United States. In conclusion, I beg leave to say that with all the consideration that I have been able to give this subject in the brief time I have had to examine it, I am of opinion that the limitation proposed in the section under consideration, as reported by the committee, namely, "that no member of the legislature of this state shall receive an appointment to the Senate of the United States," is unconstitutional, and should be stricken out.

Mr. JONES disagreed with his colleague entirely, and concurred mainly in the views of the gentlemen from Dutchess and Ontario. He went at some length into the subject of the concurrent power of the national and state governments—adverting to the doctrine laid down by Kent in his commentaries, and by Judge Story in a case in the fifth Wheaton—arguing that there were but three well defined cases in which a state parted with its sovereignty—(within which the case in hand did not come)—and that in all other cases the states exercised a concurrent power—the paramount law being binding in cases of collision. If this body should undertake to give the legislature power to elect a man under thirty years of age, this would come within the prohibition laid down by Judge Story. So if the legislature should elect a man who had not been nine years a resident of the U. S., that would also be repugnant to the U. S. constitution. All that the U. S. constitution enjoined was, that we should not elect a man who had not at least the three requisites mentioned in the instrument. And yet it was perfectly competent for us to say that we would not elect a man who was not 40; or as a matter of state expediency or policy, that we would not elect a man who was a member of the appointing power. These would be repugnant to the U. S. constitution in such a provision.

Mr. O'CONOR conceded that it would be highly indiscreet in the legislature to elect one of their own body to the place of U. S. senator; and if the idea was to insert here good advice to the legislature, in the exercise of their discretion, he had no objection to it. But if this was intended to be a binding and obligatory law upon the legislature, he must vote against it.—He thought, however, that this advice should not be put into the constitution—nothing indeed

should be inserted that had not the binding force of law or which was incapable of being enforced. This clause, if inserted here, would be wholly without force. If the legislature saw fit to violate it, the question would only arise under the general or state government. If under the former, it would be determined by the U. S. Senate, under its power to judge of the election and qualifications of its own members. He asked those who sustained this clause whether they intended to assert that the U. S. Senate would preclude a person from a seat there who had been elected in due form by the legislature, and had all the qualifications prescribed in the constitution of the U. S.? He had not heard any gentleman suggest even a doubt but the U. S. Senate would admit the member so elected.

Mr. LOOMIS said he took that position.

Mr. O'CONOR asserted nevertheless that the position was unsound. But the gentleman from Herkimer was the only one who maintained the position. Certainly the gentleman from Dutchess (Mr. RUGGLES) had shown a disinclination to place himself upon it by assuming another. His colleague (Mr. JONES) had not presented a proper case in illustration. The case he should have presented was to suppose a person aged 35, elected when our constitution prescribed the age of 40. Would the U. S. Senate refuse a seat to the person thus elected?

Mr. JONES: That would depend on the fact whether our constitution was in conflict with that of the United States in that respect. My position was that this clause is not in conflict with the U. S. constitution.

Mr. O'CONOR continued. The case he supposed truly presented the question before us. For the supposition was that our superadded qualifications might stand together with those of the United States constitution, that therefore the United States Senate would not only execute the constitution of the United States, by exacting all the qualifications therein prescribed, but would require also the additional state qualifications. Mr. O'C. thought the senate would not do so. It had been well said by the highest authority, that when two legislatures, one of higher and the other of lower authority, assumed to legislate on the same subject, the legislation of the inferior authority must necessarily be void. We learn the will of the law-giver, as much by seeing what he has left unsaid, as by reading that which he has said. In this case the constitution of the United States has prescribed the full age of 30 years as necessary to secure that maturity which was deemed necessary in a senator. The same law which declared that, declared by clear implication that no greater age was necessary to that maturity—so as to the nine year's residence. Such and so many qualifications were deemed necessary and no others. If others were deemed necessary, the law-giving power when acting upon the subject would have prescribed them. That the entire subject was intended to be regulated by the constitution of the United States, is evident from the number of its detailed provisions. The power of judging of the election and qualifications of members of Congress is given to the houses respectively, and with it the power is reserved of controlling completely the time and

manner of choosing representatives—indeed every thing connected with those subjects except the *place* of choosing senators. Nothing could be plainer than that the U. S. government had taken to themselves this whole subject—and most wisely, and necessarily. As was well said by his colleague (Mr. WHITE), to every government must be accorded the power and the right of sustaining itself—to create its own departments and keep in life and vigor all its own functions; and that too independently of the action of any other government. Else it would not be an independent government or capable of self-preservation. This self-sustaining power had been wisely secured to the U. S. All that was left to the states in respect to the appointment of senators was the choice—if it may be called a choice—to have or not to have a legislature. If any state has a legislature, that legislature must have this power of electing senators, and can exercise it, without being subject to any other restraints than those prescribed in the constitution of the U. S. On this subject he had no doubt, and he believed that no one would have had a serious doubt, but for the well-known case occurring some few years ago, where the passions of honorable men were influenced by an occurrence of this kind—an act, he admitted, highly indiscreet and improper. He apprehended that the memory of that act continued to excite a feeling honorable to them. But he had read that “hard cases make bad precedents.” They influence the passions, and seduce the judgment. Strong cases of abuse lead men to act, not according to the dictates of law, but of an honorable indignation. Such influences, if yielded to, may induce us to adopt provisions which, when engrafted on a constitution, might remain there as a reproach on our wisdom and discretion. We ought not to enact a law which could not be enforced somewhere. Mr. O’C. went on to allude to the mode of enforcing these superadded qualifications suggested by the gentleman from Dutchess—that is, by making it penal—an offence against the state—for the members of Assembly and Senate to vote for one of themselves. Mr. O’C. supposed the case of a fine being imposed, or imprisonment, or sentence of death, or imprisonment in a state prison for life; and criminal process being issued for the arrest of a person for daring to vote for and elect himself a senator, while holding a seat in the legislature.

Mr. RUGGLES enquired if the gentleman attributed to him any such extravagance?

Mr. O’CONOR was only carrying out the gentleman’s position that we might make it penal for members of the legislature to vote for one of their own number. If we might make it penal, we might punish it as we saw fit. We could make it a felony, if we could make it a misdemeanor. But however slight the penalty might be made, was it wise to bring about this collision between the constitution of the state and of the U. S.? How strange it would be that a man should be eligible under the constitution of the U. S. to the senate, admissible to his seat by the judgment of the senate, and yet guilty of a misdemeanor under the constitution of his own state for being elected. Conceiving, therefore, that we should put nothing in the

constitution that had not the force of law—that nothing was law that could not be enforced either by penalties or by denouncing voidness upon the acts done; and conceiving that the whole power of enforcing the rules in relation to the election of U. S. senators, was in the U. S. senate—he hoped this matter would be left where it was now—under the sole and exclusive control of the U. S. government and constitution.

Mr. WATERBURY took the ground that if we covered the U. S. constitution, that was all the U. S. government could require of us, and that if we went further and made a minister of the gospel or a member of the legislature ineligible, and the people ratified it, who had a right to complain of it?

Mr. SIMMONS followed in support of his amendment, arguing that even on the principle of state rights, the people of this state ought not to deprive itself of the services of its best citizens, and had indeed a claim on other states that they should do the same. He cited several state constitutions in which there was no such inhibition, and from which men of the highest talent and value as legislators, had been taken right out of the legislature and sent to the Senate, where they had distinguished themselves as public benefactors. He doubted whether gentlemen could put their fingers on a single state constitution, which contained such a restriction as this.

Mr. VAN SCHOONHOVEN followed, in favor of retaining the clause.

Mr. TALLMADGE said the bold challenge of the gentleman from Essex, had induced him to look into the constitutions of some of the states, to see if this were really a novel inhibition—and in the little time afforded him, he had been able to find several instances. The constitution of Florida, for instance, contained a very stringent provision of this sort, excluding from an appointment not only members of the legislature, but other officers, the enumeration being quite extended. The constitutions of Texas and Mississippi also contained like restrictions. The new states were fast coming into it. The expediency of the provision, if constitutional, all seemed to concede; for no one doubted the propriety of declaring that those who had consented to serve as legislators, should be held to the discharge of their trusts, and should not be allowed to pass the time which belonged to the people in schemes to promote their own aggrandizement. The constitutional argument he regarded as clear and conclusive in support of the restriction. No one it would appear to him who would look into the constitution—examine the several provisions conferring the power of choosing senators upon the legislature, and prescribing certain qualifications to which they must adhere at all events—could doubt that in all these respects the legislature were free to impose other restrictions on themselves, not in conflict with these qualifications. And if they could do this, much more could the people through the constitution impose them. The constitution of the United States only required that we should send them a senator 30 years of age, 9 years a citizen of the United States, and an inhabitant of the state.—All the rest was left to our discretion—and we,

the people of New-York, had a right to enjoin on the legislature when they chose a senator, that they should regard such and such qualifications.

The question was here taken, and Mr. SIM-

MONS' motion to strike it out was negatived, by a strong vote.

The committee then rose, and the Convention adjourned to 9 o'clock to-morrow morning.

TUESDAY, JULY 28.

Prayer by the Rev. Mr. KIP.

Mr. SHAW presented a petition of Warren T. Worden, of Auburn, praying for the abolition of the courts of record of the state, and the erection of a new court to be composed of one set of judges of equal grade and authority, to be elected by the people. Referred to the judiciary.

MILITIA AND MILITARY AFFAIRS.

Mr. WARD from the committee on military affairs, made the following report, which was committed to the committee of the whole and ordered to be printed:—

ARTICLE —.

§ 1. Militia officers shall be chosen, or appointed, as follows: captains, subalterns, and non-commissioned officers shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions. Brigadier generals and brigade inspectors, by the field officers of their respective brigades. Major generals, brigadier generals and commanding officers of regiments or separate battalions, shall appoint the staff officers to their respective divisions, brigades, regiments or separate battalions.

§ 2. The Governor shall nominate, and with the consent of the Senate, appoint all major generals, and the commissary general. The adjutant general and other chiefs of staff departments, and the *ad-à-de camp* of the commander-in chief shall be appointed by the Governor, and their commissions shall expire with the time for which the Governor shall have been elected. The commissary general shall hold his office for two years.

§ 3. The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the Governor.

§ 4. The commissioned officers of the militia shall be commissioned by the Governor; and no commissioned officer shall be removed from office, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the decision of a court martial, pursuant to law. The present officers of the militia shall hold their commissions subject to removal, as before provided.

§ 5. In case the mode of election and appointment of militia officers hereby directed, shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment and removal, if two-thirds of the members present in each house shall concur therein.

A. WARD, Chairman.

MONEY DEPOSITED IN COURT.

Mr. WHITE offered the following resolution, which was adopted:—

Resolved, That the committee on the Judiciary be instructed to enquire into the expediency of providing in the Constitution, that all moneys which now are, or may hereafter be paid into the courts of law or equity during the pending of any existing legislation, shall be deposited in the treasury of the state, for safe keeping.

ESTATES IN CHANCERY.

Mr. MANN offered the following:—

Resolved; That the Chancellor of this state be requested to direct the register, assistant register, and clerks, to furnish to this Convention the separate and

distinct items, with the names of all the estates, heirs, owners, and parties claiming and interested, for whose benefit and for what purposes the funds are held, whether in trust or otherwise, with the dates of the receipt of all the funds, comprising and making the aggregate amount reported or furnished to this Convention by the Chancellor, as subject to the order and control of the Court of Chancery, up to January, 1846—which aggregate amounts were furnished by the Chancellor, in compliance with the resolution offered by Mr. Rhoades, and adopted by Convention, 26th of June last.

Mr. NICOLL opposed the resolution. It was inquisitorial, and if answered, would expose the estates, moneys and affairs of infants and others, which could produce no good, and was not required by the Convention in the discharge of its duty.

Mr. MANN urged that it was very necessary to know to whom the property held by the court of chancery belonged.

Mr. RUGGLES did not oppose the resolution because it was inquisitorial, (for the matters in chancery were things on record and could be examined,) but because it would give the officer a laborious duty without any purpose, for he was not aware of any use that could be made of such a report here. He moved to lay the resolution on the table till to-morrow.

Mr. MANN assented and it lies on the table.

LEGISLATIVE DEPARTMENT.

The Convention again went into committee of the whole, Mr. PATTERSON in the chair, on the article on the apportionment, &c., of the legislature.

Mr. J. J. TAYLOR moved to add at the end of the 10th section—to meet some objections raised yesterday—the words

“And all such appointments and all votes given for any such member for any such office or appointment shall be void.”

The amendment was agreed to.

The last section was then read, as follows:—

Substitute for sections 15 and 16, so far as relates to senators and members of Assembly, the following:—

§ 15. The first election of senators and members of Assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-seven, and all subsequent elections shall be held on the Tuesday succeeding the first Monday of November in each year, unless otherwise directed by the legislature. The senators and members of Assembly who may be in office on the first day of January one thousand eight hundred and forty-seven, shall hold their offices until the thirty first day of December following, and no longer.

The same was agreed to without amendment. Mr. HARRISON moved to substitute the word “following” for “succeeding,” in the 3d and 5th line of the 15th section. Lost.

Mr. HUNT moved to strike out “not taxed,” after the words “persons of color,” in the 8th line of the 6th section. Lost.

Mr. HUNT made a like motion to amend the seventh section. Lost.

Mr. HARRIS'S substitute for the 7th section was then taken up in lieu of the original, as follows:—

The members of Assembly shall be apportioned among the several counties of this state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of color not taxed, and shall be chosen by single districts. The several boards of supervisors in such counties of this state, as are now entitled to more than one member of Assembly, shall assemble on the first Tuesday of January next, and divide their respective counties into a number of Assembly districts equal to the number of members of Assembly to which such counties are now severally entitled, and shall cause to be filed in the offices of the Secretary of State and the clerk of their respective counties, a description of such Assembly districts, specifying the number of each district and the population thereof. Each Assembly district shall contain as nearly as may be, an equal number of inhabitants, and shall consist of contiguous territory, but no town shall be divided in the formation of Assembly districts. The legislature, at its first session after the return of every enumeration, shall re-apportion the members of Assembly among the several counties of this state, in manner aforesaid, and the board of supervisors in such counties as may be entitled, under such re-apportionment, to more than one member, shall assemble at such time, as the legislature making such re-apportionment shall prescribe, and divide such counties into Assembly districts in the manner herein directed, and the apportionment and districts so to be made, shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section. Every county heretofore represented in the Assembly by one or more members shall continue to be entitled to a member, but no county shall hereafter be created or entitled to a member unless its population shall be equal to the ratio of population requisite for a member.

Mr. LOOMIS moved to strike out the words "and the population thereof" from the 14th line.

Mr. RUGGLES moved instead to amend by adding the words "according to the last preceding state enumeration," which was agreed to.

Mr. STETSON moved to add to the 27th line, "but the legislature may at any time amend the division of a county made by the supervisors, if it shall be made to appear that the said county has been divided with any reference to political or partizan objects, and shall therefore redivide the same."

Mr. BASCOM moved to strike out the word legislature, and insert "Supreme Court."

Both the amendment and the amendment to the amendment were negatived.

Mr. RHOADES moved to amend section seven, in line 17, so as to provide that members of Assembly may be chosen from any part of a county in which the district represented is situated, but requiring the representative to be a resident of the county.

Mr. NICHOLAS said if the constitution sanctions the selection of candidates out of the districts where they are to be voted for, it must defeat the principle objects of the single district system, which are to prevent political combinations in large counties, and to bring the candidate and his constituents nearer together, so that candidates may be generally known within their district. The amendment was lost.

Mr. HUNT moved to amend so as to provide that the Convention now sitting in the city of New-York to revise and amend the charter in

that city, might divide it into Assembly districts on or before the 1st of January next, subject to the provisions of the new constitution.

Mr. SALISBURY said that looked too much like special legislation.

Mr. HUNT and JONES explained that the Convention now in session in New-York had power to fix and define the boundaries of the wards, and could therefore discharge this duty with great propriety. The representation in the Common Council was not so equitable as to claim preference for that body, for while one alderman represented a constituency of 6000, another represented 30,000. The board of supervisors too was very different in its construction from other boards of supervisors in the state.

After a few words from Messrs. MANN and KENNEDY, the amendment was negatived by a majority of one—34 to 35.

Mr. MURPHY then moved to strike out lines 6, 7, and part of 8 down to and including the word "January" and insert "There shall be elected in each election district at the next town meeting in towns, or charter elections in cities, of this state, one commissioner. The commissioners so elected in each county shall meet in county meeting on or before the 1st day of January next," &c.

Mr. MURPHY said there were, in his mind, innumerable objections to the sending this matter to the supervisors to make the division.—But supposing it to be the sense of the house that the decision should not be made here, or by the legislature, but by some local power, he had submitted this resolution to obviate existing objections while it carried out the views of the Convention. His objection to the board of supervisors was two fold. In the first place those boards had not been elected with reference to this subject. It was proposed to put upon them a duty for which they were not originally designed—in other words the people have had no opportunity of selecting their agents to carry out this object. But, in addition, in many counties of the state there are gross inequalities in the representation in the boards of supervisors. It was so where he lived, in the city of Brooklyn, which elected 6 supervisors, while the other 6 were elected by the other towns in the county, Brooklyn at the same time embracing nine-tenths of the population of the county. Now if they adopted his amendment they would give a fair representation to every portion of the county in the body to divide the county into election districts, and thus very serious evils will be avoided.

Mr. RICHMOND had two objections to this system of the gentleman from Kings.

Mr. WARD interposed and enquired if the gentleman was in order. This subject had been passed upon, and the Convention had referred it all to the board of supervisors.

The CHAIR supposed it to be in order.

Mr. RICHMOND continued:—I pointed out an objection to such a board.

Mr. MURPHY modified his amendment to meet it.

Mr. RICHMOND nevertheless contended that the plan proposed would be more unequal than that which exists in the constitution of the

boards of supervisors. He had no desire to have this made a political matter at all.

Mr. WATERBURY objected that this would be the means of creating greater inequalities in his own county.

Mr. W. TAYLOR thought the amendment had some merit over the plan adopted by the committee; but he nevertheless thought this districting should either be done by the Convention or by the legislature. This was a great state question and it required calm and deliberation in its settlement. The Convention had confided that matter to the boards of supervisors, and on arriving at that conclusion, much was said of the confidence reposed in the people. It was, however, now said that the people should not be entrusted with this matter, lest they should get up some political excitement. Mr. T. proceeded to show that the boards of supervisors had been elected in reference to local objects, and that if it could have been anticipated that they would be entrusted with this onerous business, other men might in some cases have been elected. He spoke of inequalities in the representation in the board of supervisors, as another reason why this matter should not be confided to them; and concluded by saying that he should vote for this amendment, but he still hoped that the Convention would itself undertake, or leave to the legislature, the apportionment of the state.

Mr. WORDEN said the proposition of the gentleman could not be carried out without the alteration of the law as it now stands. The resolution would be nugatory as he understood it.

Mr. MURPHY said there were a great many provisions in this constitution to carry out which, there was no law. If, however, they adopted it, it would devolve upon the legislature to make the necessary provision to carry it out.

Mr. W. TAYLOR suggested that it should be so modified as to have the election in each district just as inspectors of electors were chosen.

Mr. VAN SCHOONHOVEN hoped the extensive machinery which this resolution would require, would not be brought into service. It had been said that the county delegations could easily divide the county, and of that he had no doubt; but no board that could be appointed could do it satisfactorily. Whatever board they might confide this subject to would have a political character, and if they saw fit they could gerrymander the counties. He nevertheless deprecated the distrust of the people which was expressed here, but he objected to setting the whole state to work to do this business. He hoped the provision would stand as at present.

Mr. COOK called the attention of the Convention to the fact that the proposition of the gentleman from Kings would involve the election of 700 new officers.

The debate was continued by Messrs. PENNIMAN, MURPHY, CROOKER and BRUCE. The question was then taken, and the amendment of Mr. MURPHY was negatived.

Mr. SWACKHAMER offered an amendment to give the members of the board of supervisors a vote according to the population they represent. This he said was designed to obviate the objection raised on the ground of inequality in representation.

The amendment was negatived

Mr. BERGEN moved to strike out "the 1st Tuesday of January," and insert "the 1st Tuesday in August." Lost.

Mr. A. W. YOUNG moved to amend so as to give Wyoming two assembly districts, and Genesee one. He went into an explanation of the circumstances under which Wyoming, with a greater population than Genesee, had now but one member whilst Genesee had two.

Mr. CROOKER supported, and Mr. RICHMOND opposed the amendment.

Mr. CHAMBERLAIN stated briefly the circumstances under which this matter was left at the last session. It was understood then, in the Senate, that the apportionment was unequal, as it stood; but it was known that this body was soon to convene, and that it would correct the wrong. The apportionment bill therefore passed, before the bill setting off these towns to Wyoming from Allegany. He was not going to say on which side the right was. Wyoming had a greater population evidently than Genesee, or than it had before the apportionment was made. And whether it was right or wrong to take a member from Genesee and give it to Wyoming, the Convention must decide. The gentleman from Wyoming had stated the case correctly—that there was some 3000 difference in favor of Wyoming, in population. And if the Convention designed to arrange representation according to population, of course Wyoming would be entitled to the member.

Mr. SWACKHAMER moved to amend, so as to leave the matter to the boards of supervisors of the two counties interested. Lost.

Mr. WARD urged briefly, that if we had power to do justice between these two counties, every consideration that ought to govern seemed to require that Wyoming should have the member.

Mr. TAGGART conceded the inequalities of the present apportionment, not in regard to Genesee and Wyoming only, but in regard to other counties—and if the entire apportionment could be remodeled, he went for it. But he insisted that it would only be adding to its injustice and inequality to undertake to alter it in one instance, and leave other equally glaring inequalities to stand.

Mr. A. W. YOUNG differed in some respects with Mr. PERKINS in regard to the circumstances which threw the apportionment bill ahead of the Wyoming bill—and urged further his amendment.

The question was here taken, and there were 21 for and 24 against the amendment. No quorum.

Mr. STETSON proposed to amend so as to give Clinton two and Genesee one member.

Mr. PERKINS suggested that the two counties should alternate in choosing two, as they did in Indiana and Ohio—that is that there should be what is called a "float" between the two. He moved to amend in that way.

The amendment was ruled out of order—and Mr. STETSON withdrew his motion.

Mr. CAMBRELENG took the ground that the legislature had no right to depart from the census in making the apportionment. By that census, Genesee had a larger population than Wyoming, and even had the bill annexing cer-

tain towns in Allegany to Wyoming, passed before the apportionment bill. He contended that the legislature could not without a violation of the constitution, have departed from the census as the basis of apportionment.

Mr. A. W. YOUNG asked if half of Allegany had been annexed to Wyoming, whether this convention would leave Allegany with her two members and Wyoming with one? He insisted that it was not only in the power, but it was the duty of this body, to do justice in the case.

The question was again put on Mr. YOUNG's amendment, and it was lost, 34 to 36.

The committee then took up the 5th section, (that which apportions the senators.)

The question was upon adding the county of Richmond to Suffolk and Queens.

Mr. HARRISON opposed the proposition as doing great injustice to the county of Richmond. The principle of contiguity of territory was violated. Nor would the change effect the object sought. It would only transfer the deficit now existing in the two districts. Suffolk and Queens contained as much population as Rensselaer county, which it was proposed to make a district. If any change was made he preferred to annex Richmond to some of the wards of New-York.

Mr. KENNEDY, on behalf of New-York, declined the honor of an association with Richmond. If the principle of contiguity was to prevail, Kings and Richmond should go together.—Richmond and Queens were about as contiguous as Richmond and Bermuda.

Mr. SHEPARD suggested a connection with Westchester.

Mr. HARRISON perceived with some mortification and regret that Richmond was discarded on all sides; and he did not know but what Richmond might be driven to declare her independence. [Laughter.] Richmond might as well be connected with Albany as with Suffolk. He should prefer that, for the contiguity would be greater in point of fact. He hoped however the report of the committee would be allowed to stand, and that Richmond and Kings would remain associated, as heretofore.

Mr. CAMBRELING did not regard Richmond as in so very forlorn a condition. She had not been discarded by Suffolk and Queens certainly. But Mr. C. thought Richmond a natural dependency of New-York. But there was an objection to attaching Richmond to Long Island which he was surprised had not been thought of by the gentlemen from Richmond. Long Island previously contemplated declaring her independence of the rest of the state. Had this been done, where would Richmond be?

Mr. MURPHY supposed this question settled when the other day Richmond was put to Queens and Suffolk. This in fact was the arrangement of the committee—for the chairman (Mr. TAYLOR) had himself proposed that connection, and the appeal to let the report stand as the committee would have it, would leave Richmond with Queens and Suffolk. He repeated the remark he made the other day when this question was up, that Kings had increased 66 per cent. within the last five years. The same rate of increase would give her 128,000 five years hence, and 222,000 in ten years—and

yet all this time she was to be tied down to one senator. Yet the gentleman from Richmond insisted on being admitted into that family. Let him go where there was room—sit down to a table where there was a seat. As to the argument of contiguity, it applied no more to Kings than Queens. Kings did not touch Richmond any more than Queens. Both were bounded by the main channel on that side. And the only communication between Richmond and Kings or Queens was through the city of New-York.—He hoped justice would be done to the growing county of Kings, now and prospectively.

The committee rose and the Convention took a recess.

AFTERNOON SESSION.

The committee of the whole again took up the report of committee number one.

The amendment heretofore proposed, adding the county of Richmond to the first district, was lost.

Mr. SHEPARD moved to take Richmond from the second district, and add it to the seventh (composed of Westchester, Putnam and Rockland.)

This was lost, but reconsidered by consent, to allow Mr. RUGGLES to present a calculation which he had made, by which the apportionment would be made more equal. He would put Richmond with Westchester and Rockland; Putnam with Dutchess; Ulster with Delaware; Columbia with Greene; Delaware with Chenango and Broome; Cortland, Tioga and Chemung together; Tompkins with Seneca.

Mr. CHATFIELD said by this arrangement, the deficiency seemed to fall upon the southern counties, while the excess was with the west which was constantly increasing in population.

Mr. MURPHY moved to amend by striking out Richmond as a part of the second district.

Mr. HARRISON opposed this motion, and Mr. BERGEN advocated it.

Mr. RUGGLES supposed that this question required such an examination as could not be given it here in committee of the whole. He therefore moved to rise and report, for the purpose of offering subsequently a motion to send this matter to a select committee of three, to determine by an examination of the whole subject in connection, whether a better or more equal division could be made.

The committee rose.

On the question of granting leave to sit again, Mr. HARRIS addressed the Convention in opposition. He had examined the apportionment made by the committee, and with a sincere desire to come to a fair opinion in regard to it, and was obliged to think that it was as equitable and equal a division as could be made.—He hoped, therefore, that the report would be received as it stood. He moved that the committee of the whole be discharged from the further consideration of the report of committee number One.

Mr. R. CAMPBELL was opposed to this.—As a member of that committee, he hoped the report would not be adopted until all attempts to make it better had failed.

Mr. CROOKER said the report might be discussed in the Convention as well as in committee, and here we had the power to apply the previous question when a proposition had been talked about long enough.

Mr. WARD should vote for the motion. The subject had been sufficiently discussed.

Mr. SHEPARD believed that if the report, as it stood, should be adopted, it would not give satisfaction to the people of the state. Especially would it not give satisfaction in the city of New York. And dissatisfaction on this point might lead to the defeat of the constitution. He hoped that it would not be put through the house by the spur of the previous question, but that it might be fully discussed in committee.

Mr. RUGGLES thought he had been more fortunate with regard to his own constituents than the gentleman from Albany with relation to his. He believed that changes in the report might be made which would render greater justice to many portions of the state. He, therefore, moved again to give this to a select committee, who might settle this question in an hour.

Mr. WARD said the gentleman from Dutchess might still make his motion in the Convention should the motion to discharge the committee prevail. For one, he should vote for that motion. If the report should again get into committee of the whole, he feared that days would be consumed to no purpose in the discussion of this apportionment. He believed that there was to be no change in the number of senators already decided upon—for one, he should not change his vote. He hoped the committee would be discharged.

Mr. CHATFIELD denied that this apportionment had been discussed. Except upon the question of taking Richmond out of its position, there had been no discussion at all; nor did he regard the matter of 32 senators as settled. He believed the vote on that question would be reconsidered. Nor did he believe that there would be entire satisfaction felt by the people unless this question should receive full consideration, with a view to do ample justice to all.—He did not wish to leave in the constitution any latent causes which should induce the people to reject it when submitted to them. And they certainly would do so if it did injustice to any part of the state. Otsego county, he knew, would not endorse an injustice. If might was to prevail over right, and this was put through, against the will and against the stomach of this House, he feared that dissatisfaction would defeat the adoption of the instrument which we should submit to the people. He would give the subject a full and deliberate discussion, and then allow it to lie upon the table for a while, as was done in the Convention of 1821, that, after deliberation, it might be recurred to again, and disposed of under the cool consideration of this body.

Mr. W. TAYLOR thought it not best to discharge the committee of the whole. He would grant leave to sit again. Then if it was thought best to send this section to a committee, the matter could be taken up again in committee of the whole. He only desired to say that he pre-

ferred not to serve again upon such a committee.

Mr. RHOADES combatted an assertion of Mr. CHATFIELD that this subject of the apportionment of senators had not been discussed. Mr. R. had heard motions to increase the number of senators to 36, 39, 40, 42, 46 and 48, and the mover of each had presented his schedule and debated it. And all of these schemes the chairman of the committee (Mr. TAYLOR) had declared more unequal than the apportionment of the committee.

Mr. CHATFIELD said his remark applied to debate in committee on the details.

Mr. RHOADES insisted that the whole merits of the section had been fully canvassed—the number of senators and the apportionment in the main had been settled as he supposed. As to the prediction that the people would not sanction this apportionment, Mr. R. said whatever might be the sentiment in New York, in the country the people were almost unanimous in the support of single senate and assembly districts, and they would be satisfied with this apportionment. He had no doubt but what the vote in his region of the state would be nearly unanimous. As to the appeals to party which had been made, Mr. R. thought they would be like the seed sown by the way side. The fowls of the air might pick them up, but our constituents would pay no sort of attention to them.

Mr. STETSON denied that this plan could not be improved—that is if single districts were abandoned—and even as it was there were gross inequalities that might be corrected. He had seen a plan for 43 senators and double districts that was much more equal—compared with which the apportionment of the committee presented deficiencies and excesses three times greater.

Mr. HARRIS said it was obvious that if any vote fixing the number of senators was to be reconsidered, it would be labor lost to go on farther with this report until that question was disposed of. To allow these motions to be made, he would withdraw his motion and move to lay the report on the table. Agreed to.

Mr. CHATFIELD moved to go into committee of the whole on the report of committee No. Eleven. Agreed to.

RIGHTS AND PRIVILEGES OF CITIZENS.

The committee of the whole, Mr. MARVIN in the chair, then took up the report in relation to the rights and privileges of citizens of the state.

The 1st section was read as follows:—

§ 1. Men are by nature free and independent, and in their social relations entitled to equal rights.

Mr. BASCOM moved to insert the words "and political," after the word "social."

Mr. KENNEDY hoped this would not be adopted. He understood it as opening the question of color.

Mr. BASCOM did not wish to pass upon a section that meant nothing. In a constitution he was not willing to say merely that man was entitled to social rights. Here was the place for us to say whether man was entitled to his political rights. If gentlemen were prepared to say this was not so, here was the proper time to say so. As to color, it was not in his mind.

He had no intention to disturb the sensibilities of the gentleman from New-York. Mr. B. considered that his own rights were equal with those of the gentleman, and he wanted them secured in this constitution.

Mr. KENNEDY considered that the Convention, by its vote excluding aliens from the basis of representation, had decided that all men were not entitled to equal political rights.

Mr. FORSYTH moved to amend the amendment by striking out the word "social," and insert "political." It was not true that every man was entitled to equal social rights.

The CHAIR ruled this motion not now in order.

Mr. NICOLL was opposed to the insertion of either of these first two sections in the Constitution. They were mere abstractions, and we

had enough business to transact, without discussing abstractions.

Mr. W. TAYLOR believed a majority of the Convention would agree with the gentleman last up, that we had too much important business on hand to waste time in the discussion of mere abstractions. This mode of ploughing one hour, hoeing another hour, then building a piece of fence, and then diving into the meadow, as he had seen some farmers do, would never accomplish any thing. He wanted to dispose of the question of the apportionment first, before taking up an entirely new subject. To test the sense of the House, he would move to rise and report progress.

Agreed to, 55 to 34.

The Convention then adjourned to nine o'clock to-morrow morning.

WEDNESDAY, JULY 29.

Prayer by the Rev. Mr. KIP.

EXPLANATION.

Mr. KENNEDY rose and said he did not know that it would be entirely in order at this time, but he did not know at what time it would be more in order, to correct a single line which had appeared in one of the newspapers of this city relative to himself. He had intended to pass it by without any observation, but he had been advised by friends that he ought to notice it, and to correct the error here. The line to which he alluded appeared in the Albany Atlas of Monday afternoon. It would be remembered that during the debate on the single district question, one of his colleagues made some remarks in reference to instructions, which he said the New York delegation had received at the time they were nominated for election. It would also be remembered that several delegates from New York dissented from the remarks there made—himself among the number. The Atlas reported a portion of that debate in the following terms:—

After Mr. MORRIS had stated that he had received instructions, and that had been objected to, Mr. MORRIS said he had received instructions, first in the 15th ward, and next from Tammany Hall. Mr. K. dissented, and said as reported—"that is not so. The gentleman is all wrong." Then Mr. MORRIS proceeded to say—"a printed circular was sent to us. I received one." The Atlas report then says:—

"Mr. KENNEDY:—There was no answer asked to it."

This was the error to which he wished to call the attention of the Convention, for the purpose of setting himself aright. What he said was, that it was not necessary that the answer should be in the affirmative. So far from there being no answer asked to it, he would read an extract from the introduction to those queries which were put, to show that there was an answer asked.

Mr. SWACKHAMER enquired what question was before the Convention. He thought

this was not in order. [Cries of "oh, certainly," "go on," "go on."]

Mr. KENNEDY said he would not detain the Convention longer than to read the extract alluded to.

"Sir—Your name having been presented for nomination as a delegate to the State Convention, we are directed by the Democratic Republican County Convention, to propound to you the following questions; and we request that your answer may be sent to Fernando Wood, or other member of the Committee, on or before Tuesday next, at 12 o'clock."

With these remarks, he was done. He had merely wished to show that he had not asserted that no answers were requested. He regretted that the gentleman, whose remarks had called for these explanations, was not in his seat. In the absence of that gentleman, it might be indecorous to pursue the topic.

Mr. TILDEN presented a communication, consisting of a preamble and resolutions from the Convention now sitting in the city of New-York, respecting the chartered rights of that city. Referred to the committee on municipal corporations.

Mr. MARVIN presented a memorial from a council of the Seneca tribe of Indians. Referred to the committee of the whole, having in charge the report from the committee on the rights and privileges of citizens, and ordered to be printed.

LEGISLATIVE DEPARTMENT.

Mr. W. TAYLOR intimated his wish that the Convention should proceed to take the vote on the pending motions which have been laid on the table, for the reconsideration of questions relative to the number of senators, &c., as reported by committee number one. He should make no motion himself. He merely rose to indicate his wish that the report should be disposed of.

Mr. RUGGLES had supposed yesterday, from a calculation which was made in haste, between the morning and evening sessions, that some improvement could be made on the report of the standing committee. He was however satisfied, on a re-examination of the report, and or

consultation with others, that the report could not be altered, as he supposed; or that if altered, it would produce consequences which he had not foreseen. He should therefore abandon the attempt to change the eight districts, as he had designed.

Mr. TOWNSEND suggested that it might be necessary to reprint this report as amended in committee of the whole, and hence it was important that it should be perfected. He moved that it be taken up and the motions to reconsider disposed of *seriatim*.

Mr. SHEPARD hoped his colleague would withdraw his motion. He thought it would be precipitate to dispose of those motions now.

Mr. TOWNSEND withdrew his motion, but moved that the report as amended be printed.

Mr. CAMBRELENG must disagree with the gentleman from New-York (Mr. SHEPARD).—He did not think this Convention had or was likely to "precipitate" any thing this session. [Laughter.]

After an ineffectual effort by Mr. SHEPARD, to induce the Convention to lay the report on the table for one week, only 23 voting in favor of that motion,

A motion by Mr. W. TAYLOR to postpone to Tuesday was then negative, 54 to 40.

A motion was then made to reconsider the vote by which 43 was rejected as the number of senators.

Mr. WARD called for the yeas and nays.

Mr. LOOMIS desired the vote to be taken first on reconsidering the vote adopting 32.

Mr. O'CONOR spoke at much length in favor of double districts and an increase of senators. His remarks will be given hereafter.

Mr. CHATFIELD and Mr. RHOADES also continued the debate.

Mr. SIMMONS said he had frequently expressed a desire that the term of the Senate and the Assembly should be long enough to secure an efficient check on legislation till the general, matured, permanent public sentiment could express itself. For that purpose, he desired the Convention to adopt four years as the senatorial term and two years for the Assembly.—That, however, was contrary to the sentiment of the Convention, and he submitted. Indeed he had before intimated his opinion that two years now were equivalent to four years forty years ago, for all the purposes for which time was a requisite—that is, for the purpose of generalizing and maturing public sentiment.—When the vote was taken the other day, for single districts, he gave his vote with the view to do the best he could. His county, so far as it was entitled to be heard here, was unquestionably in favor of single districts, for the election of senators, so that they might have an opportunity to know for whom they voted, and that their representative might know them.—Suppose they had 43 senators and 24 districts, then they would have single districts. There would be but one man elected at a time. He spoke of the argument in favor of making New York city four districts, to which he expressed his repugnance. He thought there would be no difficulty in the districting that the board of supervisors would not be able to surmount; or the legislature could do it; but by whomsoever

to be done, it was desirable that the Assembly districts should be single throughout the state, for plain and obvious reasons. Without such a division, one part might elect by general ticket, and another part by single districts, and, as Mr. Jefferson said in his letter to Mr. Madison, there can be no democracy where that exists. He was for single Assembly districts and for 43 senators to be elected in 24 senatorial districts, one each year, which was single enough, and would be satisfactory to the people.

Mr. W. TAYLOR defended the report of the committee, especially against the arguments which had been adduced to prove that the elections in alternate senate districts would lead to the "ride and tie" system. He said this might be the case if there were no other than senatorial elections, but there would at the same time be elections in every county throughout the state, to engage the attention of the people. Besides colonization and other election frauds could be guarded against by a 60 days' residence and other provisions; and thus while these evils were avoided, the fundamental principles for which gentlemen had contended would be preserved.

Mr. STRONG pointed to the past to show gentlemen the necessity of being expeditious in the transaction of their business, and concluded by moving the previous question.

The previous question was not seconded, but 27 voting for the motion.

Mr. WORDEN denied that he had changed his ground on the question, as had been intimated; but when he was called upon to give his vote on such a question, he should look to what had been done and settled, and get the result of a disturbance of a proposition that this Convention had agreed to. He was in favor of a larger number than 32 senators, but he was equally in favor of single senate districts, and on no consideration would he hazard and jeopard the principle on which they had settled the single senate districts. His friend from New York, had given them a glowing statement of the past, and said they must have double senate districts to control the popular will; but if he had time he could shew that double senate districts would be more likely to yield to popular impulses than single districts.

Mr. MARVIN next spoke at length in favor of the increase of senators. His remarks will be given hereafter.

Mr. TILDEN continued the debate.

Mr. STEPHENS remarked, that the powerful argument of his colleague (Mr. O'CONOR) had not been met on its main point—which he understood to be the importance of the double district system, with a view to secure stability in the senate. The argument had rather been confined to the comparative excellencies of the double and single district system in other respects. We had agreed that senators should be elected for two years, and at the same time with the assembly—that is, both houses were to come in on the same impulse, whatever the excitement prevalent at the time. This would of course bring here two houses elected under the same influences and who would necessarily act out the one will that sent them here. But he would not re-argue the question. He rose ra-

ther to present a fact which he had been surprised to see had not been alluded to in the course of this debate, illustrative of the check upon hasty legislation, which was the result of our system as now organized. He alluded to the fact that in the year 1839, bills passed the assembly loaning the credit of the state to the amount of \$5,000,000, on account of works that would have cost \$50,000,000. The senate rejected every one of those bills, except a single one appropriating \$400,000. If the two houses had come in under the same impulse that year, probably all these bills would have passed, and this state would have been brought into the ruinous condition of some of the sister states.—He desired a reconsideration in the hope of getting double districts. He would even take the ride-and-tie system in preference to this. He thought the state had been saved by the senate and might be again.

Mr. NICHOLAS said he had determined to vote for a reconsideration. He had before avowed his intention to adhere to the present number of senators, but that there were objects to be attained by an increase that he deemed of such importance, that he might be induced to vote for such increase. And the leading motive with him in voting for such increase would be to restore the principle of permanency in the senate as it now existed. He should have been pleased with a three years' term—as not too long to secure experience in the Senate, which would be more and more necessary as our state went forward in population—and at the same time he would adhere to the single district system, not only from its great advantages but from a belief that it was desired by the people. But he could not see the necessity of sacrificing the principle of permanency in the Senate. There was no substantial objection to the "ride and tie" system that had been adopted and thoroughly tested in other states—especially if we should adopt one of the provisions of the report of the committee on the elective franchise, requiring sixty days' residence prior to an election in the town or ward. Nor could he imagine how the interests of a district could be injuriously affected, by electing a senator every alternate year. He was satisfied that nothing but an increase of senators would secure to the rural districts of the state their due representation as compared with the cities. He said this from no feeling of jealousy towards the cities—for he appreciated their importance to the country. But the country owed it to itself to look well to this question. He repeated, this important subject was worthy of a reconsideration, with a view to an effort to restore this principle of the permanency and character of the Senate, and to secure to the rural districts their due influence in the councils of the state—under the great disproportion in the growth of the cities. Circumstances, which hereafter probably would not exist, had depreciated the Senate in the public estimation. Its participation in the appointing power has given to it too much of a political character. We should probably strip it of that attribute—and if we could give it permanency, he should always look on it as on all Senates, as the sheet anchor of the government.

Mr. FORSYTH should vote against a reconsideration—not because his opinions on the subject of an increase of senators had been changed, but because he believed the single district system might be put at hazard by it. He came here with instructions on this subject which he did not feel at liberty to disregard—not instructions from a political meeting or caucus, but from the great mass of his constituents of all parties—who, without exception, so far as he knew, were for the single district system. He should be glad to see the number in both houses increased—for he believed that numbers there was safety—but even that would be of little importance, and would add little to the security of the people, unless members of both houses were elected by a single undivided constituency. The latter he considered as of higher importance, and therefore he should vote against reconsidering. True, the question of single districts was not directly involved here. But when he heard gentlemen who urged a reconsideration, avowing as part of their plan, forty-eight senators and double districts, he confessed that it alarmed him to such a degree as to induce him to stand by the number thirty-two. Again he believed that our senators and representatives should be elected every year, and this doctrine of the stability of the Senate was false. He denied that the Senate had been the conservator of the public interests or welfare, or ad stood up against public impulses more steadily than the Assembly. As a set-off to the case alluded to by Mr. STEPHENS, Mr. F. pointed to a case where the Senate passed a bill appropriating seven and a half millions to certain banks, and which the house killed. The truth was that each house, from a variety of circumstances, often political, acted as a check on each other. Nor did he believe in this doctrine of popular impulses. He had no fears in leaving this whole matter in the hands of the people, believing that if the popular impulse should lead the legislature off the track, the sober second thought would bring them back again. He should be happy to unite with the friends of an increase of senators, but not to the hazard of the paramount principle of single districts.

Mr. CHAMBERLAIN said he had supposed that if any one question was better settled than another in the Convention—unless it was the matter of striking out "native" from among qualifications for Governor—it was that the senate should consist of 32 senators, and that those senators should be elected in single districts. This plan had his approbation. He believed it to be in accordance with the feeling and wish of his constituents. He had supposed also that the people had a right to expect at the hands of this Convention, above all things, retrenchment and reform in the expenses of the government. The proposition here virtually was to increase the senate from eight to sixteen members; and at the same time the probability was that the senate was to be stripped of its judicial power, and some other tribunal substituted as a court of last resort. This gentlemen supposed, was to curtail the expenses of the government. The expense to the people of the present Court of Errors was about \$25,000 per annum. As far as that went, there would be a

reduction of expenses. But would not the new court, as contemplated, increase the expense still more? It had been suggested that eight or twelve judges were to constitute this court. They must have a salary of from \$2,500 to \$3000. If the expense of the new court was to be any thing like this, it was evident we should save nothing in point of expense by the change.—Hence, he would vote against a reconsideration, believing it to be the wish not only of his constituents but of the whole people to lessen the expenses of government, and that they did not expect or desire to see the Senate increased.

Mr. HAWLEY though in favor of an increase of the number of senators, nevertheless was disposed to acquiesce in the decision of the Convention. And especially was he opposed to opening this question to aid gentleman in establishing double districts. To that he was utterly opposed. Mr. H. in further allusion to the course of the Senate as contrasted with the Assembly, called attention to the fact that in 1833, the Assembly passed a bill appropriating one million for canal purposes—which the Senate increased to four millions, and that at the same session a bill passed the Senate authorizing an issue of seven and a half millions of stock, ostensibly to aid the banks to resume.—Both these bills, appropriating in all eleven millions and a half, received the sanction of the Senate and not of the Assembly.

Mr. TAGGART thought the question of single districts was a separate and abstract question from this; and he hoped it would not be mingled up with it. He came here in favor of single districts. He was still in favor of them; but he should be willing to compromise that question, if thereby we could increase the representation and equalize it. But on no other principle would he consent to vote for double districts. He regarded an increase of representation as the only mode of saving the rural districts, and he desired the country to regard the proposition from the city and growing districts, as an act of magnanimity on their part.

Mr. HUNT could not see how it was, if the city of New-York elected one-eighth of the Senate, how the country was to gain by an increase of the Senate.

Mr. TAGGART was understood to reply that the city, in apportioning the Assembly, had the advantage of one member, by an aggregation of fractions, of which it had the benefit.

Mr. BASCOM, though originally in favor of an increase of senators, was disposed to acquiesce in the decision of the body—especially as it had decided also in favor of single districts. With both these together, he was content.

Mr. O'CONOR said, that in conceding great force to the objections to the ride-and-tie system, he was rather conceding to the opinions of others, than distinctly expressing his own.—What he deemed as a primary object, was some degree of continuity in the Senate; and if he could secure that, he was prepared to go for single districts, with the ride-and-tie system, and all its supposed evils. For, by introducing stringent provisions against fraud, in the article on the elective franchise, we could in a great measure prevent the evils apprehended from the ride-and-tie system. Let us have that system,

with these guards, rather than give up the all important result—that of securing some continuity in the Senate.

Mr. VAN SCHOONHOVEN insisted that there was no force in the argument that the cities were to have a preponderance over the country under this system—and that it was founded on a mistaken idea that there was a natural collision of interests between city and country. He would not object to increasing the Senate; still he believed there was no call for it from the people. The complaints were against the judicial power of the Senate, and that the districts were too large. If we went beyond that, we went farther than the people asked us to go, and we enhanced materially the expenses of government. He should vote against reconsidering.

Mr. BRUCE regarded the question as settled that we were to have single Senate and Assembly districts; and whatever might have been his views of an increase of senators, he regarded that question as settled also. And he feared that if this vote was reconsidered, we jeopardized the question of single districts, which he believed to be a darling principle with the people. Besides, he was disposed to let this matter stand where a large majority had placed it, and if possible, to dispose of this article, which had already occupied too much time.

Mr. ST. JOHN here moved the previous question, and there was a second, and

The main question was then put, and the Convention *refused to reconsider*—ayes 39, noes 70, as follows:—

AYES—Messrs. Angel, Bergen, Bowdish, Brundage, Chatfield, Conely, Cornell, Danforth, Dubois, Gardner, Hart, Hunt, Jones, Kemble, Kennedy, Loomis, Maun, Marvin, Murphy, Nellis, Nicholas, Nicoll, O'Connor, Perkins, President, Ruggles, Shepard, Simmons, W. H. Spencer, Stephens, Stetson, Stow, Swackhamer, Taft, Taggart, J. J. Taylor, Tilden, Vache, White—39.

NOES—Messrs. Ayrault, H. Backus, Bascom, Bouck, Frayton, Brown, Bruce, Bull, Burr, Cambreleng, D. D. Campbell, Candee, Chamberlain, Cook, Crooker, Cuddebuck, Dana, Dodd, Dorlon, Flanders, Forsyth, Gebhard, Harris, Harrison, Hawley, Hotchkiss, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jordan, Kernan, Kingsley, Kirkland, Maxwell, Miller, Morris, Parish, Patterson, Penniman, Porter, Powers, Rhoades, Richmond, Kiker, St. John, Salisbury, Sears, Shaver, Shaw, Sheldn, E. Spencer, Stanton, Strong, Tallmadge, W. Taylor, Townsend, Tuthill, Van Schoonhoven, Ward, Warren, Waterbury, Witbeck, Wood, Worden, W. B. Wright, Yawger, Young, Youngs—70.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. W. TAYLOR moved that the Convention go into committee of the whole on the report of committee No. One, in order that it might be reported to the Convention in form. He supposed there would be no motions to amend. This motion was agreed to, and Mr. PATTERSON took the chair.

Mr. MURPHY moved a reconsideration of the vote refusing to add Richmond to the first district, and briefly advocated his motion.

Messrs. HARRISON and CAMBRELENG opposed the motion, and it was negative, 32 to 47.

Mr. KENNEDY offered an amendment, transposing the arrangement of the wards in the city

of New York, so that they should be as follows:

District No. 3 shall consist of the 1st, 3rd, 5th, 6th, and 8th wards of the city and county of New York.

District No. 4 shall consist of the 2d, 4th, 7th, 10th, and 13th wards.

District No. 5 shall consist of the 11th, 14th, 15th and 17th wards.

District No. 6 shall consist of the 9th, 12th, 16th and 18th wards.

Mr. KENNEDY said in presenting this plan, he did not wish to be understood as supposing that this was the best which could be formed. A better division could no doubt be effected by dividing wards and basing the division on election districts, but they had not time to make such a division. He still had a faint hope that the Convention, before it adjourned, would see the injustice which they had done to New York by obliging them to divide it into four separate districts, and retrace its steps. He proceeded at length to explain the plan which he had proposed.

Mr. WARD inquired if the delegation from New York concurred in this plan?

Mr. KENNEDY replied, that all with whom he had spoken upon the subject concurred in it.

Mr. WARD took occasion to say, in view of some remarks which had fallen from members of the New York delegation in relation to delegates from the country, that there was no disposition on the part of the latter to take any course which would result in injury to the great commercial metropolis. For one, he had no such desire; and he believed that if the delegation from that city could present a plan which they believed would do them greater justice than that reported by the committee, there would not be the least objection to adopting it.

He wished to say, in justice to the chairman of committee number one, that he retired to his chamber and perfected his arrangement of the several districts without consulting a single member in relation to their preferences. He had said nothing to himself in relation to Westchester, and he believed that others could repeat the same declaration.

Messrs. SHEPARD, MORRIS and O'CONNOR, approved Mr. KENNEDY's proposition.

Mr. WHITE would assent to it, although he regarded the arrangement of the committee as a just and equitable one.

Mr. RHOADES moved to pass over the four New-York districts, to give time to the delegation from that city to consult together and agree upon some division.

This was assented to.

No amendments were offered to any of the districts from number seven to twenty-four inclusive.

The 25th district—Tompkins, Seneca and Chemung—Mr. MAXWELL proposed to change—so that it would consist of Tompkins, Seneca and Yates—and to make the 26th district consist of Steuben and Chemung, instead of Steuben and Yates. Agreed to.

The others were agreed to without change.

Mr. MARVIN moved to amend the 2d section, so as to authorize the legislature after 1855 to increase the number of senators to not exceeding 50, and the assembly to not exceeding 150. Lost.

The committee then rose and reported the article to the Convention, and it was laid on the table and ordered printed as amended.

The Convention then adjourned to 9 o'clock to-morrow morning.

THURSDAY, JULY 30.

Prayer by the Rev. Mr. McDONOUGH.

CANALS FINANCES, &c.

Mr. HOFFMAN, from the Third standing committee, made the following report, which was read by the Secretary, Mr. H. being too unwell to read it himself:

ARTICLE.—

On the existing debts and liabilities of the state, and to provide for the payment thereof.

§ 1 After paying the expenses of collection, superintendence and ordinary repairs, [\$1,500,000] one million and five hundred thousand dollars of the revenues of the state canals shall, in each fiscal year, and at that rate for a shorter period, commencing on the first day of June, one thousand eight hundred and forty-six, be set apart as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the Canal Debt, as it existed at the time aforesaid, and including three hundred thousand dollars then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

§ 2 In liquidation of the state claims for advances to, and payments for, the canals [\$672,500], six hundred and seventy-two thousand and five hundred dollars of the revenues of the said canals, shall, forever, in each fiscal year, and at that rate for a shorter period, commencing on the first day of June, one thousand eight hundred and forty-six, be paid into the treasury for the use of the state; and if the payment of

that sum, or any part thereof, shall be delayed by reason of the priority established in the preceding section, the amount so delayed, with quarterly interest thereon, at the then current rate, shall be so paid out of the said revenues as soon as can be done consistently with such priority.

§ 3 The surplus of the revenues of the canals, after paying the said expenses of the canals and the sums appropriated by the two preceding sections, shall, in each fiscal year, be applied to the improvement of the Erie canal, in such manner as may be directed by law, until such surplus shall amount in the aggregate to the sum of [\$2,500,000] two million five hundred thousand dollars.

§ 4 Of the sum of six hundred and seventy-two thousand five hundred dollars required by the second section of this article to be paid into the treasury, [\$200,000] five hundred thousand dollars shall, in each fiscal year, and at that rate for a shorter period, commencing on the first day of June, one thousand eight hundred and forty-six, be set apart as a sinking fund to pay the interest and redeem the principal of that part of the state debt called the General Fund debt, including the debt for loans of the state credit to railroad companies which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever and as far as any part thereof may become a charge on the treasury or General Fund, until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the said five hundred thousand dollars shall at any time be de-

ferred by reason of the priority recognized in the second section of this article, the sum so deferred, with quarterly interest thereon, at the then current rate, shall be paid to the last mentioned sinking fund, as soon as the sum so deferred shall be received into the treasury.

§ 5. The claims of the state against any incorporated company to pay the interest and redeem the principal of the stock of the state loaned or advanced to such company, shall be fairly and duly enforced, and not deferred, released or compromised; and the moneys arising from such claims shall be set apart and applied as part of the sinking fund provided in the fourth section of this article.

§ 6. If the sinking funds, or either of them provided in this article, shall prove insufficient to enable the state on the credit of such fund, to procure the means to satisfy the claims of the creditors of the state as they become payable, the legislature shall by equitable taxes so increase the revenues of the said funds as to make them respectively sufficient perfectly to preserve the public faith. Every contribution or advance to the canals or their debt from any source other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the treasury for the use of the state out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt.

§ 7. The legislature shall not sell, lease or otherwise dispose of any of the canals of the state, so far as the same are now finished and navigable; but they shall remain the property of the state and under its management forever.

By order of the committee,
MICHAEL HOFFMAN, Chairman.

Mr. HOFFMAN said after the distinct opinion of the Convention, expressed by a formal vote, that it would be inexpedient for a committee to report their reasons, any observations on the merits of this measure at this time would be entirely out of place. When the subject should come before the Convention in committee of the whole or in the body of the House, he would avail himself of the opportunity to lay before it the reasons that had induced him to unite with the committee in this report. In the end or ends to be attained by it—the payment of the state debt, and the settlement of all claims between the canals on the one side and the state on the other—he believed the committee were unanimous. But on a subject so vast as this, involving such complicated and minute calculations, although he believed that every member of the committee had endeavored as well as his leisure would permit, to make calculations to aid his judgment, yet some of them had not had the opportunity to make those calculations as minute as they desired, and they would therefore have it distinctly understood that in the attempt to perfect these provisions—in giving to them more consideration—they reserved to themselves, what he supposed was not only their right, but a right of which he supposed they could not divest themselves—the privilege of conforming to the best deliberation they could give to the subject. With these observations, which he hoped would do justice to every member of the committee, he moved that the report would be printed, and referred to the committee of the whole.

The motion was agreed to.

Mr. HOFFMAN again rose, and said he was directed by the committee on Finance to make the following report:—

ARTICLE —.

On the power to create future state debts and liabilities, and in restraint thereof.

§ 1. No money shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an ap-

propriation by law, nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

§ 2. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association or incorporation.

§ 3. The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct or contingent, singly or in the aggregate, shall not, at any time, exceed one million of dollars, and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

§ 4. In addition to the above limited powers to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

§ 5. Except the debts specified in the third and fourth sections of this article, no debt or liability shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by a law for some single work or object, to be distinctly specified therein, and such law shall impose and provide for the collection of a direct annual tax, to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for or against it, at such election. On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journals there of, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?" The legislature may at any time after the approval of such law by the people, if no debt shall have been contracted or liability incurred in pursuance thereof, repeal the law; and may at any time by law forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law shall remain in force and be irrepealable, and be annually collected until the proceeds thereof shall have made the provision heretofore specified to pay and discharge the interest and principal of such debt and liability.

The money arising from any loan or stock creating debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever.

No such law shall be submitted to be acted on within three months after its passage or at any general election, when any other law or any bill or any amendment of the constitution, shall be submitted to be voted for or against.

§ 6. Every law which imposes, continues, or revives a tax, shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

§ 7. On the final passage, in either house of the legislature, of every act which imposes, continues or revives a tax, or makes, continues, or revives any appropriation of public or trust money or property—or releases, discharges or commutes any debt or demand of the state, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

By order of the committee,
MICHAEL HOFFMAN, Chairman.

Mr. HOFFMAN said that in this article the committee was in the main he believed unanimous. In the first place as to the clause relative to specific appropriations, and the means to enforce it, he believed there was no dissent. On

the clause limiting casual debts to a million of dollars, some gentlemen supposed it might be necessary in a state of from three to six millions of inhabitants to enlarge the amount a small extent. On the proposition which authorizes the creation of a debt for particular purposes by special law, he was not aware that there was any serious difference of opinion. Some gentlemen might think the same end might be attained by other means than submission to the people, or that making the debt payable in 18 years was not sufficiently stringent; but with some doubts and difficulties on the points he had mentioned, he believed the committee was unanimous in the opinion that the industry and labor of the state should be defended as strongly as was now proposed, at least against extravagant expenditures and taxation in consequence of it. With this declaration, he moved that the report be referred to the same committee of the whole to which the preceding report was referred, and that it be printed.

The motion was agreed to.

MUNICIPAL CORPORATIONS.

Mr. MURPHY, from the Fourteenth standing committee, made the following report:—

ARTICLE

1. Private property shall not be taken for improvements in cities and villages, unless the compensation therefor shall be first determined before a judicial tribunal by a jury of twelve freeholders of the city or village where the same shall be situated, who shall be chosen and qualified as jurors in civil cases.

2. No local assessment for any improvement in any city or village, shall be laid, unless a majority of all the owners of the lands to be assessed shall apply for such improvement, nor unless such improvement shall be ordered by a vote of two-thirds of the common council or board of trustees of such city or village.

3. No debt shall be created by any city or village corporation except to suppress insurrection, or to provide against an existing pestilence or casualty, unless the same shall be authorized by act of the legislature, for some single object or work to be distinctly specified therein, which law shall provide the ways and means exclusive of loans to pay the interest of such debt as it shall fall due, and also to pay and discharge the principal thereon within twenty years, by tax to be assessed and collected upon the taxable property of such city or village, in equal amounts as near as may be, annually, and such law shall be irrevocable until such debt and the interest thereon, shall be fully paid and discharged. And no such law shall take effect until it shall have been approved by a majority of the electors of such city or village; and no money so raised shall be applied otherwise than to the object specified in such law.

By order of the committee

H. C. MURPHY, Chairman.

Mr. M. said that, regarding the first section, the committee was unanimous; but with regard to the others, it was not so. Differing himself from the committee on this, that the provisions which they had submitted did not go into the defects of our system of municipal corporations, he had prepared a minority report, which he asked permission to submit at this time.

The Secretary read the minority report, as follows:—

ARTICLE.—

1. No charter or special act for the incorporation of any city or village shall be granted, but general and uniform laws shall be passed for the incorporation of cities, and like laws for the incorporation of villages, subject to such alterations as the legislature shall from time to time deem proper to make. The boundaries and limits of the territory included within any city or village corporation shall be determined in such manner as the legislature shall prescribe.

2. No assessment for any improvement in any city or village shall be laid otherwise than by general tax upon the taxable property of such city or village, levied and collected with an annual tax for other expenses.

3. Private property shall not be taken for any improvement in any city or village other than for state purposes, unless the compensation shall be first fixed by a jury in a court proceeding according to the course of the common law.

4. No debt shall be contracted by any city or village corporation on a longer credit than twenty years, nor unless there shall be levied and collected in its annual tax of the preceding year one-twentieth part of such debt towards the repayment of the same, unless such debt be necessary to provide against pestilence or casualty. After the creation of any debt there shall be levied and collected in said annual tax annually thereafter one-twentieth part, or as near one twentieth part as may be, of such debt, towards its repayment.

5. Money shall not be borrowed by any city or village corporation in anticipation of its annual tax, except for the purpose of paying interest about to become due on any debt now existing, or to be created under the limitations of this article, nor unless the amount shall have been previously levied in such annual tax.

6. No liability shall be contracted by any city or village corporation, unless provision have previously been made in its annual tax for discharging the same, or unless the same be incurred under the limitations of this article.

HENRY C. MURPHY.

Mr. MURPHY moved that these reports be printed, and referred to the committee of the whole.

The motion was agreed to.

LEGISLATIVE DEPARTMENT.

Mr. STRONG moved that the Convention proceed to the unfinished business.

The motion was agreed to, and the Convention took up the article from the first standing committee, as amended in committee of the whole.

The first section was approved without amendment.

The second section having been read,

Mr. MARVIN moved to amend by adding at the end of the section the words following:—

"The legislature may after the enumeration to be made in the year 1858, increase the number of senators to any number not exceeding fifty, and the number of members of assembly not exceeding 160."

Mr. W. H. SPENCER called for a division, so as to take the vote first on increasing the number of senators.

Mr. KENNEDY suggested the propriety of altering the word "increase" to "change," for the legislature might hereafter deem it necessary to reduce the number of senators.

Mr. MARVIN was understood to decline giving power to the legislature to reduce the number of senators.

After a brief conversation, Mr. MARVIN modified his amendment so as to provide that:

"The legislature after the next state enumeration may increase the number of senators to any number not exceeding 60, and members of assembly to any number not exceeding 160; and may after every state enumeration fix the number of senators at any number between 32 and 60 inclusive, and the members of Assembly at any number between 128 and 160 inclusive."

After a brief conversation between Mr. MARVIN, Mr. BASCOM, and Mr. TALLMADGE, the question was taken on the first division—the increasing the number of senators, and it was rejected—ayes 35, noes 70, as follows:

AYES—Messrs. Angel, H. Backus, Bascom, Bull Burr, Chatfield, Conely, Cornell, Crooker, Dornon, Du Bois, Gardner, Gebhard, Hart, Jones, Kemble, Kennedy, Loomis, Marvin, Nellis, O'Connor, Patterson, Porter Powers, President, Richmond, Salisbury, Shepard, W

H. Spencer, Stephens, Swackhamer, Taft, Taggart, Tilden, Young—35.

NAYS—Ayrault, F. F. Backus, Bergen, Bouck, Bowdish, Brayton, Brown, Bruce, Brundage, Cambreleng, D. D. Campbell, Candee, Clark, Clyde, Cook, Cuddeback, Dana, Danforth, Dodd, Flanders, Forsyth, Harrison, Hawley, Hotchkiss, Hunt, Hunter, A. Huntington, E. Hutchinson, Hutchinson, Hyde, Jordan, Kernan, Kingsley, Kirkland, McNeill, McNitt, Maxwell, Miller, Morris, Murphy, Nicholas, Nicoll, Parish, Penniman, Perkins, Rhoades, Riker, Ruggles, St. John, Sears, Shaw, Sheldon, Smith, E. Spencer, Stanton, Stetson, Strong, Tallmadge, J. J. Taylor, W. Taylor, Townsend, Tuthill, Vanschoonhoven, Waterbury, Willard, Witbeck, Wood, W. B. Wright, Yawger, Youngs—70.

The question the occurred on the other division—to increase the number of members of Assembly.

Mr. MARVIN said he supposed the vote just taken settled the question, he therefore would not trouble the Convention to take the yeas and nays.

Mr. TALLMADGE renewed the demand for the yeas and nays—and there were ayes 21, noes 87.

So the entire proposition was negatived.

The 5th section was then taken up. [It divides the state into and prescribes the Senate districts.]

Mr. W. TAYLOR moved to strike out and insert the section originally reported by the committee.

Mr. KENNEDY remarked that to assent to that would be to bring them to the "ride and tie" system.

Mr. LOOMIS should vote against the proposition. He preferred that senators should be elected for two years, and all go out at once, to this chequered system which the committee had proposed, although he desired to avoid even the first conclusion. By the committee's plan, half the state was every year to be disfranchised, and yet they had to go through the whole form and expense of the election every year. That proposition too would afford facilities for colonization and corruption. He also called the attention of the Convention to the fact that, by the committee's plan, the elections for the cities were brought together in one year, and the elections for the country in the other year. He pointed out how the Senate might be influenced by an excitement got up in the cities, which were more exposed to excitements than the rural districts, and hoped the Convention would adhere to the vote already given on this subject.

Mr. PERKINS thought motions to reconsider should not be made where there was an expressive vote of the body in favor of a provision, or unless the question had been decided by a small and close vote. But this being such a motion in effect, he proceeded to address himself to the question. He proceeded to discuss the prominent topics which have been brought forward in this debate.

Mr. W. TAYLOR briefly replied to the remarks of the gentleman from Herkimer, and others.

The yeas and nays were then taken on the amendment and resulted yeas 21, nays 86—as follows:—

AYES—Conely, Dorlon, Dubois, E. Huntington, Jordan, Kemble, Kingsley, Kirkland, Marvin, Nicholas, O'Connor, Rhoades, Ruggles, E. Spencer, Stephens, Taft, Tallmadge, J. J. Taylor, W. Taylor, Vache, Young—21.

NAYS—Ayrault, F. F. Backus, H. Backus, Bascom, Bergen, Bouck, Bowdish, Brayton, Brown, Bruce, Brundage, Bull, Burr, Cambreleng, D. D. Campbell, Candee, Chamberlain, Chatfield, Clark, Clyde, Cook, Cornell, Crooker, Cuddeback, Dana, Danforth, Flanders, Forsyth, Gardner, Gebhard, Harris, Harrison, Hart, Hawley, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Jones, Kenn dy, Kernan, Loomis, McNeill, McNitt, Maxwell, Miller, Morris, Murphy, Nicoll, Nicoll, Parish, Patterson, Penniman, Perkins, Porter, Powers, President, Richmond, Riker, Salisbury, Sears, Shaw, Sheldon, Shepard, Smith, W. H. Spencer, Stanton, Stetson, Slow, Strong, Taggart, Townsend, Tuthill, Vanschoonhoven, Warren, Waterbury, White, Willard, Witbeck, Wood, Worden, W. B. Wright, Yawger, Youngs—86.

Mr. WHITE then moved to strike out all down to and including the 12th line, and insert:—

"The state shall be divided into 16 districts to be called Senate Districts, each of which shall choose two senators, and the senators first elected shall be divided into two classes; the senators of the first class shall serve one year, and the senators of the second class two years, and 16 senators shall be elected annually thereafter."

Mr. STETSON said he would detain the Convention only one minute to explain why he should vote against this amendment. Sometimes since he had voted for this proposition; but that vote was given under the hope that, if it prevailed, the Convention would reconsider their previous decision as to the number of senators, and enlarge it so that when doubled, we would have in the territory and population of a double district about the same quantity that would be assigned to a single district with thirty-two for the whole number of the Senate. His motive had been to secure continuity, stability and more experience in the Senate, and also equalization of representation. That hope was now gone. The Convention had refused to reconsider, and this was the last vote. He could not consent to make the districts so large as they would be if doubled on the small number of thirty-two senators.

Mr. WHITE called for the yeas and nays and they were ordered and resulted thus:—

AYES—Bergen, Brown, Brundage, Conely, Cornell, Hunt, Jones, Kemble, Kennedy, Loomis, Murphy, Nicoll, O'Connor, Perkins, Ruggles, Shepard, Smith, Stephens, Vache, White—0.

NAYS—Ayrault, F. F. Backus, H. Backus, Bascom, Bouck, Bowdish, Brayton, Bruce, Bull, Burr, Cambreleng, D. D. Campbell, R. Campbell Jr., Candee, Chamberlain, Chatfield, Clyde, Cook, Crooker, Cuddeback, Dana, Danforth, Dorlon, Dubois, Flanders, Forsyth, Gardner, Gebhard, Harris, Harrison, Hart, Hawley, Hotchkiss, Hunter, A. Huntington, E. Hutchinson, Hutchinson, Hyde, Jordan, Kernan, Kingsley, Kirkland, McNeill, McNitt, Marvin, Maxwell, Miller, Morris, Nicoll, Nicholas, Parish, Patterson, Penniman, Porter, Powers, President, Rhoades, Richmond, Riker, St. John, Salisbury, Sears, Shaw, Sheldon, E. Spencer, W. H. Spencer, Stanton, Stetson, Strong, Swackhamer, Taft, Taggart, Tallmadge, J. J. Taylor, W. Taylor, Townsend, Tuthill, Vanschoonhoven, Warren, Waterbury, Willard, Witbeck, Wood, W. B. Wright, Yawger, Young, Youngs—87.

Mr. MURPHY moved to strike out the word "Richmond" in the 15th line and insert it in the 13th line, so as to make Suffolk, Queens and Richmond one senate district, and detach Richmond from Kings. Mr. M. called for the yeas and nays, and being ordered and taken, they resulted thus:—

AYES—Bascom, Bergen, Bouck, Bowdish, Brayton, Brown, Brundage, R. Campbell Jr., Chamberlain, Chatfield, Conely, Cook, Cornell, Cuddeback, Danforth, Dodd, Flanders, Gardner, Hart, Hunt, Hunter, E. Huntington, Hutchinson, Hyde, Kennedy, Kernan, Kirkland,

McNeil, Maxwell, Murphy, Nellis, Nicoll, O'Connor, Perkins, Porter, President, Ruggles, St. John, Shaw, Sheldon, Shepard, Smith, Stephens, Stetson, Swackhamer, Taft, Townsend, Vache, Waterbury, White, Wood, Yawger, Young 63.

WAYS—Ayrault, F. F. Backus, H. Backus, Bruce, Bull, Burr, Cambreleng, D. B. Campbell, Clark, Crooker, Dana, Darion, Dubois, Forsyth, Gebhard, Harris, Harrison, Hawley, Hotchkiss, A. Huntington, Jordan, Kemble, Kinsley, Loomis, McNitt, Marvin, Miller, Morris, Nicholas, Parish, Patterson, Penniman, Powers, Rhoades, Richmond, Riker, Salisbury, Sears, E. Spencer, W. H. Spencer, Stanton, Stow, Strong, T. G. Tarrant, Tallmadge, J. J. Taylor, Tuthill, Vanschoonhoven, Warren, W. B. Wright, Youngs—1

Mr. KENNEDY moved to amend by striking out from the word "district" in the 16th line, to the word "wards" in the 23d line; and insert as follows:

"Districts No. 3, No. 4, No. 5 and No. 6, shall consist of the city and county of New York. And the board of supervisors of said city and county shall on or before the first day of May 1847, divide the city and county into the number of senate districts to which it is entitled, as near as may be of an equal number of inhabitants, and of contiguous territory."

Mr. PATTERSON said this was adopting a new principle, to go on and divide up the state and then say that the board of supervisors shall divide the city of New York into four districts. We had better finish up this business. Something had been said about political divisions, but that he had disregarded. It was sufficient for him to know that the districts were compact, without looking to the returns which those districts had given. He thought the districts formed by the committee, were fair, and there was a gentleman from New York on the committee to whom they were satisfactory.

Mr. W. TAYLOR preferred that the Convention should go on and perfect the districts as they had begun, instead of leaving it to the board of supervisors in New-York to district that city.

Mr. O'CONOR advocated the amendment of his colleague. This Convention had undertaken to form the districts, and not to turn them over to local bodies representing the whole districts. As to the Assembly, they had come to the conclusion, there being local bodies representing counties that had to be subdivided, that they would turn them over to such bodies. The principle on which the Convention had acted was that where there were several counties that had to be placed together, the operation of placing them together and classifying them was performed by this Convention; but when a county had to be cut up into parts for the purpose of forming legislative districts that they had determined to turn it over to the local authorities of the county to make the division. This was the principle on which they had gone thus far.—They had taken on themselves the formation of the senatorial districts, and turned over the Assembly districts to a local board. The Convention had classified, but the division they had turned over to others. Now in the case of the city of New-York, they had no classification of counties in relation to the Senate districts.—What they had to do was to divide a single county into three or four legislative districts, just as that same county, for another purpose was to be divided into sixteen legislative districts. If their course was to harmonize, he contended that this amendment should pass.—

The precise geographical division was not to be looked to. They should look to population, and that could be done better in New-York city.

Mr. NICOLL said there was another reason. In all probability the wards of New York would be changed by the Convention now sitting in that city; and if that were so and this Convention proceeded to district that city now, it would lead to great confusion. The wards as now laid down, by the 1st of January next, may not have an existence, and he submitted that New York ought to be allowed to district herself in conformity to the wards to be laid out. Such a course would produce more harmony, and therefore he hoped this Convention would leave it to a body competent to take charge of it. All they should was simple justise. He hoped the amendment would prevail.

Mr. STRONG said the simple question was whether this Convention should proceed with its business or wait for the city of New York. And whether all the rest of the state should be divided by the Convention, and New York should be districted by its board of supervisors to gerrymander it so as to suit their own views. He hoped the amendment would be voted down.

Mr. SWACKHAMER asked how this Convention could make the division without knowing anything of the new wards? He thought that city should be equitably divided and conveniently to its inhabitants.

Mr. PATTERSON offered an amendment, to add the words "of compact" after the word "inhabitants," so as to make the districts of "compact and contiguous territory."

Mr. KENNEDY had no objection to the amendment.

Mr. W. TAYLOR had no objection to have this passed over, until the end of the Convention, to give the Convention sitting in New-York an opportunity to complete the districts.

Mr. NICOLL said that would accomplish nothing; for the result of the labors of the city Convention must be passed upon by the people, and afterwards ratified by the legislature. That could not be done while this Convention would remain in session.

Mr. BASCOM thought it was proper that where local territory was to be divided, it should be done by the local authorities. He saw no difficulty in this, except that the division would not be made until the constitution itself would have to be submitted to the people.

Mr. KENNEDY suggested that neither would the Assembly districts be completed, and yet no difficulty was anticipated in that respect.

Mr. MURPHY advocated the amendment.

Mr. CROOKER also expressed the hope that New-York might have her own way in this matter. He thought they should hazard nothing by leaving it to the local authorities.

Mr. KIRKLAND saw no objection to it.

Mr. SHEPARD offered an amendment, to require the board of supervisors, when they shall have completed such division, to cause a certificate thereof, stating the number and boundaries of the districts and the population thereof, to be filed in the office of the Secretary of State and the clerk of the said county.

Some conversation then ensued between

Messrs. TALLMADGE, CROOKER, JONES, and WHITE.

Mr. KENNEDY accepted the amendments of Mr. PATTERSON and Mr. SHEPARD.

Mr. BRUCE opposed the amendments. He thought it was the duty of the Convention to go on and frame the constitution of the state as a state. He objected to the making of any distinctions between the city of New-York and the other counties.

After a few words from Messrs. STOW and WORDEN, the amendment was agreed to.

The other districts were then taken up in succession, and they were agreed to without debate or amendment, from the 7th to the 16th, inclusive.

Mr. SMITH moved to strike the word "Schoharie" from the 42nd line, and insert "Chenango," so as to make the 17th district consist of Chenango and Otsego. He also moved to strike the word "Chenango" from the 47th line, and insert "Schoharie," so as to make Delaware and Schoharie the 18th district.

Mr. BOUCK opposed the motion.

Mr. SMITH defended it on the ground that Otsego and Chenango were more closely allied than were Chenango and Delaware, by position, commercial intercourse, &c.

Mr. BURR said Delaware was singularly situated. She had seven counties of the state of New-York adjoining her, besides Wayne in Pennsylvania, and as they were a very good-natured, amiable set of people, they were willing to take any of those counties, except Wayne in Pa., and they would not be willing to take her unless Pennsylvania paid her canal debt.—He said he came here, with some pride, as the representative of the old democratic county of Delaware, which had sometimes claimed to be the banner county; and yet it would be readily perceived, that the whole of her neighbors, even including democratic Chenango, shrunk from her touch. Schoharie, too, made most strenuous opposition to the alliance, in the formation of a senatorial district, and he was apprehensive that the Convention would be compelled to set off Delaware as a district by herself. (Laughter.) He had said they were a very humble people, and therefore he need scarcely say that to be a single district they would submit in all good humor.

Mr. HARRIS was in favor of the motion of the gentleman from Chenango, and if the Convention should adopt the amendment, he should move to take Schenectady away from Albany, and add her to Delaware and Schoharie.

Mr. WATERBURY, Mr. KIRKLAND, Mr. BOUCK, Mr. RHOADES, Mr. SMITH, and some others, continued the discussion of the question, which was then decided in the negative—ayes 43, nays 47, as follows:—

AYES—Angel, Brown, Chatfield, Clark, Cook, Cornell, Dubois, Flanders, Forsyth, Gebhard, Harris, Hunt, Hunter, Hyde, Kennedy, Kirkland, Maxwell, Morris, Nicoll, O'Connor, Perkins, Porter, Powers, President, Richmond, Riker, St. John, Shaw, Sheldon, Shepard, Smith, Stephens, Stetson, Stow, Swackhamer, Taft, Taggart, Tallmadge, J. J. Taylor, Vache, White, Willard, Youngs—43.

NOES—Messrs. Ayrault, F. F. Backus, H. Backus, Bascom, Bouck, Rowdish, Brayton, Bruce, Cambreleng, D. D. Campbell, Candee, Crooker, Dana, Danforth, Dodd, Dorlon, Gardner, Harrison, Hawley, Hotch-

kiss, A. Huntington, Jones, Kingsley, Loomis, McNitt, Marvin, Miller, Nellis, Nicholas, Parish, Patterson, Rhoades, Salisbury, Sears, E. Spencer, W. H. Spencer, Stanton, Strong, Townsend, Tu hill, Van-choonhoven, Warren, Waterbury, Wood, W. B. Wright, Yawger, Young—47.

Mr. HARRISON moved a re-consideration of the vote by which Richmond was excluded from the second district—and added that he hoped the New York delegation, in arranging the New York districts, would bear in mind that he might be obliged to propose annexing Richmond to one of the lower wards of the city. [A laugh.]

The motion to reconsider lies on the table.

Mr. WHITE moved to strike out of the section the words "excepting aliens and persons of color not taxed"—so as to include these classes in the basis of representation.

A division of this question was demanded, and it was first put on striking out "not taxed."

Mr. DANA inquired if this amendment was adopted, whether all colored persons would not be excluded from the basis, whether voters or not?

Mr. O'CONOR said the object was to abolish this odious discrimination between persons who were taxed and those who were not. When we came to the question of the elective franchise, the Convention would allow those of this class to vote who had no property, or not, as gentlemen pleased. It raised the question whether we would have them all in, or strike them all out.

Mr. DANA opposed excluding those who were entitled to the right of suffrage. True we might change the law and allow none of them to vote. But if we did so, we should do monstrous injustice. Whilst he had the power of speech and the power to act, he should stand up in defence of the equal right of suffrage to all God's children, black or white. He was against any discrimination on account of color.

Mr. KENNEDY remarked that either the gentleman misunderstood the question or Mr. K. misunderstood him. It was not a question of suffrage, but related to the basis of representation only. Now if any of this portion of God's children were to be included, the whole should be. This section as it stood, included in the basis of representation only a small portion of these colored citizens—those taxed. What had taxes to do with it?

Mr. MURPHY thought the gentleman from Madison (Mr. DANA) understood this question. The gentleman's idea was that these two measures should go together; and he wished in carrying out his ultimate design to meet the difficulty at the threshold. The clause as it stood narrowed the basis of representation in the cities. As proposed to be amended, it narrowed it still more. He had no difficulty on this subject of suffrage. He would allow the present provision of the constitution to stand, allowing persons of color who were taxed to be represented on the principle that taxation and representation should go together. He went for striking out the whole clause—not this part of it.

Mr. RICHMOND wanted to ask Mr. M., after he had taken all these aliens and persons of color into the basis of representation, whether he would let them vote for the officers nominated on account of that representation?

Mr. MURPHY said he was in favor of retaining the Constitution as it was.

Mr. RICHMOND said for his own part, whenever he should vote to make any class the basis of representation, he would extend to them the right to vote. He had nothing to say on this particular proposition.

Mr. HUNT wanted to strike out the words "persons of color not taxed." There were none such who were not taxed, unless they were in state prison.

Mr. PERKINS wanted this amended so as to make the right of representation co-extensive with the right of suffrage.

Mr. VAN SCHOONHOVEN hoped all the words in relation to persons of color would be stricken out—but to strike out only the words "not taxed," you left an odious distinction between the electors of the state. He was opposed to the present distinction based upon property. A gentleman near him said he proposed to strike out the provision which now allowed colored persons to vote. This was indeed taking time by the forelock, and was proposing to work a still greater wrong upon this class. He hoped the day was not far distant, when inasmuch as we had opened the door, and admitted the colored man to be a citizen, that we should place all on a par, and admit all to the right of suffrage without reference to color. But the present proposition was a step backward, in this day of Democratic progress and reform. He trusted this Convention would not sanction such a wrong as was here contemplated.

Mr. BASCOM found it convenient to have a rule to govern his action here. He had one applicable to the case in point. He regarded it as well settled by this Convention, that the basis of representation should be co-extensive with the elective franchise. As it was, persons of color who were taxed were a part of the voting population. He was not now saying that this was right or wrong, nor should he consider whether the Convention would change the rule or not. He trusted, however, that we should not do as some gentlemen propose, diminish the number of the electoral class. What would be the result of the rule established by the gentleman from Rensselaer, who would admit all the colored people to the right of representation without allowing them to vote? Why, the same as is now seen in Congress, where though the slave population was represented, it was only by those who misrepresented their interests in every particular. He would also refer to a case in point. The delegation from New-York represented a small portion of these colored citizens, and yet we saw coming from them propositions to strip them still farther of the privileges which they now enjoy.

Mr. BRUCE felt bound to vote against this motion, because he considered it his duty, as a representative, to protect, as far as he could, the rights of every American citizen. He believed the success of this motion would strike at some of these rights. This was too grave a subject to be decided hastily, and to give time for deliberation he moved to adjourn. Lost.

Mr. KENNEDY denied that this question was at all connected with the question of suffrage. He would meet that question when it

came up. This was only whether there should be still kept up the distinction based on taxation.

Messrs. BRUCE and KENNEDY briefly continued the debate, when the motion to strike out the words "not taxed" was negatived. Ayes 13, noes 33.

The Convention then took a recess.

AFTERNOON SESSION.

The motion of Mr. WHITE to strike out "persons of color not taxed," in the seventh line of the sixth section, was negatived, ayes 29, noes 56, as follows:—

AYES—Messrs. Ayrault, Bergen, Brayton, Brown, Bruce, R. Campbell, jr., Chatfield, Conely, Crooker, Dana, Dodd, Flanders, Hunt, Miller, Morris, Nicoll, O'Connor, Rhoades, Shepard, Stephens, Stetson, Swackhamer, W. Taylor, Townsend, Van Schoonhoven, Warren, White, Witbeck, W. B. Wright—29.

NOES—Messrs. Angel, F. F. Backus, Bascom, Bouck, Bowditch, Cambreleng, D. D. Campbell, Candee, Chamberlain, Clark, Clyde, Cornell, Cuddeback, Danforth, Dubois, Gebhard, Harrison, Hart, Hotchkiss, Hunter, A. Huntington, Hyde, Kemble, Kennedy, Kernan, Kirkland, Loomis, Marvin, Maxwell, Nellis, Nicholas, Parish, Patterson, Penniman, President, Richmond, Riker, Russell, Salisbury, Sears, Shaw, Sheldon, Smith, W. H. Spencer, Stanton, Strong, Taft, Taggart, Tallmadge, J. J. Taylor, Tuthill, Waterbury, Wood, Yawger, Young, Youngs—66.

The last division of the motion, to strike out the word "aliens," was also negatived, ayes 12, noes 78.

Mr. BASCOM moved as an amendment, to add the words "and excluding also," before "and," in the 7th line, and also to add the words, "so long only as persons of color shall be excluded from the elective franchise, upon the same terms as white persons," after the words "not taxed," in the eighth line. He did this in order to provide for making the people of color a part of the basis of representation whenever they should be admitted to share the elective franchise upon equal terms with white citizens, if that should ever happen. Lost, ayes 36, noes 40.

Mr. HUNT moved to add after the word "aliens" in the 7th line, "and except the unnaturalized wives and widows of American citizens." Lost, without a division.

The section was then agreed to.

The seventh section was read, and

Mr. W. TAYLOR moved to strike out January and insert June, as the time when the supervisors should meet to make a division of their counties. Lost, ayes 39, noes 56, as follows:—

AYES—Messrs. Angel, Bergen, Bouck, Bowditch, Brown, Brundage, Cambreleng, R. Campbell, jr., Chamberlain, Clyde, Cornell, Cuddeback, Dubois, Hart, Hunt, Hutchinson, Hyde, Kemble, Kernan, Loomis, Maxwell, Morris, Nellis, Perkins, Powers, President, Riker, St. John, Shaw, Sheldon, Shepard, Stetson, Swackhamer, J. J. Taylor, W. Taylor, Tuthill, Willard, Wood, Yawger—39.

NAYS—Messrs. Ayrault, F. F. Backus, H. Backus, Bascom, Bruce, D. D. Campbell, Candee, Chatfield, Clark, Conely, Crooker, Dana, Danforth, Dodd, Flanders, Gardner, Gebhard, Harrison, Hotchkiss, Hunter, A. Huntington, K. Huntington, Kennedy, Kirkland, Marvin, Miller, Nicholas, Nicoll, O'Connor, Parish, Patterson, Penniman, Rhoades, Richmond, Russell, Salisbury, Sears, Smith, E. Spencer, W. H. Spencer, Stanton, Stephens, Stow, Strong, Taft, Taggart, Tallmadge, Townsend, Van Schoonhoven, Warren, Waterbury, White, Witbeck, W. B. Wright, Young, Youngs—56.

Mr. R. CAMPBELL, jr., moved to strike out from the 6th to the 17th line, inclusive, (containing the provision that the division of counties shall be made by the board of supervisors.) He did this with a view to having the apportionment made by the Convention.

The motion was lost as follows:

AYES—Messrs. Angel, Bergen, Bowdish, Brown, Brundage, R. Campbell, jr., Chatfield, Cornell, Cuddeback, Danforth, Dubois, Hunt, Hutchinson, Kernan, Nellis, O'Connor, Shaw, Sheldon, Shepard, Smith, Stetson, Swackhamer, J. J. Taylor, W. Taylor, Tuthill, Yawger—26.

NOES—Messrs. Ayrault, F. F. Backus, H. Backus, Bascom, Bouck, Brayton, Bruce, Furr, Cambreleng, D. D. Campbell, Candee, Chamberlain, Clark, Clyde, Conely, Crooker, Dana, Dodd, Flanders, Garduer, Gebhard, Harrison, Hart, Hotchkiss, Hunter, A. Huntington, E. Huntington, Hyde, Kentile, Kennedy, Kirkland, Loomis, Marvin, Maxwell, Miller, Morris, Nicholas, Nicoll, Parish, Patterson, Penniman, Powers, President, Richmond, Riker, St John, Salisbury, Sears, E. Spencer, W. H. Spencer, Stanton, Stow, Strong, Taggart, Tallmadge, Townsend, Van Schoonhoven, Warren, Waterbury, White, Willard, Witbeck, Wood, W. B. Wright, Young, Youngs—66.

Mr. A. W. YOUNG moved to amend in the 11th line, by inserting after "entitled by law" as follows:—"Except the counties of Wyoming and Genesee; the former of which shall be divided into two districts, and the latter shall constitute one district."

Mr. TAGGART said that it would be recollected that he had endeavored to have the representation both in Senate and Assembly equalized so as to do ample justice both to Genesee and Wyoming counties. That for the purpose of equality, he had sought to have the number of senators and members of the assembly increased, but the Convention had decided, by repeated votes, not to increase the representation, and had refused to interfere with the apportionment of members of assembly, made by the legislature, with which decisions of the Convention he was bound to submit. And he insisted that it would not be proper to interfere in this case, unless the whole apportionment should be set aside, and the representation should be equalized throughout the whole state. That Genesee ought not to be singled out as an exception to the general rule adopted by the Convention; and he desired to urge two reasons in opposition to the amendment proposed by the gentleman from Wyoming, in addition to those he had the honor to present in committee of the whole. One of these reasons had arisen from the action of the Convention since that time. The other, he then omitted in his remarks before the committee.

[Mr. T. was here interrupted by a violent thunder gust, accompanied by wind and rain, which entirely drowned his voice, scattered books and papers upon the floor, and tore the window curtains of the west windows into a thousand fragments. The delegates left their seats in confusion, and the cries of adjourn! adjourn! adjourn! were the only sounds audible amidst the roaring of the winds and the reverberations of the repeated peals of thunder. The Sergeant-at-arms and door-keepers at length closed the windows—the tempest subsided—the delegates resumed their seats, and order was restored, when Mr. T., who, during the war, din and confusion of the scene, had maintained his position, resumed his remarks, and said:]

It seems that he (Mr. T.) was destined to be interrupted in his remarks by the five minute rule. A few days ago he was stopped by the application of the five minute rule, adopted by the Convention, and to-day he has been relieved by a similar rule, occasioned by the elements. That rule was rescinded by the Convention and he had concluded his remarks, and this having now been repealed, he would resume the discussion. He wished to urge for the consideration of the Convention two points in opposition to the amendment proposed by the gentleman from Wyoming. First, then, he would remark that the two and a half towns before their connection to Wyoming, had their representation allotted them by the apportionment of two members of Assembly to Allegany county. That county then contained but little more than the full ratio for two members. After setting off the town of Nunda and the east half of Portage to Livingston county, the county of Allegany inclusive of the two and a half towns annexed to Wyoming, did not contain the full ratio of population for two members. That these towns having received their representation in the allotment to Allegany, when they formed a part of that county, it was manifestly unjust to Genesee to take from her one of her members in consequence of an arrangement by which part of Allegany had been annexed to Wyoming, in which arrangement Genesee has no part. The other reason he should urge was that since the discussion in the committee of the whole, the report of committee number one dividing the state into senate districts had been fully settled by the vote of the Convention. It will be seen by this division, that the senate district in which Genesee was situated, composed of the counties of Genesee, Orleans and Niagara, contained a population exceeding 85000, while the district in which Wyoming was situated, composed of the counties of Allegany and Wyoming, contained a population of but little over 62000, making a difference in the population of the two senate districts of 23000; that such difference in the representation of the senate districts will make the representation in the two counties nearly equal by allowing Genesee to retain her two members. At all events, it will be much more an equality, than it will be in case one member should be taken from Genesee and given to Wyoming.

Mr. PATTERSON, after expressing his regret that the Convention had not consented to increase the number of members of the assembly, and thus equalize, in some measure, the representation, so as to give to the smaller counties, with large fractions, their just weight—went on to urge that, taking things as we found them, we were bound to remedy such gross inequalities as now existed between these two counties. Wyoming had a larger population than Genesee, by some 2,500, and ought to have two members. We had undertaken to vary the apportionment of senators made last winter, and why not that for the assembly?

Mr. CAMBRELENG insisted that the apportionment of last winter being based upon the last census, was right as it stood then, and ought not to be changed, because by annexation, Wyoming had since come to exceed Genesee. That apportionment was constitutional

and binding for ten years, and could not and ought not to be disturbed unless we went through the state, and conformed it to the existing population in all cases. He urged also that it would be a mischievous precedent, and upon the recurrence of a new census and apportionment, would justify a legislature in changing county lines with a view to securing a party advantage in the representation.

Mr. CHATFIELD urged that the last apportionment should stand, or we ought to revise it throughout. In that event, perhaps, both these counties might lose the member, and Clinton get it—for we had a right to take into consideration an increase from natural causes, as well as an increase by legislative act.

Mr. CROOKER insisted that we were bound to remedy existing inequalities, and especially where such inequalities were glaring and were so upon the census itself. The census showed that Wyoming now had some 2500 greater population than Genesee; and she was justly entitled to the two members.

Mr. RICHMOND urged the injustice of robbing Genesee of a member on the strength of an addition to Wyoming of a population that had been taken into the account in apportioning members to Allegany.

Mr. STETSON insisted that Clinton, by natural increase since the census, had a larger fraction than either Wyoming or Genesee; and he moved to give Clinton two and Genesee one member. *Lost.*

Mr. KENNEDY thought, if Wyoming was to gain a member at the expense of any county, it should be at the expense of Allegany.

Mr. A. W. YOUNG replied that Allegany had still enough to entitle her to two.

The amendment of Mr. Young was negatived as follows:—

AYES—Messrs. F. F. Backus, Bergen, Brundage, Burr, Chamberlain, Crooker, Dana, Danforth, Dorion,

Morris, Murphy, Patterson, Penniman, Swackhamer, Tallmadge, J. J. Taylor, Young—17.

NOES—Messrs. Ayrault, H. Backus, Bascom, Bowdish, Bryton, Brown, Ambreleng, D. D. Campbell, R. Campbell jr., Candee, Chatfield, Clark, Clyde, Conely, Cornell, Cuddeback, Dubois, Flanders, Gardner, Gehard, Harrison, Hart, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Kemble, Kennedy, Kirkland, Loomis, Marvin, Maxwell, Miller, Nellis, Nicholas, O'Connor, Parish, Powers, President, Richmond, Riker, Russell, St. John, Salisbury, Sears, Shaw, Sheldon, Shepard, Smith, E. Spencer, W. H. Spencer, Stanton, Stetson, Stow, Taft, Taggart, W. Taylor, Townsend, Tuthill, Warren, White, Willard, Witbeck, Wood, Yawger, Youngs—69.

Mr. PATTERSON moved to amend so that the counties should be divided into districts of as compact form as may be.

This was debated by Messrs. LOOMIS, PATTERSON, STETSON and PERKINS and amended so as to add the word "convenient," and agreed to.

The 7th section was then agreed to.

The 9th section (in relation to the pay of members) was then read.

Mr. CROOKER moved to strike out that portion which gives the Speaker of the Assembly an additional compensation.

This was briefly debated by Messrs. CROOKER, KIRKLAND, WORDEN, PATTERSON, W. TAYLOR, CHATFIELD, and BROWN, and rejected.

Mr. VAN SCHOONHOVEN moved to adjourn. *Lost.*

Mr. PERKINS moved an amendment limiting the session of the legislature to 100 days, instead of the session as it now stands—(\$3 a day, but the aggregate not to exceed \$300.) *Lost.*

Mr. BROWN moved to strike out that portion which declares that a member of the legislature shall receive no pay during his absence from the legislature; but before taking the question he moved to adjourn, which was agreed to.

Adj. to 9 o'clock to-morrow morning.

FRIDAY, JULY 31.

Prayer by the Rev. Mr. McDONOUGH.

OFFICIAL RETURNS.

The PRESIDENT announced that he had received numerous returns from district attorneys, county clerks, and masters and examiners in chancery, in answer to resolutions of the Convention. They had come to hand since the abstract was prepared by the committee of five—and now awaited the disposition of the Convention.

After some conversation, in which Messrs. MURPHY, J. J. TAYLOR, KIRKLAND, and F. F. BACKUS took part, they were referred to the committee of five, to be abstracted.

LEGISLATIVE DEPARTMENT.

The Convention resumed the consideration of the report of the committee of the whole, of the Article reported from committee No. One.

The pending question was on the motion of Mr. BROWN, to strike out the amendment to the 9th section, made in committee of the whole,

to deprive members of their compensation when not actually present.

Mr. BROWN pointed out the vast disproportion between the compensation of members of the legislature and public officers, the latter also performing their duties at home, while our lawmakers were taken from their homes and business. If a member should go home for a day or two to look to his family and business, he saw no good reason why they should enter into a mean and small account with some officer of the legislature to deduct the miserable compensation of three dollars a day. If it was designed to make members attend punctually, who were disposed to take their pleasure, it would fail of its object; for all they would have to do would be to attend and answer to their names once, and they would be entitled to their compensation. The result would be, therefore, that the deduction would be made from the compensation of the hard working, useful members, who might go home for a day to attend to their domestic concerns, or to recruit their strength

from the effects of their constant public labors. He was willing to record his name in favor of an increase of the per diem of members of the legislature, rather than a diminution, especially when clerks of courts and other officers, had been receiving so much larger an amount. He thought this great state ought to pay a just and liberal compensation to the law-makers, otherwise the whole business would be thrown into the hands of the wealthy, or those who might consent to come here for sinister objects.

Mr. BRUCE differed from the gentleman from Orange. This state had never been in want of legislators since the adoption of the constitution of 1821. A large portion of the legislative body were farmers, who came here in the winter when they had but little to do at home, and who were then content with a per diem of three dollars. Perhaps professional men, lawyers and others, like the gentleman from Orange, might not be satisfied, but the majority were. And with respect to the high salaries alluded to, the people had long been crying out against those abuses, and demanding a diminution of those perquisites of office. The people would not consent to have the compensation of members of the legislature increased beyond a reasonable amount, merely because other officers received too much.

Mr. WORDEN explained the circumstances under which the provision was adopted, and went on to contend that the compensation given was entirely inadequate. He alluded to the practice in England of paying nothing to members of Parliament, but who often spent from £15,000 to £30,000 in contesting an election to obtain their seats. The consequence was that none but the wealthy could obtain a seat in the British Parliament. That system, however, would not answer in a free country like this. He described the labors which members of the legislature underwent, and trusted they would come back to the custom heretofore in use, and leave this subject to the good sense of the legislature. There were, however, evils arising out of absenteeism, one of which was the reconsidering of questions which had been decided in the absence of gentlemen, on their return. He thought every gentleman who accepted a seat here, should attend to the duties which his position devolved upon him; but it was not always done, and various propositions were made to correct the evil, between which the one adopted was a compromise. He went on to pass a high encomium on the legislature of the state, which he said had been favorably compared with the legislative bodies of Europe as well as of our own states and Union, and denied that it was entitled to the censure which had been cast upon it.

Mr. SWACKHAMER explained a resolution which he offered some days ago, and went on to contend that it was unreasonable to expect members to remain here day after day to the neglect of their families and domestic concerns, and to deduct a few dollars from their pay if they should absent themselves for a short time for such a purpose. He should be even willing to increase the pay of members, for no man came here and went away without sustaining loss in his pecuniary concerns. There was, however, a laudable ambition, which would prompt some of them to make sacrifices for such

positions; but he thought this state should not require men to injure themselves by their services to the public.

Mr. KIRKLAND was disposed to treat the members of the legislature in this matter with the confidence to which they were entitled as representatives of the people, and not to encumber the constitution with paltry details of dollars and cents. He intended, at the proper time, to offer the following as a substitute for the whole section:

"The compensation of members of the Senate and Assembly shall be fixed by law. After being so fixed, it shall not be altered so as to increase the compensation of the members of the legislature by which the law fixing the said compensation shall be passed."

Mr. LOOMIS was disposed to approve of such a provision. It was similar to one which had been suggested in committee of the whole. He thought it should be left to the legislature, with proper and respectful restraints and limitations.

Mr. W. TAYLOR followed in favor of leaving the constitution as it now was.

Mr. NICHOLAS said after the sensible and just view taken of this subject by several gentlemen who have addressed the Convention this morning, it may be unnecessary for him to enlarge upon what has been said, but he rose to say that if the gentleman from Orange (Mr. Brown) was disposed to withdraw his amendment he Mr. N. would be glad to renew his, to fix the maximum per diem pay of members at \$3 and then leave the whole matter as it now is in the constitution. As to the provision, preventing members from receiving pay, should they be called home by the sickness of their family, or any domestic calamity, he Mr. N. had always disapproved of it. A man of integrity will not intermit his attention to his official duties without good and sufficient reasons; but when he is required by circumstances beyond his control to incur the expense of a journey home, and with the permission of the body of which he is a member, he should not be subjected to an abatement of his pay on account of his absence. If the people will send men of loose morals here, they will evade this restriction; if you impose it, they will always feign excuses to bring themselves within the exception of sickness. No one day's pay will be withheld from such men, and the only effect of the provision will be to do injustice to honest representatives, and to perpetuate a temptation to men wanting integrity to evade the constitution.

Mr. SALISBURY had not heard complaints among the people that the pay of members of the legislature was too much. But he had heard complaints that they were spending too much time in discussing subjects which had no relation to their duties, and in making political capital. The unnecessary length of the sessions would be avoided perhaps, when the legislature should be relieved from much of the small matters of legislation which now devolve upon them. The pay he believed to be very fair compensation, and if three dollars could obtain talent equal to that in Congress, at \$3, or in the Parliament of Great Britain, as the gentleman from Ontario (Mr. WORDEN) had said, he could not go for increasing it. He thought the amend-

meat offered by that gentleman, and adopted, a very good one, and should vote to sustain it, believing it desirable, if possible, to secure attention to public duty by public servants.

Mr. VAN SCHOONHOVEN followed in favor of striking out.

Mr. TAGGART continued the debate, in favor of striking out the amendment of Mr. WORDEN.

Mr. A. W. YOUNG appealed to the Convention against spending too much time in debate. Complaints were coming in thicker and faster, that so little progress was made.

Mr. E. SPENCER believed the subject had been discussed long enough; and hoped the question would be taken.

Mr. DANFORTH was in favor of limiting the session to 90 days, which he believed was a period of a sufficient length for all practical purposes. But he hoped the Convention would, with a great degree of unanimity, agree to strike out the obnoxious provision that men who come here upon their honor should be called to account for every hour that they might find it necessary to be absent from the House. Nor did he believe it just that the pay should be deducted when they were absent at their homes for a few days during the session.

Mr. KENNEDY. And paying for board here at the same time.

Mr. SALISBURY would apply the same rule to the public officers that individuals did to their agents. No one would pay their agent their regular per diem allowance while he was riding about the country, to New York or Boston. He demanded the ayes and noes.

Mr. SIMMONS concluded the discussion, in favor of retaining the present section, when the motion of Mr. BROWN was agreed to—ayes 81, nays 22, as follows:—

AYES—Messrs. Angel, Ayrault, F. F. Backus, H. Backus, Bergen, Bouck, Bowdish, Brayton, Brown, Bull, Cambreleng, D. D. Campbell, R. Campbell, Jr., Candee, Chamberlain, Chatfield, Clark, Clyde, Conely, Cook, Cornell, Crooker, Cuddeback, Danforth, Dorlon, Forsyth, Gebhard, Harrison, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jones, Jordan, Kemble, Kennedy, Kernan, Kingsley, Kirkland, McNeill, McNitt, Marvin, Maxwell, Miller, Morris, Murphy, Nellis, Nicholas, Nicoll, O'Connor, Parish, Perkins, Powers, Rhoades, Richmond, Riker, Russell, Sears, Shaw, Sheldon, Shepard, Smith, E. Spencer, W. H. Spencer, Stephens, Stetson, Strong, Swackhamer, Taggart, J. J. Taylor, W. Taylor, Tutbill, Vache, Vanschoonhoven, Warren, White, Wood, Young—81.

NAYES—Messrs. Archer, Bascom, Burr, Dana, Dodd, Dubois, Flanders, Gardner, Harris, Patterson, St. John, Salisbury, Simmons, Stanton, Taft, Tallmadge, Townsend, Waterbury, Willard, W. B. Wright, Yawger, Youngs—22.

Mr. MURPHY moved to strike out all the section down to the word "route," and insert:—

"The members of the legislature shall receive for their service, a compensation to be ascertained by law, and paid out of the public treasury. But no increase of compensation shall take effect during the year in which it shall have been made, nor shall any law be passed increasing the compensation of the members of the legislature beyond the sum of three dollars per day."

Mr. SWACKHAMER moved to amend the amendment, by adding:—

"Nor shall any session of the legislature extend beyond the period of ninety days, except in cases of war, insurrection, or invasion."

Mr. FORSYTH moved the previous question, and it was seconded by a vote of 42 to 21, which being less than a quorum, the vote was again taken, and 49 voted in the affirmative and 23 in the negative.

The main question was then ordered, and the yeas and nays taken on Mr. SWACKHAMER's amendment, and resulted, yeas 52, nays 52, as follows:—

AYES—Messrs. Ayrault, F. F. Backus, Bergen, Burr, Cambreleng, D. D. Campbell, R. Campbell, Jr., Candee, Clark, Cook, Dana, Danforth, Dodd, Dorlon, Dubois, Gardner, Harrison, Hotchkiss, Hunter, A. Huntington, Jordan, Kernan, Kingsley, McNeill, McNitt, Maxwell, Morris, Powers, Richmond, Riker, Russell, Salisbury, Sears, Shaw, Sheldon, Simmons, E. Spencer, Stanton, Stetson, Strong, Swackhamer, Taft, Tallmadge, J. J. Taylor, Townsend, Vache, White, Willard, Wood, W. B. Wright, Yawger, Youngs—52.

NOES—Messrs. Angel, H. Backus, Bascom, Bouck, Bowdish, Brayton, Brown, Bull, Chamberlain, Chatfield, Conely, Cornell, Crooker, Cuddeback, Flanders, Forsyth, Gebhard, Harris, Hart, Hunt, E. Huntington, Hutchinson, Hyde, Jones, Kemble, Kennedy, Kirkland, Loomis, Marvin, Miller, Murphy, Nellis, Nicholas, Nicoll, O'Connor, Parish, Patterson, Perkins, President, Rhoades, St. John, Shepard, Stephens, Taggart, W. Taylor, Tilden, Tutbill, Van Schoonhoven, Warren, Waterbury, Worden, Young—52.

So the amendment was lost.

The question then recurred on Mr. MURPHY's amendment, and it was lost, ayes 45, noes 63, as follows:—

AYES—Messrs. Angel, F. F. Backus, H. Backus, Bascom, Bouck, Bowdish, Brown, Brundage, Bull, Chamberlain, Chatfield, Conely, Cornell, Crooker, Cuddeback, Flanders, Gebhard, Hart, Hunt, Jones, Kemble, Kennedy, Loomis, Marvin, Morris, Murphy, Nicholas, Nicoll, O'Connor, Parish, Perkins, President, Rhoades, Shepard, Smith, Stephens, Stow, Tallmadge, W. Taylor, Tilden, Tutbill, Van Schoonhoven, Warren, Worden, Young—45.

NOES—Messrs. Ayrault, Bergen, Brayton, Bruce, Burr, Cambreleng, D. D. Campbell, R. Campbell, Jr., Candee, Clark, Clyde, Cook, Dana, Danforth, Dodd, Dorlon, Dubois, Gardner, Harris, Harrison, Hotchkiss, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jordan, Kernan, Kingsley, Kirkland, McNeill, McNitt, Maxwell, Miller, Nellis, Patterson, Powers, Richmond, Riker, Russell, St. John, Sears, Shaw, Sheldon, Simmons, E. Spencer, Stanton, Stetson, Strong, Swackhamer, Taft, Taggart, J. J. Taylor, Townsend, Vache, Waterbury, White, Willard, Wood, W. B. Wright, Yawger, Youngs—63.

Mr. WORDEN then moved to amend by adding after the word allowance, the following:—

"Unless two-thirds of all the members elected shall assent to the continuance of the session beyond the period of 100 days."

Mr. W. advocated his amendment. He contended that freedom of debate in the legislature had ever been a fundamental principle in free governments, and that civil liberty and personal rights were mainly dependent upon it. And it was necessary that it should be preserved, as a safeguard against the encroachments of executive power.

Mr. HARRIS replied. He said the provision did not require the legislature to terminate its session; it merely said that the members of the legislature should not receive pay for any period beyond one hundred days. If any emergency, should arise, he trusted the legislature would be patriotic enough to continue in session even though they received no pay. If they would not remain under such circumstances, they might depend upon it the country would derive no great good by any sittings of such a

legislature, who considered their three dollars a day of more importance than the interests of the country.

Mr. RICHMOND and PERKINS both entered into the discussion at some length.

Mr. MORRIS said he was opposed to long sessions, at the same time that he was for giving a fair compensation, and his votes had been given with a view to shorten the sessions without throwing an imputation in advance upon the legislature. As the importance of leaving the sessions without limit, to prevent executive usurpations, Mr. M. supposed the constitution was a check upon such usurpations, and the remedy of impeachment the proper one. They should not be limited in time when engaged in impeachment. [A remark here from some gentleman near Mr. M. led him to say.] If the legislature were suspected of being corrupt enough to impeach the Governor every year for the sake of getting their three dollars a day, in God's name abolish the legislature.

Mr. WORDEN remarked that if the legislature would stay here for the sake of three dollars a day, they might impeach the Governor to make an excuse for it.

Mr. MORRIS replied that he did not believe, under the single district system, that any such results were to be apprehended. Nor did he believe that these stringent provisions would be required. Still, they had been asked for, and he should vote for them in what he regarded as the next best shape he could get. He wanted, however, an amendment, so as to except cases when the legislature should be engaged in proceedings for impeachment. He moved that amendment.

Mr. WORDEN withdrew his proposition.

Mr. DODD moved the previous question, and there was a second, &c., and

The question was put on Mr. MORRIS' amendment and it was adopted, 44 to 35.

The question, as amended, was then adopted, ayes 68, noes 35.

AYES—Messrs. Ayrault, F. F. Backus, H. Backus, Brayton, Bruce, Bull, Burr, Cambreleng, D. D. Campbell, R. Campbell, jr., Candee, Clark, Clyde, Cook, Cuddeback, Dana, Danforth, Dodd, Dorion, Dubois, Gardner, Harris, Harrison, Hotchkiss, Hunter, A Huntington, E. Huntington, Hutchinson, Hyde, Kernan, Kingsley, McNeil, McNitt, Maxwell, Miller, Morris, Nellis, Nicholas, Nicoll, Powers, Richmond, Riker, Ruggles, Russell, St. John, Salisbury, Shaw, Sheldon, Simmons, E. Spencer, Stanton, Stetson, Strong, Swackhamer, Taft, Taggart, Tallmadge, J. J. Taylor, W. Taylor, Townsend, Waterbury, White, Willard, Wood, W. B. Wright, Yawger, Young, Youngs—68.

NOES—Messrs. Bascom, Bouck, Brown, Brundage, Chamberlain, Chatfield, Conely, Cornell, Crooker, Flanders, Gebhard, Har, Har, Jones, Jordan, Kemble, Kennedy, Kirkland, Loomis, Marvin, Murphy, O'Conor, Parish, Patterson, Perkins, President, Rhoades, Sears, Shepard, Smith, Stow, Tuthill, Van Schoonhoven, Warren, Worden—35.

Mr. CROOKER moved a reconsideration of this vote. Table.

Mr. SWACKHAMER also moved a reconsideration of the vote on the ninety days' limitation. Table.

The tenth section being now read,

Mr. WHITE moved to amend by striking out "or to the Senate of the U. S."—(the effect of which would be to leave members of the legislature eligible to the U. S. Senate.)

The amendment was negatived, ayes 19, noes 85, as follows:—

AYES—Messrs. Bascom, Bergen, Brown, Candee, Gardner, Hunt, Hunter, Kemble, Marvin, Murphy, Nicoll, O'Conor, Russell, Simmons, Smith, Stow, Taggart, Vache, White—19.

NAYS—Messrs. Ayrault, F. F. Backus, H. Backus, Baker, Bouck, Brayton, Bruce, Brundage, Burr, Cambreleng, D. D. Campbell, R. Campbell, jr., Chamberlain, Chatfield, Clark, Clyde, Conely, Cook, Cornell, Crooker, Cuddeback, Dana, Danforth, Dodd, Dubois, Flanders, Gebhard, Harris, Harrison, Hart, Hotchkiss, A Huntington, E. Huntington, Hutchinson, Hyde, Jones, Jordan, Kennedy, Kernan, Kingsley, Kirkland, Loomis, McNeil, McNitt, Maxwell, Miller, Morris, Nellis, Nicholas, Parish, Patterson, Perkins, Powers, President, Richmond, Riker, Ruggles, St. John, Salisbury, Shaw, Sheldon, Shepard, E. Spencer, Stanton, Stephens, Stetson, Strong, Swackhamer, Taft, Tallmadge, J. J. Taylor, W. Taylor, Townsend, Tuthill, Van Schoonhoven, Warren, Waterbury, Willard, Wood, Worden, Yawger, Young, Youngs—85.

The tenth section was then adopted.

The eleventh section, Mr. SIMMONS moved to amend by striking out "judicial" in the 2nd line, and inserting "civil"—so that it should read:—"No person being a member of congress or holding any judicial or military office under the U. S., shall hold a seat in the legislature." He desired to make it conform to the latter clause of the section which read thus:—

"And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat."

Mr. RUSSELL:—That would exclude postmasters.

Mr. SIMMONS was aware of that.

Mr. CHATFIELD said the intention was to prevent a member being appointed after his election to an office under the U. S. government, and thus giving that government a control over the legislature in the appointment of U. S. senators for instance—but not to prevent the people from electing a member, knowing him to hold a civil office under the U. S.

Mr. SIMMONS' amendment was lost.

Mr. CONELY moved to amend to exclude all holding offices under the U. S. except postmasters. Lost.

The eleventh section was agreed to.

Mr. SMITH moved to amend the twelfth section, so as to provide that the first election under this constitution for members of the legislature be held in October instead of November. Lost.

Section fifteen was then agreed to.

Mr. SMITH moved a reconsideration of the vote in regard to the Chenango district. Table.

AFTERNOON SESSION.

Mr. STETSON submitted a proposition, in relation to fractional representation, to add the following, as a new section, to the report of committee number one:—

§ . The first part of section seven shall be construed so that members of the Assembly shall be apportioned as follows:—The aggregate representative population of the state shall be divided by one hundred and twenty-eight, and the quotient shall be a ratio upon which one member shall be apportioned to each county of the state; but the residue of the members, after that, shall be apportioned so that the fraction of a smaller county shall always be entitled to a member in preference to the number equal to the first ratio in a larger county, whenever the fraction of the smaller county is larger in proportion to its whole representative population, than the fraction of the larger county be to its whole representative population, if the whole number

of the remainder of members were continued to be apportioned according to said first ratio.

Mr. WORDEN explained his understanding of the section to be that Clinton, for instance, with one member and a fraction of 9000, would have an additional member on that fraction, in preference to New York with sixteen members and a fraction of 10,000.

Mr. STETSON said the operation of the section would be something like that—and went into an explanation somewhat in detail. His intention was to give the country the benefit of an accumulation of fractions, of which the city of New York now had the benefit to the disadvantage of the country.

Mr. JONES sympathized with the gentleman from Clinton, on account of the unfortunate position of Clinton.

Mr. STETSON: We do not ask sympathy.—We shall have it next time, as a right.

Mr. JONES would nevertheless extend his sympathy. Clinton was no doubt unfortunate; but no doubt upon the next census, her fraction would be large enough to secure her another member.

Mr. STETSON: That takes off the point of the sympathy.

Mr. JONES hoped the gentleman's anticipations would be realized—and went on to say that he listened to the gentleman's speech attentively, but unfortunately he had not been able to understand it. He could not say of the gentleman's statistics, what had been said of statistics in general, that they were after all nothing but fictions told in numerals, for it would not be decorous to say so. But it was a sufficient answer to them to say that if New York had one eighth of the representation in the Assembly, she had also one eighth of the representative population of the state.

Mr. WORDEN remarked that there were none so blind as those who would not see—and went on to explain his idea of the operation of the rule.

Mr. BROWN was satisfied the proposition deserved all consideration—but it was a complicated one, and ought to be printed before being acted on. He suggested that it be postponed until to-morrow and printed.

The section was ordered to be printed.

Mr. W. TAYLOR offered the following additional section—which he said was a section of the old constitution, with the words “and legislative term” added—to prevent any misconstruction of the political year:

§ 16. The political year and legislative term shall begin on the first day of January; and the legislature shall every year assemble on the first Tuesday in January, unless a different day shall be appointed by law.

Mr. CROOKER moved to strike out “unless a different day shall be appointed by law.” Better have it fixed, than fluctuating.

Mr. SHEPARD suggested that some pestilence might make it necessary to change the place and time of holding the legislature.

Mr. CROOKER did not see how the legislature would foresee when the pestilence was to come.

Mr. CROOKER's motion was lost, and Mr. TAYLOR's section adopted.

Mr. W. TAYLOR then moved that the article as perfected, be printed—which was agreed to.

The article relating to the Legislative Department, as finally adopted, is as follows:—

ARTICLE I.

Section 1. The legislative power of this state shall be vested in a Senate and Assembly.

§ 2. The Senate shall consist of thirty-two members, and the Senators shall be chosen for two years. The Assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

Substitute the following for section 5:

§ 5. The state shall be divided into thirty-two districts, to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to thirty-two inclusive.

District No. 1 shall consist of the counties of Richmond, Suffolk and Queens

District No. 2 shall consist of the county of Kings.

Districts Nos. 3, 4, 5 and 6 shall consist of the city and county of New York; and the board of supervisors of said city and county shall, on or before the first day of May, 1847, divide the city and county into the number of senate districts to which it is entitled, as near as may be of an equal number of inhabitants, of contiguous territory and of compact form. The board of supervisors when they shall have completed such division, shall cause certificates thereof, stating the number and boundaries of each district and the population thereof, to be filed in the office of the Secretary of State and of the clerk of said city and county.

District No. 7 shall consist of the counties of Westchester, Putnam and Rockland.

District No. 8 shall consist of the counties of Dutchess and Columbia.

District No. 9 shall consist of the counties of Orange and Sullivan.

District No. 10 shall consist of the counties of Ulster and Greene.

District No. 11 shall consist of the counties of Albany and Schenectady.

District No. 12 shall consist of the county of Rensselaer.

District No. 13 shall consist of the counties of Washington and Saratoga.

District No. 14 shall consist of the counties of Warren, Essex and Clinton.

District No. 15 shall consist of the counties of St. Lawrence and Franklin.

District No. 16 shall consist of the counties of Herkimer, Hamilton, Fulton and Montgomery.

District No. 17 shall consist of the counties of Schoharie and Otsego.

District No. 18 shall consist of the counties of Delaware and Chenango.

District No. 19 shall consist of the county of Oneida.

District No. 20 shall consist of the counties of Madison and Oswego.

District No. 21 shall consist of the counties of Jefferson and Lewis.

District No. 22 shall consist of the county of Onondaga.

District No. 23 shall consist of the counties of Cortland, Broome and Tioga.

District No. 24 shall consist of the counties of Cayuga and Wayne.

District No. 25 shall consist of the counties of Tompkins, Seneca and Yates.

District No. 26 shall consist of the counties of Steuben and Chemung.

District No. 27 shall consist of the county of Monroe.

District No. 28 shall consist of the counties of Orleans, Genesee and Niagara.

District No. 29 shall consist of the counties of Ontario and Livingston.

District No. 30 shall consist of the counties of Allegany and Wyoming.

District No. 31 shall consist of the county of Erie.

District No. 32 shall consist of the counties of Chautauque and Cattaraugus.

§ 6. An enumeration of the inhabitants of the state shall be taken under the direction of the legislature in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature at the first session after the return of every enumeration that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and persons of color not taxed; and shall remain unaltered until the return of another enumeration, and

shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district, except such county shall be equitably entitled to two or more senators.

§ 7. The members of the assembly shall be apportioned among the several counties of this state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of color not taxed, and shall be chosen by single districts.

The several boards of supervisors in such counties of this state, as are now entitled to more than one member of assembly, shall assemble on the first Tuesday of January next, and divide their respective counties into assembly districts equal to the number of members of assembly to which such counties are now severally entitled by law, and shall cause to be filed in the offices of the Secretary of State and the clerk of their respective counties, a description of such assembly districts, specifying the number of each district and the population thereof, according to the last state enumeration, as near as can be ascertained. Each assembly district shall contain as nearly as may be, an equal number of inhabitants, excluding aliens and persons of color not taxed, and shall consist of contiguous and convenient territory, but no town shall be divided in the formation of assembly districts.

§ 8. The legislature, at its first session after the return of every enumeration, shall re-apportion the members of assembly among the several counties of this state, in manner aforesaid, and the board of supervisors in such counties as may be entitled, under such re-apportionment, to more than one member, shall assemble at such time as the legislature making such re-apportionment shall prescribe, and divide such counties into assembly districts in the manner herein directed, and the apportionment and districts so to be made, shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section.

Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly, and no new county shall hereafter be erected, unless its population shall entitle it to a member. The county of Hamilton shall elect with Fulton, until the population of Hamilton shall, according to the ratio, be entitled to a member.

§ 9. The members of the legislature shall receive for their services a sum not exceeding three dollars a day from the commencement of the session; but such pay shall not exceed in the aggregate three hundred dollars for per diem allowance, except in cases of impeachment. The limitation as to the aggregate compensation shall not take effect until 1848. When convened in extra session by the Governor, they shall receive \$3 per day. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting on the most usual route. The Speaker of the Assembly shall, in virtue of his office, receive an additional compensation equal to one-third of his per diem as member.

§ 10. No member of the legislature shall receive any civil appointment within this state, or to the Senate of the United States from the Governor, the Governor and Senate, or from the legislature, during the term for which he shall have been elected.

§ 11. No person, being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Substitute for sections 15 and 16, so far as relates to Senators and members of Assembly, the following:—

§ 15. The first election of Senators and members of Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty seven; and all subsequent elections shall be held on the Tuesday succeeding the first Monday of November in each year, unless otherwise directed by the legislature. The Senators and members of Assembly who may be in office on the first day of January, one thousand eight hundred and forty-seven, shall hold their offices until the thirty-first day of December following, and no longer.

§ 16. The political year and legislative term shall begin on the first day of January; and the legislature shall every year assemble on the first Tuesday in January, unless a different day shall be appointed by law.

APPOINTMENT OR ELECTION OF STATE OFFICERS.

On motion of Mr. W. TAYLOR, the committee of the whole, Mr. WORDEN in the chair, took up the report of committee No. Six (Mr. CHATFIELD's), on the appointment or election of all officers whose powers and duties are not local, &c.

The first section was read, as follows:—

§ The Secretary of State, Comptroller, Treasurer and Attorney General shall be chosen by the people at an annual general election, and shall hold their offices for two years. The Secretary of State and Comptroller shall receive an annual salary of two thousand and five hundred dollars; the Treasurer shall receive an annual salary of one thousand five hundred dollars; and the Attorney General shall receive an annual salary of two thousand dollars; but he shall not receive any other or further fees, perquisites or compensation for any services performed by him as Attorney General.

Mr. KENNEDY moved to amend as follows:

Strike out from the 4th line, after the word "years," and insert "and shall receive an annual salary, to be prescribed by law, which shall not be altered during their respective terms of office."

Mr. CHATFIELD was not prepared to let this go by default. He went on to point out the important changes proposed in the report. The committee proposed first to give the election of these officers to the people. On that point he anticipated little, if any, objection. Next they proposed to shorten the term of these officers; and chiefly with a view that they might come in and go out with the Executive—and this because they were to some extent cabinet officers, and it was due to the Executive that he should have a cabinet who accorded with him in regard to measures, that his administration might be harmonious. The committee also thought it important that the constituent body should, as often as once in two years, have an opportunity of passing upon the acts of these officers. Mr. C. went on to explain and define the fixing of the salaries of these officers in the constitution—that they might not be the subject of change, with changes of party, and might not be a matter of consideration in their election. The committee had fixed them at the present salaries—believing that they were not too high. As to the Attorney General, the committee thought \$2000, cutting off extra compensation, would not be too high, and that the state would be the gainer at that. Now the salary was \$1000, together with a large amount of fees and perquisites, much of which did not go upon the Comptroller's books. The present incumbent had received somewhere in the neighborhood of \$4000, to which would be added compensation for some two months' services recently at Auburn.

Mr. SIMMONS thought it would not look well to put the Governor's salary in the power of the legislature, and fix those of his cabinet in the constitution. He should prefer to see all these salaries left to the legislature, or all fixed in the Constitution.

Mr. RICHMOND remarked that we were laying the foundation for a large number of offices, and this principle seemed thus far to have been settled, that if we left these salaries to be fixed by the legislature we should also prohibit

any change in them to take effect upon an incumbent. Supposing this to be the judgment of the Convention—we should then throw upon a single legislature the power and duty of fixing the salaries of all your judges, state officers, clerks of courts, &c. &c. It was easy to see what a lobby this would bring to bear upon the legislature—and how utterly this whole matter of salaries might be placed beyond the reach of the people, for a long term of years. He trusted if we did not fix salaries in the constitution, we should at least place them where the people

could lay their hands on them, if the legislature, under the influence of those interested, should give too high salaries. But he hoped we should fix them in the constitution; and he warned gentlemen that if we placed these salaries beyond the reach of the people for long terms, that they never would receive such a constitution.

On motion of Mr. CHAMBERLAIN, the committee rose and reported progress, and the Convention

Adjourned to 9 o'clock to-morrow morning.

SATURDAY, AUGUST 1.

Prayer by the Rev. Mr. McDONOUGH.

STATE OFFICERS.

Mr. PERKINS presented a minority report from committee number six. He said the report exhibited his own views, for he did not claim that they were the views of any other member of the committee, though in some particulars others of the committee agreed with him in some of his differences from the report of the majority. He read the report as follows:—

ARTICLE —.

§ 1. An Attorney General shall be elected at the times and places of choosing the Governor, and shall hold his office for the same term.

§ 2. The Treasurer shall be appointed annually, on the first Tuesday in February, by the open *viva voce* vote of the Legislature, and by a majority of all the votes cast.

§ 3. There shall be elected, by plurality of votes, at the times and places of choosing Members of Assembly, a Secretary of State, a Comptroller, a State Engineer and Surveyor, three Canal Commissioners, and three Inspectors of State Prisons. Under their first election, they shall respectively hold their offices for the term prescribed in the next section of this article, and thereafter for three years respectively.

§ 4. Of the officers first elected under the preceding section, the State Engineer and Surveyor shall hold his office for one year, the Comptroller for two years, and the Secretary of State for three years. The Canal Commissioners and Inspector of State Prisons having the greatest number of votes shall hold their offices for three years; those having the next greatest number of votes shall hold their offices for two years; and the others for one year. In case of an equality in the number of votes for either of the offices of Commissioner or Inspector, who shall be first elected, the term of their office shall be determined by lot.

§ 5. In case there shall be an equality in the number of votes for any officer to be elected under this article, so that there shall be no choice; or in case of the death, resignation, removal or other disability of either of the officers mentioned in the third section of this article, the Legislature shall, by open nomination and vote, choose a person to perform the duties of the office for the term, or residue of the unexpired term, as the case may be.

§ 6. The Lieut. Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney General, and State Engineer and Surveyor, shall be the Commissioners of the Land Office.

The Lieut. Governor, Secretary of State, Comptroller, Treasurer and Attorney General, shall be the Commissioners of the Canal Fund.

The Canal Board shall consist of the Commissioners of the Canal Fund, the State Engineer and Surveyor, and the Canal Commissioners.

§ 7. All officers the manner of whose appointment is not prescribed by this Constitution, shall be chosen or appointed as shall be prescribed by the law existing at the time of their appointment.

§ 8. Every officer having a stated salary shall account

for and pay to the Treasurer of the State all perquisites of office, he may receive.

§ 9. All officers having salaries (except Judicial officers) shall at stated times receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected. But this shall not be construed to prevent the passage of laws at any time to regulate the compensation of future incumbents of office.

§ 10. All provisions of law authorizing the appointment of Inspectors, Weighers and Measurers of merchandize, (except salt) are abrogated.

BISHOP PERKINS.

Mr. P. said the principal differences were that the Secretary of State, Comptroller, State Engineer and Surveyor, were by him proposed to be elected for three years, and they were to be classified so that one of them would be elected annually. The report of the majority proposed to elect them for two years, and all to go out at once. His report also proposed to give to these officers a salary which shall not be altered during the time for which they shall be elected; but the legislature may prescribe the compensation of future incumbents. These were the principal alterations, except that the Treasurer was to be appointed annually by the legislature. Having made some further explanations he moved that the report be committed to the committee of the whole having in charge the majority report, and that it be printed.

Mr. CHATFIELD made some complaints which were not distinctly heard, that this report should be brought in at this time. He doubted if it could be now considered, and was understood to intimate that the gentleman from St. Lawrence had been wanting in respect to the committee.

Mr. PERKINS said he was ever unfortunate in the expression of his difference of opinion from the chairman of the committee. Indeed, it seemed to be a matter of great disrespect for any gentleman of this Convention to venture to differ from him (Mr. CHATFIELD). When the report of the majority was agreed to, he assented to the report being made, though voting against some of its provisions in committee; and he had now felt it to be his duty to submit his views, as they differed from the majority.—At an early day, he proposed, by resolution, something in the nature of a minority report, and that was deemed exceedingly disrespectful; and he received a lecture for that too. [Laughter.] There was, on the part of the chairman of the committee, a strange sensitiveness, which

he could not understand. If there was no imputation on that gentleman or his actions—if, when there existed a mere difference of opinion, a member took that mode of bringing his views before the Convention—it seemed to him that, for a member to get up and complain of having been treated with disrespect, showed either a jealousy of other members, or a dyspeptic nervousness which could not endure a mere difference of opinion. Mr. P had taken the course which his judgment dictated to be the proper one to bring his views before the Convention.—He had exercised his right, which he was not at liberty to sacrifice to any jealousies, and while he remained a member of a committee which made a report of which he disapproved, he should not be deterred from presenting a counter report, and endeavoring to amend the one from which he dissented. He might perhaps have presented this report at an earlier day, although after the manner in which the gentleman (Mr. CHATFIELD) received any indication of a difference of opinion on the coming in of his report, he had finally determined to waive any further expression of his opinion, until the matter was under the consideration of the Convention.

Mr. CHATFIELD hoped the gentleman from St. Lawrence would not understand him as saying that there had been any disrespect to him personally. If he did say that, he had said what he had not intended. All he had said was that the committee had not been treated with the respect to which they were entitled. Mr. C. proceeded at some length to point out the parliamentary course which the gentleman from St. Lawrence should have pursued.

Mr. PERKINS responded and showed what course had been taken both by the majority and minority of the committee and reiterated the statement of his conviction that the offence committed was in daring to differ from the chairman of the committee, whose great sensitiveness was otherwise inexplicably mysterious. After some other observations the motion to print and refer was carried.

JUDICIAL SYSTEM

Mr. RUGGLES, from the committee on the judiciary, presented a report, which was read by the secretary, as follows :—

Sec. 1. The Assembly shall have the power of impeachment by a vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, and the judges of the court of appeals—the major part of whom may hold the court. On the trial of an impeachment against the Governor, the Lieut. Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until his acquittal. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to evidence, and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office; but the party convicted shall be liable to indictment and punishment according to law.

§ 2. There shall be a court of appeals, composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the supreme court having the shortest time to serve. Provision shall be made by law for designating one of the members elected as chief judge, and for selecting such justices of the supreme court from time to time, and for so classifying those elected that one shall be elected every second year.

§ 3. There shall be a supreme court having the same jurisdiction in law and equity which the supreme court and court of chancery now have subject to regulation by law.

§ 4. The state shall be divided into eight judicial districts, of which the city of New-York shall be one—the others to be bounded by county lines, and be compact and equal in population as nearly as may be.—There shall be four justices of the supreme court for each district, and as many more in the district composed of the city of New-York as may from time to time be authorized by law, but not to exceed the number of justices in the other districts in proportion to their population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

§ 5. Any three of them may hold general terms of said court in any district, and one of them may hold special terms and circuit courts, and preside at the courts of oyer and terminer in any county.

§ 6. They shall severally at stated times receive for their services a compensation to be established by law, which shall not be diminished during their continuance in office.

§ 7. They shall not hold any other office or public trust. All votes for either of them for any elective office, (except that of justice of the supreme court, or judge of the court of appeals,) given by the legislature or the people, shall be void. They shall not exercise any power of appointment, except in licensing practitioners in their courts.

§ 8. The classification of the justices of the supreme court, the times and places of holding the terms of the court of appeals, and of the general and special terms of the supreme court, within the several districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law.

§ 9. The testimony in equity cases shall be taken before the judge, who shall hear and decide the case in the same manner as testimony is taken upon the trial of an issue at law.

§ 10. Surrogates shall be elected for four years.—They shall be compensated by fixed salaries, and they shall not receive any fees or perquisites of office.

§ 11. Justices of the supreme court and judges of the court of appeals may be removed by joint resolution of both houses of the legislature, if two-thirds of all the members elected to the assembly and a majority of all the members elected to the senate, concur therein.—Surrogates and all judicial officers, except those mentioned in this section, and except justices of the peace, may be removed by the senate on the recommendation of the Governor, but no such removal shall be made unless the cause thereof be entered on the journal, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence. On the question of removal, the yeas and noes shall be entered on the journals.

§ 12. The justices of the supreme court shall be nominated by the Governor and appointed by and with the consent of the senate; or

§ 12. The justices of the supreme court shall be elected by the electors of the respective districts, at such time as may be provided by law, but not within ninety days before or after the general annual election.

§ 13. Inferior courts of civil and criminal jurisdiction may be established by the legislature, and appeals and writs of error therefrom may be brought to the supreme court or court of appeals as shall be provided by law.

§ 14. The legislature may reorganize the judicial districts at the first session after the return of every enumeration under this constitution in the manner provided for in section four, and at no other time; and they may at such session increase or diminish the number of districts, but such increase or diminution shall not be more than one district at any one time. Each district shall have four justices of the supreme court, but no diminution of the districts shall have the effect to remove a judge from office.

§ 15. The electors of the several towns shall at their annual town meeting, and in such manner as the legislature may direct, elect their justices of the peace.—Their term of office shall be four years. Their number and classification may be regulated by law.

§ 16. The court for the trial of impeachments and the correction of errors, the court of chancery, the

supreme court, and the county courts as at present organized, are abolished.

§ 17. No judicial officer, except justices of the peace, shall receive any fees or perquisites of office.

By order of the committee,

CHARLES H. RUGGLES, Chairman.

Mr. RUGGLES begged the indulgence of the Convention that he might occupy its time a few minutes in making some explanations in regard to the report which had just been read. The committee to which he belonged was not unanimous in agreeing to the report; but he had the direction of a majority of the committee to present it to the Convention. The necessity of revising and reorganizing our judiciary system was one of the principal causes of calling the Convention. This necessity had existed for several years; and the attempts repeatedly made to amend the constitution in the mode pointed out in that instrument having uniformly failed, it became indispensable necessary to assemble the Convention. Dissatisfaction had long existed with regard to the construction of the present court for the correction of errors. It was believed by many to be too numerous for securing the strict attention of all its members to the elaborate arguments frequently made before it in complicated and difficult cases. It was further alleged that the responsibility of its members was too little felt, because it was too much divided among its great number of judges. Its connection with the legislative branch of the government was justly regarded by many as a fault in its organization; and particularly so with respect to the decision of all causes in which the constitutionality of an act of the legislature was drawn in question. In all such cases the point in dispute must necessarily have been prejudged in passing the law. Complaints have also been made of the delay and expense of litigation in the Court of Chancery; and yet the officers of that court are not generally, if at all, justly chargeable with censure. The delay had arisen partly from the great quantity of business in that court—vastly greater than its small number of officers can reasonably be expected to dispatch—and partly from the inconvenient and ill-devised mode of taking testimony before an examiner, in writing, out of court. The frequent appeals now allowed by law in that and the other courts, are objected to with great reason as unnecessary, burthensome and vexatious. The supreme court is insufficient in the number of its judges to dispose of the great mass of business to be done in it. A single central branch of judges is not adapted to the convenience of so large a state as ours in territorial extent. It can hold but four terms a year; its calendars are so burthened and surcharged with business that suitors and counsel, after travelling great distances to arrive at the court, are frequently compelled to wait in vain for the opportunity of being heard. The circuit system, adopted in 1822, is disapproved; and the opinions of the members of the bar and of the public, seem to require the restoration, in that respect, of the organization which preceded that of 1822. It is believed to be better that the judges who assemble to re-examine the decisions at the circuits, should themselves hold the circuit courts, and thus be brought into direct contact with the people and their business. In some counties, the county

courts are efficient and useful in the dispatch of business. In others, it is said they are not so, and are complained of as a burthen rather than a benefit to the county. In the trial of civil causes before a jury, experience has demonstrated that a single judge is more efficient than a greater number, and that those county courts in which the trial of causes is committed to some one of the judges, gave greater satisfaction to suitors than when they all take part in the trial. In speaking of the insufficiency of the present system of courts to do the business of the state, it must not be forgotten that it was framed on the basis of the population of the year 1820.—At that time the number of inhabitants was 1,372,812. It has since doubled. The last enumeration shows the population of 1845 to be 2,604,495. The wealth of the state has increased probably in a greater ratio. It is unreasonable to expect that the judicial officers under the present constitution, although of eminent talent and unwearied industry, should be able to hear and determine all the disputes and controversies which must unavoidably spring up among an active, energetic and prosperous population of nearly three millions. In framing the plan which I have here the honor in behalf of a majority of the committee to report, the committee have endeavored to remedy the defects of the existing system. By altering the organization of the Court for the Correction of Errors, by such a reduction of the number of its judges that each may be more apt to give to every case an attentive hearing and careful examination, without reliance on the judgment of his fellows; and that each may feel more directly and sensibly the weight, importance and responsibility of his own share of the duty in rendering final judgment between the parties. By severing its connexion with the legislature in order that its attention may not be diverted from its appropriate duties in the administration of justice, by multifarious subjects on which as senators, its judges have been called to act, or by the more exciting and distracting scenes of party politics in which the members of the legislature have been continually involved. Instead of a court composed of the chancellor, the judges of the supreme court, the lieutenant governor, and thirty-two senators, the committee recommend a court of appeals, to be composed of eight judges—four of whom shall be justices of the supreme court of original jurisdiction and liable to do the duties of a justice of that court in holding circuit courts and terms when not engaged in the court of appeals. The committee propose that the remaining four judges of the appellate court shall be elected by the people on a general ballot. This preserves and continues in the court of last resort, a popular and as your committee believe, a valuable feature existing in the present court. The presence of a portion of laymen in that court, if such should be elected,—of men of extensive general knowledge and sound judgment—not educated to the legal profession, may in many cases be useful. It may serve to correct the tendency which is said to exist in the minds of professional men, to be led away by habits of thought, from the just conclusions of natural reason into the track of technical rules, inapplicable to

the circumstances of the case and at variance with the nature and principles of our social and political institutions. The committee entertain no fears that a court so constituted will be unstable in its decisions, or that it will fail in paying all respect to uniform rules and established precedents. Whatever may be the objections against the election by the people of local judges, and judges whose duties may require them, alone and without associates, to decide controversies at the circuits between their friends and their opponents, the objection applies with little, if any force, to the election of part of the judges of the court of appeals. The judges of that court being eight in number, it will seldom happen that a majority of the court are acquainted with the parties. The majority of the court will always, from their position, number and connexion with each other, be beyond the reach of those influences, which in the case of a single or local judge, may be regarded as unfavorable to the exercise of unbiassed and impartial judgment. For the purpose of organizing a Supreme Court of original jurisdiction the plan reported by the committee proposes to divide the state into eight judicial districts. The state has outgrown the system established in 1822. There is a necessity of increasing its working power, by enlarging the number of that class of judicial officers which has heretofore been most efficient. The jurisdictions of the present Supreme Court and Court of Chancery are united in one Supreme Court by the plan proposed. In regard to this union of the two courts there has been a difference of opinion among the members of the committee. On the one hand it has been urged with great force, that the perfection of skill, in learning as in the arts, is best attained by the division of labor; and that in the vast field of jurisprudence it would be better to class the laborers into separate departments, so that the skill and learning of each might be limited and directed to that one particular branch of duty for which he might be most eminently qualified. On the other hand that system is supposed by some to be attended with the inconvenience of having too many tribunals. By others it is believed that by uniting the two tribunals in one the mode of procedure at law and in equity, which now differ widely, may immediately by legal enactment or more gradually by the action and practice of the court be assimilated and finally blended, thus obliterating and abolishing the distinction between law and equity as heretofore recognized. Without coming to this conclusion, several of the committee who were inclined to favor the continuance of separate courts, have regarded it as a question not of vital importance; and they have yielded their original preference for separate courts in favor of what they deem the greater advantages of the plan reported. The union of the two jurisdictions in the same court is not an untried experiment. It has the sanction of a number of the states; and in part of the judicial system of the United States. One of its advantages in connexion with the plan of the committee arises from the greater facility and convenience with which the equity causes involving questions of fact, may be tried before a jury at the circuit in the county where the parties re-

side, and without the formality and expense of a separate court. One of the changes recommended by the committee and which they all regard as highly important and useful, relates to the taking of testimony in equity causes. Heretofore it has been taken by deposition before an examiner in chancery and not in open court.—The examiner not being authorized to reject any testimony which either party proposes to take, the depositions are usually encumbered with a vast mass of matter immaterial to the questions in controversy. A great proportion of the delay and expense of litigation in chancery arises from this cause. The committee recommend a provision directing the evidence to be taken before the judge on the trial as in cases of common law. Although this is matter within the power of the legislature it has long been the subject of complaint and the evil has remained without correction. The committee consider it so essential in the way of reform, and so material in relation to the operation of the system reported, that they deem it worthy of constitutional enactment. The justices of the Supreme Court, as proposed by the committee, are to be charged with the entire judicial business—legal and equitable, civil and criminal, which has heretofore been done by the Supreme Court, the Court of Chancery, and the county courts. The weight and burthen of the business is considerably increased by the duty charged upon the judges of taking the testimony in equity cases in open court at the circuit. For these varied and extensive duties the number of judges of the Supreme Court must be large.—The committee propose eight districts, and four judges in each district—32 in the whole—of which number, however, four are to be judges of the court of appeals, leaving 28 judges for the actual business of the Supreme Court. These judges are to hold as many general and special terms in each district, and as many circuit courts and courts of oyer and terminer in each county as may be necessary. By the system thus proposed, the committee have endeavored to provide a remedy for the deficiencies of the present organization:—

1st By adapting the number of active judicial officers to the altered circumstances of the state and to the quantity of work to be done.

2nd. By reducing the number of judges of the appellate court for its greater convenience and efficiency in the despatch of business.

Third, By separating that court from its connexion with the legislative branch of the government.

Fourth, By the reduction of the number of appeals in civil cases, consequent on the establishment of a single court.

Fifth, By diminishing the delay and expense of litigation in the court of chancery in the mode of taking evidence, and by providing a number of judges sufficient to dispatch the business of that court

Sixth, By establishing a branch of the court in each of the eight districts, so that the business may be done where it arises, without journeying to distant parts of the state for the hearing of causes.

Seventh, By abolishing the system of circuit

judges; and requiring their duty to be done by the judges of the supreme court.

Eighth, By an inflexible rule that all judicial officers, above the grade of justices of the peace, shall be compensated by fixed salaries, and shall not receive fees or perquisites of office.

It has been the aim and object of the committee to give to the system proposed, all the requisite efficiency, with the smallest number of judicial officers adequate to that end; and with as little increase of expense to the treasury as may be consistent with the prompt and faithful administration of justice. How far the committee have succeeded in diminishing the number of officers, will appear by a brief comparison of the present system with that which is proposed in its place:—

The Court of Errors consists of the Lieut. Governor and Senators—in number,.....	33
The Court of Chancery, of the Chancellor and three Vice-Chancellors,.....	4
The Supreme Court, of three Judges,.....	3
Circuit Judges,.....	8
County Judges, five in each county, excepting New-York,.....	290

Making in the whole, 338 judges, besides the judges of the local city courts, which may be required to remain as they are. In the place of these 338 judges, and 168 examiners in chancery, the committee propose that the business should be done by the 36 judges mentioned in this report. But the establishment proposed by the committee must unavoidably be a charge on the treasury, somewhat heavier than the present, because the present is dependent to some extent on fees received for specific services, which the committee recommend unanimously should be entirely changed. The judges created under the new constitution, are to be compensated by fixed salaries, and not be in any respect dependent on suitors, attorneys, solicitors, or counsellors, for their livelihood or emolument; and because, although the entire number of judges is greatly diminished, the number of efficient working officers requires to be and is enlarged, for the purpose of giving greater promptness and efficiency to this branch of the government. The expense of the present system, and of that reported by the committee, will appear by the following statement:—

The expenses of the Court for the Correction of Errors in 1845, as stated by the Comptroller.....	\$26,193
Chancellor's salary.....	3,000
Vice Chancellor, 1st circuit.....	2,000
Assistant Vice Chancellor.....	2,700
Vice Chancellor of the 8th circuit.....	1,600
Three Justices of the Supreme Court.....	9,000
Eight Circuit Judges, \$1,600 each.....	12,800
Paid in 47 counties for the attendance and services of the Judges of the county courts.....	14,632
Estimated for the remaining counties.....	3,424
Amount drawn from State and County Treasuries.....	\$75,359
Fees of the Vice Chancellor of New York, the Assistant Vice Chancellor and Judge of the 1st circuit.....	\$,378
Judge of 2d circuit, returned.....	303
" 3d circuit, returned.....	800
" 4th circuit, returned.....	351
" 6th circuit estimated at.....	600
" 6th circuit estimated at.....	300
" 7th circuit, returned.....	753
" 8th circuit, returned.....	125
Fees of 86 Examiners in Chancery.....	16,336
Estimated at same rate for remainder, not returned.....	15,480

Fees paid to first Judges of counties.....	3,784
Add to this the sum before stated as drawn from the State and County Treasuries.....	\$44,096
Making a sum total of.....	\$119,464

Which constitutes the compensation paid by the state, by the counties, and by suitors in fees to the three hundred and thirty-eight judges and to the examiners in chancery, under the present organization.

An accurate compendium of the present establishment and that which the committee have proposed, cannot be made, because the committee do not propose that the salaries of the judges under the new arrangement should be fixed by the constitution. They deem it expedient that it should be left to the legislature. But if the plan proposed by the committee should be adopted by the Convention, and the legislature should fix the compensation of the thirty-six judges at the same sum which is now paid to the judges of the present Supreme Court, the amount (which would be \$108,000) is less than the sum now paid to the judges and examiners, although it is more than is drawn from the public treasuries. But when we take into view the great increase of the population and wealth of the state since the present system was established, the actual expense upon the treasury will be less in proportion to the means of defraying it than that of the present system was when it was established. But if it should be deemed just that the suitors should contribute towards the expenses of the establishment and thus relieve the treasury from a part of the burthen, a small sum paid in each case at some specified stage of its progress, into the hands of the clerks for the benefit of the treasury, will effect that object without increasing the expense to the public beyond what is now paid in the shape of fees.— This however is not suggested by the committee as expedient to be adopted either here or in the legislature. The object of the chairman is only to show that the establishment proposed by the committee is neither beyond the wants nor beyond the means of the state in principles of strict economy. Dividing the population of the state, which is 2,604,495, by the number of judges proposed by the committee, and the result, if the report should be adopted, will be that we shall have one judge to every 72,347 inhabitants. On a comparison of our own with other states, it is found that the number of our judges will be smaller in proportion to our population than in any state in the union, excepting two. Massachusetts has one judge to 73,769 inhabitants, according to the census of 1840, and North Carolina to 75,341, according to the same enumeration. In Massachusetts their judges are heavily burthened with duty. In North Carolina, if the slave population is deducted, that state has one judge to every 51,000 inhabitants. In considering this plan of the committee, with respect to the number of judges, the more doubtful question is whether the number is not too small. The system proposed, is, however, capable of expansion without further constitutional provision. This may be done by adding to the number of districts after the state census of

1855; or by the establishment of superior courts if the supreme courts should be found overcharged with business. As to the mode by which the judges should be selected, whether by appointment or by popular election, the members of the committee entertained different opinions. They understand that the same differences of opinion exist in the Convention. The plan submitted in the report is adapted to either mode of selection, and believing that on this point, which has been the subject of much conversation and discussion, the opinions of the committee may better be ascertained on the floor than by the report, they have reported, and respectfully submit a proposition in the alternative. So that the Convention may adopt that which it may in its wisdom deem the most advantageous to the public. The present, for obvious reasons, is not a suitable occasion for entering into a discussion of that topic. It will, doubtless, receive, at the proper time, that attention from the Convention which its great importance deserves.

Mr. O'CONOR presented a minority report; which the Secretary read as follows:—

ARTICLE.—

§ 1. The judicial power of this state shall be vested in the Supreme Court, and the inferior courts mentioned in this article; subject to such appellate jurisdiction as may be vested in the Court of Appeals.

§ 2. The state shall be divided by law into a convenient number of districts, not less than eight nor more than twelve, subject to alteration from time to time as the public good may require; in each of which there shall be elected by the people one judge of the Court of Appeals; and for each of which there shall be appointed by the supervisors of the towns and wards therein, at a joint meeting, three district judges, or so many more as may be directed by general laws.

§ 3. The Court of Appeals shall consist of the Lieutenant-Governor, the judges so elected, or the major part of them, and any two judges of the Supreme Court. In the absence of the Lieutenant-Governor the senior justice present shall preside. The judges of the court below shall assign the reasons for their decision, and the same shall not be reversed or altered without the concurrence of six members.

§ 4. The Supreme Court shall consist of a chief justice and twelve justices, any of whom may hold the court.

§ 5. Civil cases at issue in the Supreme Court, whether triable by jury or not, may be tried before any of the judges before mentioned in this article. Any three of said judges, or any one of them, with one or more of the county judges may hold courts of oyer and terminer and general jail delivery.

§ 6. The county courts may be held by the district or county judges or any of them. The general sessions of the peace may be held by any three of said judges, or by any one of them with two justices of the peace.

§ 7. There shall be in each county one or more county judges, and in each town one or more justices of the peace, as may be directed by general laws. The number of justices of the peace in cities and wards thereof and in villages, shall be prescribed by law.

§ 8. Courts of civil jurisdiction, having a clerk and seal, to be held by three or more judges, may be established in any city, and courts of summary process, having a clerk, and to be held by one or more justices of the peace, may be established in any city, ward or wards, town or village.

§ 9. Appeals may be allowed by general laws from decisions of a city or county court held before three or more judges, directly to the Court of Appeals.

§ 10. The Justices of the Supreme Court shall be appointed by the Senate and Assembly in joint meeting, at which the President of the Senate shall preside. And if such President be the Lt. Governor, he shall have a casting vote only. Clerks of the Supreme Court shall be elected by the people of the state or district as may be directed by law. County Judges shall be appointed by the Boards of Supervisors, and City Judges and their Clerks by the Common Councils of the cities. In towns, the Justices of the Peace and Clerks of Jus-

ties' Courts shall be elected by the people, and in cities, wards and villages, shall be appointed by such local authorities, or elected by the people as may be prescribed by general laws.

§ 11. Clerks of courts, Justices of the Peace, and County Judges shall hold their offices for four years; Judges of the Court of Appeals, District and City Judges for ten years, and Justices of the Supreme Court during good behaviour, or until they attain the age of seventy years.

§ 12. Justices of the Peace may be vested with jurisdiction, in civil cases for money demands not exceeding \$100.

§ 13. All Judges and Justices mentioned in this article or any of them, may be vested with such jurisdiction as conservators of the peace or otherwise, as may be prescribed by law.

§ 14. County and City Judges, and Clerks of the Supreme and City Courts, may be removed by the Senate on the recommendation of the Governor and Justices of the Peace, and Clerks of Justices' Courts, may be removed by the County Courts, for causes to be specified in the recommendation or order of removal. The officer shall have notice of the charge against him and the right of being heard thereon before the Governor or County Court.

§ 15. Vacancies in any of the offices mentioned in this article, happening by death or otherwise, may be filled by temporary appointments as may be prescribed by law.

§ 16. No Judge shall hold any other office or public trust, and all votes given for any of them during his continuance in office shall be void.

§ 17. No judge, nor any justice of the peace, authorized to hold any court mentioned in the 8th section of this article, shall exercise any power of appointment to office, or receive any fees or reward for any services whatever, except a stated salary to be prescribed by law, and to be unalterable during his term of office.— Courts and judges may be authorized to appoint trustees, receivers, auditors, referees, elisors, experts, and other agents, to perform duties in any pending suit or matter, and to license counsellors and attorneys.

§ 18. A code of procedure in civil suits shall be enacted within two years, subject to alteration by law. The Supreme Court, subject to control by law, shall establish uniform rules of practice for all civil courts in this state, except the Court of Appeals.

§ 19. All causes and matters depending in the Court of Chancery, shall be transferred to the Supreme Court. The transfer or continuance, as may be required, of all other causes and matters depending, shall be directed by law.

The following section should be inserted in the chapter on the legislative department, immediately after the section No. 12, in the constitution of 1821:

§—. The Assembly, by the concurrence of a majority of the number elected, may impeach any civil officer for mal or corrupt conduct in office, or for high crimes and misdemeanors. The Senate, with the judges of appeals, or the major part of them, shall have sole power to try all impeachments. Before sitting on such trial, each member shall take and subscribe a solemn declaration, truly and impartially to try and determine the charge in question. When the Governor is impeached, the Lieut. Governor shall take no part in the trial. No conviction shall take place without the concurrence of two thirds of the members present; nor shall judgment extend further than to removal from office; but the party convicted shall be liable to indictment and punishment according to law.

Respectfully submitted.

CHARLES O'CONOR.

Mr. O'CONOR said it was not necessary that he should do more at this time than to state briefly the points on which he differed from a majority of the committee. That difference to be sure would sufficiently appear from his written report, yet according to usage he would briefly state it, that it might come before the minds of the members more clearly, by being unconnected with the minor details which in a paper of this kind are apt to divert attention from the principle involved.—

He was of opinion that it was quite proper to preserve that feature in our judicial system, which authorizes the people to elect the greater part, or nearly all the judges of the court of appeals in the last resort. He was of that opinion because it was desirable as far as conveniently practicable to vest the power of appointment to office in the people rather than in any select body; and also because he conceived there would be no difficulty in the people acquiring such a degree of knowledge concerning the character and capacity of every candidate, as might be necessary to enable them to determine his fitness to hold a seat in that high tribunal. But in reference to such departments as the supreme court and the county courts, if indeed those tribunals are to be preserved, his reflections had led him to a different conclusion. In those courts not only are integrity and soundness of judgment, and great general capacity and good sense, required; but also an extensive knowledge of what is commonly called the technicalities, or the more artificial details of the legal machinery and great experience in the application of them. As to these courts, it struck him with great force to be eminently proper that the people should make choice of the judges through the instrumentality of some select body or committee appointed to make the selection. Taking for his guide in this matter, the practice which has long obtained throughout the country, in the organization of the school districts, where the people elect all their ordinary governing officers but do not assume the appointment of the teachers, referring their selection to a select body. In that way only can we examine into the minute details as to capacity and fitness in the candidate which are requisite to be known, before a proper choice can be made. From want of opportunities of observation, and not from want of capacity to judge, he conceived that the people could not, in their own persons, make the best selections. The principle of election by the people, he would retain in the judicial department to the full extent in which it had been sanctioned and applied in former usage; that is to say, in the construction of the court of appeals in the last resort. He did not agree with the committee, in the propriety of extending it to the selection of the judges of first instance. He also dissented from the majority in their resolution to abolish the county courts. It now seemed, though he did not know it until this morning, that he was in a minority on that point. He had supposed a majority was in favor of upholding these county courts. In this he differed radically with the committee, for he held it to be expedient not to annihilate the county courts because they were now inefficient, as indeed all the courts were. On the contrary he deemed it a sounder policy to preserve, reorganize and strengthen, so as to qualify them for the dispatch of business. By this means the greater portion of the business of the state would be performed in these tribunals. Intimately connected with this difference between himself and the committee, was another in relation to the structure of the supreme court. Desiring to preserve the county courts by means of a district organization which would raise those courts to a very high grade in point of ca-

capacity, he deemed it highly desirable to preserve the singleness and unity of the supreme court. It might meet in as many places, and hold as many terms as the legislature might direct but he considered it essential to the preservation of private right, and public liberty and vitally important in reference to the legal reputation of the state, that we should retain one single, uniform supreme court, and not a court split up into fragments like that reported by the committee. Herein again he differed radically from the committee. He would state another and a leading reason why he had presented a distinct and fully written out system different from that presented by the committee. Whilst he was very much disposed to preserve essentially the existing state of things so far as the judges and the modes of organizing the courts were concerned—and in that respect might be considered as acting on a strongly conservative principle. Yet in respect to the forms of practice and pleadings, these minor details administrative of civil justice he went far beyond the majority of the committee, in the disposition to make what might be called radical changes. The Convention had been informed by the chairman that the committee had determined by a considerable majority to bring together the administration of what was called law and equity and to direct justice in these two forms to be administered in the same courts, acting, as the chairman inform us, in some measure under the idea that at some period those two forms or methods of administering civil justice might be perfectly blended, so that there should no longer be recognized or known such a distinction as law and equity—a distinction which it must be admitted it would be highly desirable to abolish. He deemed it an evil that we should have recognized in the constitution by an express provision the truth of that saying which the unlearned in the metaphysics of law or legal practice are apt to indulge in when they find fault with a legal decision—to wit, that law is one thing and equity or good conscience is another. He thought there was no ground for the distinction, and that civil justice in all its forms and phases might be and ought to be administered in the same tribunals and in one uniform mode of procedure.—Although it had been his fortune to practice for a good many years in the rigid and technical forms of the common law and though he did not hesitate to say, even here, that he was as capable of fencing with them as his neighbors, and of taking care that his clients should not suffer from their misapplication, yet he had long thought that there was no propriety in the existing distinctions in the forms of practice and pleading, between these two tribunals—that of law and equity;—and therefore, with the same view as the committee, that of ultimately blending them together, and forming one consistent, uniform and harmonious method of practice in the administration of justice, he had brought forward, as well as the committee, a system tending to that end.—His method of effecting the result differed from that of the committee in this one important respect—in no part of the article which he had presented had he introduced the phrases—courts of law, and courts of equity—jurisdiction in

law, or jurisdiction in equity. By thus denying to the distinction a constitutional recognition, it was left fully and unquestionably within the power of the legislature, should they in their wisdom, on a full examination of the subject, find it proper to blend the system, to do so. It left the law-making and law-reforming power unembarrassed by any language in the constitution, which might be a barrier to such blending. It also left to them the power of retracing their steps, if, after making the experiment, it should be found that the project of blending the two systems was impracticable—was, as some supposed, a dream of visionary enthusiasts in law-reform. If enlightened by the developments of experience, they should find the distinction salutary, they would be free to erect anew this barrier between *law* and *conscience*, which nothing but the iron test of mischiefs actually experienced from its abolition, could convince him was necessary. It was, in a principal measure, with the view of avoiding the permanent establishment in the constitution beyond the reach of legislative power, of these two modes of proceeding, that he had felt himself constrained to write out anew the whole article; otherwise he would probably have confined himself to his right to propose, in committee of the whole, amendments of the article reported by the chairman. In other respects, he mainly concurred with the committee. Whilst he concurred most fully in the remarks of the honorable chairman, as to the expediency of assimilating the modes of taking testimony in those different classes of cases, called cases at law and cases in equity, and especially that the trial by jury should be extended as far as possible, still he had omitted that provision from his system because he conceived that these minute details belonged to the field of ordinary legislation, or to that of court rules, and not to the constitution.

Mr. KIRKLAND, from the same committee, submitted the following counter report:

ARTICLE—

Judicial Department.

§ 1. The judicial power shall be vested in the courts established or authorized by this article.

Court of Impeachments.

§ 2. There shall be a Court for the trial of Impeachments. It shall be composed of the President of the Senate, and the Senators, or the major part of them. The members of the court shall, before trying any impeachment, take an oath or affirmation impartially to try and determine the charge in question. No person shall be convicted without the concurrence of two thirds of the members present. Judgment in case of impeachment shall extend only to removal from office and disqualification to hold any office of trust, honor or profit under this State, but the person convicted shall be liable to indictment and punishment according to law. Any Judge impeached shall be suspended from exercising his office till his acquittal. The Assembly shall have the power of impeaching all civil officers of this State for corrupt practices in office and high crimes and misdemeanors, but a majority of all the members elected shall concur in an impeachment.

Supreme Court of Appeals,

§ 3. There shall be a supreme court of appeals. It shall be composed of seven (7) judges, three of whom shall be elected by the qualified electors of the State, and four of whom shall be appointed by the Governor with the consent of the Senate. It shall have appellate jurisdiction only. It shall hold at least four terms annually; said terms shall be held at different places. It shall appoint its own clerk, who shall hold during the pleasure of the court. A majority of said judges shall

constitute a quorum for holding a court. No judgment or decree shall be reversed without the votes of a majority of all the judges of said court. The senior in years of said judges shall preside in said court.

Superior Courts.

§ 4. The state shall be divided into six judicial districts, to be denominated the first, second, third, fourth, fifth and sixth judicial districts, of which the city of New York shall form the first. There shall be a Superior Court in each of the said districts, which shall have jurisdiction in all matters of law and equity within the state, and such supervisory and other power over inferior tribunals and officers within its district as now exists in the Supreme Court, subject to the appellate jurisdiction of the Supreme Court of Appeals. It shall in the first district be composed of six judges, and in each of the other districts of four judges. Two of the judges in each of said districts shall be elected by the qualified electors of such district, and the remainder of said judges shall be appointed by the joint ballot of the members of the Senate and Assembly. The Governor shall designate one of the judges thus elected as Chief Justice of the Court in the district for which he was elected. Each of said judges shall, during his continuance in office, reside in the district for which he was elected or appointed.

§ 5. The judges of the Supreme Court of Appeals, and of the Superior Court, may hold courts in any district, under such regulations as may be prescribed by law. Each of said judges shall possess the power now possessed by any judge of the Supreme Court or the Chancellor at chambers, subject to regulation & modification by law. Circuit Courts may be held by any one of said judges; and general terms of the Superior Court in any district by any three of them; and special terms by any one of them for the hearing and disposition of matters usually heard at special terms.

Courts of Oyer and Terminer may be held by any one of said judges with whom in said court shall be associated the two county judges, except in the city and county of New York, where two Aldermen of said city shall be associated with such judge in said court of oyer and terminer.

Provision shall be made by law for the transfer of causes from one district to another, and for the change of venue from one district to another, and for the change of venue to a county in the same or another district, as the ends of justice may require.

§ 6. There shall be a clerk of said superior court in each district. He shall be elected by the qualified electors of such district, and shall hold his office for four years, subject to removal by said court, for misconduct or incompetency. He shall give security, if required by law. Provision shall be made by law for supplying vacancies in said office.

§ 7. The judges of the Supreme Court of Appeals and of the Superior Courts shall hold their offices for ten years. Vacancies in the case of an elected judge shall be supplied by election, and in the case of an appointed judge, by appointment, as provided in this article. Any judge of either of said courts, elected or appointed to fill a vacancy, shall hold his office for ten years.

Provision shall be made by law for cases of an equality of votes, in all cases of election authorized by this article.

§ 8. Cases, both in law and equity, shall be tried at said Circuit courts, and without a jury, whenever the parties in interest in a suit, and the judge holding the circuit assent thereto. Provision shall be made by law for cases in law or equity not properly triable at a Circuit Court. Provision shall also be made by law for the performance of the duties heretofore performed by masters in chancery.

Circuit Court and Surrogate.

§ 9. There shall in each county be a county court, which shall have the jurisdiction now existing in the county courts, subject to modification and alteration by law; and also such equity and other jurisdiction as may be conferred by law.

In the first judicial district there shall be four district judges of the county court; each of them shall alone hold county courts in said district, for the trial and disposition of civil cases. In criminal cases, two of the aldermen of the city of New-York shall be associated with any one of said district judges. In each of the other judicial districts, there shall be a district judge of the county court: he shall alone hold courts for the trial and disposition of civil cases in each

county in his district. In criminal cases, the two county judges shall be associated with him. The term of office of said district judges shall be eight years. They shall be appointed by the joint ballot of the Senate and Assembly. Any district judge appointed to fill a vacancy, shall hold his office for eight years.

The district judges of one district may hold courts in any other district, and shall do so when required by law; and said district judges may be authorized by law to hold circuit courts.

There shall in each county be a first judge and an associate judge. They shall be elected by the qualified electors of such county, and shall hold their offices for four years. The first judge shall have and exercise the powers and duties of surrogate in his county. Each of said county judges shall also have and exercise such other powers and jurisdiction as may be conferred by law. Provision shall be made by law for cases of vacancy in the office of said first judge and associate judge, or either of them, and for the case of the absence or inability of them, or either of them, to perform any of their official duties.

§ 10. Appeals from the judgments or decrees of a county court shall be brought to the superior court of the district in which said county is situated. In case of affirmance, no further appeal shall be allowed.

Miscellaneous Provisions.

§ 11. Laws may be passed to diminish the number of the judges of the supreme court, court of appeals, and of the judges of the superior court, and of the district judges of the county court in any district, if the number hereby authorized shall be unnecessary. Laws may be passed to increase the number of the judges of the supreme court of appeals, and the judges of the superior court, and the said district judges in any district whenever and as often as the public interests demand.—Any such additional judge shall be elected or appointed as shall be prescribed by the law authorizing such additional judge. The districts in this article mentioned may be altered by law whenever and as often as the public interests demand. No law authorizing a diminution or increase in the number of judges or the alteration of any district shall be passed without the votes of two-thirds of the members elected to each branch of the legislature, and no such law shall affect any judge then in office.

§ 12. The Judges in this article mentioned, shall receive stated annual salaries. The salary of no Judge shall be diminished during his continuance in office.—The said Judges shall receive no fees or perquisites of office. No one of them shall, during his continuance in office, hold any other office under this state, and all votes for any office (except the office of Judge) given by the legislature or the people, or any Judge while in office shall be void.

No provision of this section shall apply to the said Associate Judges.

§ 13. The Governor shall remove any of the said Judges, on the address of two-thirds of the members of each branch of the legislature; provided, however, that the cause or causes shall be stated in full in such address, and entered at large on the journals of each house; and the Judge intended to be removed shall have reasonable notice of the same, and shall be admitted to a hearing in his defence, before such shall be adopted. In any case of such address, the vote shall be taken by ayes and nays, and be entered on the journals of each House.

§ 14. Laws may be passed for the creation of local courts, with jurisdiction inferior to that of the County Court, and for the continuance of such courts now existing.

Justices of the Peace.

§ 15. Justices of the Peace shall continue to be elected as they are now elected. Their number, powers and duties shall continue as they now are, subject to modifications and alterations therein by law. Laws shall be passed to abolish appeals as now authorized from courts of Justices of the Peace, and for further trial and final decision in such cases in the same town where the first trial was had, or in an adjoining town.

Respectfully submitted, C. F. KIRKLAND.

Mr. K. explained his plan at some length.

Mr. BASCOM said that however much he regretted the necessity of increasing the number of reports from the judiciary committee, he would detain the Convention with no other apol-

ogy than to say that a sense of duty impelled him to submit another minority report. He objected particularly to that part of the report that sought to perpetuate exclusive chancery jurisdiction during the continuance of the constitution. Heretofore this jurisdiction had been created and continued by law, and could be by law limited or destroyed. He objected too, to the mode proposed for the appointment of the judges. He objected also that the proposition of the committee does not distribute the sessions of the court sufficiently throughout the state. It provides for a session of the court in each of the eight districts. He desired that bank sessions should be held in all or nearly all the counties of the state. He objected also to the power proposed to be given to the legislature, not only to increase the judges of the proposed courts, but to create and multiply inferior courts without limitation. Entertaining these objections, he had felt it his duty to prepare an article, which he now respectfully asked leave to submit:—

ARTICLE —

§ 1. A court for the trial of impeachments shall consist of the President of the Senate, the Senators or a major part of them, and the judges of the supreme court or a major part of them, whose term of office shall be within two years and not within one year of its expiration. And the senators and judges taking their seats in the said court for the trial of an impeachment, shall continue members thereof until the same shall be determined, notwithstanding the expiration of their term. No officer against whom an impeachment may have been presented shall, at any time, be a member of the said court. The impeachment of an officer shall suspend him from the discharge of his official functions.

§ 2. The Assembly shall have power of impeaching all civil officers of this state for mal and corrupt conduct in office and high crimes and misdemeanors, by a majority of all the members elected concurring.

Judgment in cases of impeachment shall not extend further than the removal from offices and shall not be a bar to an indictment.

§ 3. All other judicial power shall be vested in justices' courts, a Supreme court and in Surrogates.

§ 4. Justices of the peace shall be chosen by the electors in such districts, in such numbers and for such periods of time, and their powers, jurisdiction and duties shall be such as are, or may be, prescribed by law.

The supreme court shall have such powers and jurisdiction as shall be prescribed by law.

There shall be thirty-two judges thereof, one of which shall be elected by the electors of each of the Senate districts, at a special election at which no other officer shall be chosen.

The said judges shall hold their office for four years, except a part of those first to be chosen. Vacancies shall be filled at special elections to be ordered by the governor, and judges chosen to fill vacancies shall hold only for the unexpired term.

§ 6. Four of the Senate districts shall compose a judicial district, and the judges first to be chosen in a judicial district shall at a time and place to be designated by the Governor, meet and draw for terms, of one, two, three and four years. The term of the judges chosen in the different judicial districts, shall commence in different months of the year.

§ 7. There shall be a circuit session by one of the judges of the supreme court in each of the counties of the judicial district, as often as the judges thereof shall deem proper, for the trial by jury of all issues that may be joined in civil and criminal causes, and for the rendering of final judgments in criminal causes. For the trial and decision of criminal causes there shall be associated with the judge, the surrogate and one justice of the peace of the county, or in the absence of the surrogate two justices of the peace.

§ 8. There shall be bank sessions of not less than three nor more than four judges of the Supreme Court in the several counties of the judicial districts, at such times and places as to the judges thereof shall seem proper, to review the decisions and proceedings of the

circuit sessions, and to discharge such other duties in relation to the administration of justice and the establishment of rights as shall be prescribed by law.

§ 9. There shall be appeal sessions composed of the judges whose term of office shall be within one year of its termination, in the several judicial districts of the State at such times and places as shall be appointed by the said judges, unless said times and places shall be fixed by law, at which the decisions of the sessions in banc may be reviewed and such other judicial powers exercised as shall be prescribed by law.

§ 10. Surrogates of counties shall be chosen by the electors thereof, and shall hold their offices for four years.

Their powers and jurisdiction over the estates of deceased persons and other matters, shall be such as are, or may be prescribed by law.

The legislature may provide that issues joined in any proceedings before surrogates may be tried at the Circuit Sessions, and that any of the proceedings of Surrogates may be reviewed by the Supreme Court.

§ 11. The Clerks of the several counties of this state shall be clerks of the Supreme Court with such powers and duties as shall be prescribed by law.

§ 12. A clerk of the Appeal sessions shall be appointed by the judges thereof, who shall hold his office at the pleasure of the said judges, and shall receive such compensation as shall be prescribed by law.

§ 13. The judges of the supreme court shall receive no fees or perquisites of office, other than a fixed salary; and any alteration thereof shall only effect those to be thereafter chosen; but an allowance for traveling expense, in addition to a fixed salary, may be made to a judge required to discharge judicial duties without his judicial district.

Respectfully submitted. ANSEL BASCOM.

Mr. SIMMONS said he had no minority report to make, but he wished to define his position. Some three or four years ago, it was known to the Convention, he was instrumental in attempting to procure the action of the legislature on amendments to the constitution which were nearly adopted. Those amendments were for the improvement of our judicial system, some of them agreeing with and others differing from those now proposed, and therefore the Convention would excuse him for taking a few minutes to make an explanation. He had assented to the majority report being brought in for consideration, and if he could not get any thing better he should go for it, for he held it to be the duty of every patriotic man not to oppose all that was offered because he did not get as much as suited his inclinations. He confessed here were some radical differences of opinion, between the majority report and his own views; and although he must frankly confess that the very beautiful exposition of it by the chairman (Mr. RUGGLES) had made it appear a little better to him than it did last evening; yet there were some things he could not approve, except in the alternative that he could not get anything better. He should go for it in preference to any thing worse if he could make the distinction.—He would state briefly some of the things to which he objected in this report, and a few of the particulars in which he differed from the committee. First, then, as to the mode of appointment of judges. He could not think that the deliberate and well considered and settled opinion of the people of this state was in favor of the election of the judges of the Supreme Court. And yet he confessed he was of opinion that the people were in favor of some change by which they shall be brought nearer to the people, and the state courts more diffused and less centralized than the system we now have. And perhaps some such method might be hit

upon as that adopted in Vermont, where the election was by the joint ballot of the two houses of the legislature. But the present mode would satisfy him better than a resort to popular elections for judges of the Supreme Court, if they were to hold office for only the short term of eight years. Then as to the tenure of office. He could not think that the best interest of the state was consistent with so short a term as eight years, considering the little inducement it would be for gentlemen who were competent to fill the highest judicial offices of the state. He would not now enter into the discussion of this question—he would merely suggest as an excuse for his opinion, that the best men—those very persons who ought to fill such places, would be the least likely to consent to take them for so very short a term. He had no objection to an election by the people, provided the tenure of office could be made long enough, and the incumbents could be made ineligible for another term, and could do as well for themselves in that position as they could in other employments. If this could be secured he thought an election by the people would be the best mode of appointment. He was for an election by the people if they could get the term right, and that he believed was the opinion of the best men in the state. He would like the term till sixty-five years of age, but if that was too long, then for a term of years long enough to induce the best talents to accept the place. Without this security we should effectually destroy the judiciary. And next, as to the organization of these courts. In regard to the number of judges, he did not materially differ from the committee. He had first thought there should be thirty-two; or some number from thirty to forty, which could be best arranged in judicial districts for the purposes of business. Then there were *nisi prius* duties and bench duties. He thought there should no longer be a divorce between the subtleties and niceties of book learning and practical knowledge derived from practice and experience in the trial of causes which draws more largely on the common sense. Those two streams of knowledge must have a confluence in forming the mind of the judge. The committee were all unanimous as to that. And then there was the mode of taking testimony in equity cases. They were all agreed also on the necessity of a change there. But then came a point on which he had to differ from the committee, and he hoped the Convention would view it in the same light with himself, when the subject came to be fully considered. He thought that having this great expansion of judges of from thirty-two to thirty-six, and arranged on a kind of spirit level system over the whole state, would break down the moral power and influence of the court, and that it was necessary to provide some head to be looked up to, whose opinions should be considered as authentic and undisputed law, and whose decisions should be received as legal oracles, which should have a moral weight beyond its mere power of legal coercion. He feared we should, by such an expansion, have a system which would become so allow in proportion to its breadth. He wished to see about one-half this number of judges, say sixteen, formed into state courts of general concurrent

jurisdiction, and so raised above the rest as to be considered the great expositors of the law—whose decisions should be published, and referred to as precedents, and sustain the reputation of our reports. And then he wished to have the other sixteen judges so arranged as to form a system of superior courts, something like the superior court in the city of New-York; but local, as contradistinguished from the state courts, and supplying the places of the county courts. With such a system, he thought the people would be satisfied. It was evident that in the improvement of our judicial system, two great points were necessary to be attained. One was, the enlargement of the judicial force, so as to make it adequate to the growing wants of the state, whose population and business had now outgrown its judicial institutions; and the other was a more equal arrangement of these forces locally over the state—so that while enlarging, we should avoid centralizing our courts too much. It was desirable to avoid both extremes. One of the great inconveniences in this state, had been, that the courts in bank had been too much centralized; and thus the suitors in the extremities of the state had been obliged, in getting their law business done, to be subject to double expenditures. They had to transport their causes, papers and counsel, one or two hundred miles to the place where the court sat. Now in improving this system, it seemed to him that they could accomplish both objects, of keeping up the state courts, as heretofore, in the prominent, central points of the state, and giving, at the same time, more expansion to the judiciary, by creating, and distributing to other parts of the state, an equal number of local superior courts. By the erection of these, of equal grade, in effect, with the state courts, they would have secured all the substantial objects of equalization as well as enlargement of the courts so far as necessary for practical purposes—all the advantages of local courts distributed so as to accommodate all without losing or lessening the advantages of the state courts as heretofore organized. We now have eleven supreme court judges and four equity judges in the court of chancery. Now with one additional supreme court judge, this was judicial force enough for the state courts. The twelve judges could be arranged into sections or divisions of four each, for the business of courts in bank, and all ride the circuits in vacations to hold nisi prius courts; while the four equity judges might constitute a state court of equity to sit at four different places in bank, and each judge in vacation ride his equity circuit and take plea testimony. Then let the additional sixteen judges be distributed through the state under a similar organization of three superior courts or sections of a superior court of law, and the other four should constitute the superior court of equity: if the terms in bank of these superior courts should be located at different points from those of the supreme court, you would attain all the benefits of equal distribution in bringing justice home to the suitors, while you would save all the advantages and reputation of the state courts as to weight of character and moral influence. Mr. S. thought it would not do to break up our state judiciary into mere provincial or district courts. But then

he must candidly admit that the point on which he most essentially differed from the proposition brought before the Convention by the majority of the committee and by each of the minority reports was one, that, unless he was very much mistaken this Convention would ultimately adopt, and that is the separation of the law and equity jurisdiction into different courts as heretofore, and not their union in the same court. Mr. S. wished to organize the judiciary so as to have one-fourth part of the state courts serve as equity courts, and the other three-fourths as law courts. He could not for a moment conceive that it was wise and proper in us to blend these jurisdictions at the very time when other states, as far as he had been able to ascertain, were moving in an opposite direction, and were more and more separating the equity from the law courts with a view to obtain all the advantages arising from a sub-division of labor and improvements of the science—he could not think it would be wise in us, in opposition to the declared opinions of every judge he had read of, from Lord Bacon down to Chancellor Kent and Judge Story—to amalgamate those two jurisdictions. He thought it highly dangerous to convert this standing army of judges into so many chancellors, with all the arbitrary power of that court. We had long ago attained to the separation, and he thought we had better hold to what we had got. We had got a *certainly* in common law courts, and jury trials, and we ought not to hazard this security by mixing them up with equity powers in the same hands. There were, however, a good many things in the majority report which he should sustain, and he should seek to make it as much better as possible. He did not think it advisable to bring in a minority report. He knew the disadvantage in a deliberative body of confusing the mind by double images of varied projects; and being aware that several reports were coming in, he felt that it would be better to go in this qualified way with the majority, and rely on his good fortune to carry amendments, adapted to his purpose, in the committee of the whole or in the Convention.

Mr. LOOMIS said that perhaps it would not be improper if he should follow the example of his associates on the committee, who had felt it to be their duty to address the Convention and define their positions in this matter. He desired to be understood as concurring with cordiality in the main principles and leading features of the report of the committee presented, by its chairman, to the Convention this morning. In saying this, however, he desired to be understood as not indicating an opinion that the report of the majority was perfect in its details, or that it contained all that he should desire to see embodied in the Constitution. nor yet that some matters of minor import contained in it might not be changed with advantage; and he should feel the same liberty which had been expressed by his associates of the committee, to ask a modification of any part of it when it should come under consideration. There was, however, one further view of the matter, and it was the principal inducement for him to address the Convention on this occasion; neither the report of the majority nor that of any member as a minority, as far as he had

heard them, contained what seemed to him a very desirable provision—a plan for another court, a humbler court—a court of little pretension but of great utility—one much more needed in the transaction of ordinary, necessary business, than the higher tribunals. He desired to see something of this kind provided for in the constitution, and for that purpose he should submit, before he set down, three sections taken from a judicial system, which he had drawn up in the progress of the labors of the judiciary committee, as others had. He should not submit an entire *plan*, because he concurred in the report of the committee in its general features, but only as to this branch of it, relating to a local tribunal. He would not deem this a proper occasion to propose any amendment to the report of the committee, but rather to supply what seemed to him would be a valuable addition. He deemed it due to the Convention and to himself, that entertaining the view he did, of the necessity of a local tribunal for the transaction of business in the country, near the homes of persons having business to do, he should submit it in advance that it might be examined before the subject came up for consideration. He proposed to establish a simple county tribunal, to be confined wholly within the county—to have jurisdiction of appeals and certiorari from justices' courts, and also of a large class of neighborhood matters, such as the partition of lands, sales of infant's estates, equity powers over lunatics and drunkard's estates, removal of tenants holding over, and many other cases. There was a large amount of this kind of business necessarily arising in every county, which ought to be transacted in the neighborhood where it exists. He proposed in the three sections which he should offer, to provide for the election of officers to be called *county justices*, to have jurisdiction of the matters to which he had alluded. He would have two such county justices in every county, and more than that in the larger counties, to be determined by the legislature, as the wants of the business might require, but not to exceed one for every ten thousand inhabitants in such county. He did not propose that these officers should hold county courts for the trial of causes, as courts of common pleas are held, with all the form and expense of the attendance of sheriff, crier and county juries—but to permit all trials of issues of that kind to be had before the tribunal reported by the committee, at their circuit courts. But he designed this court to perform a kind of county circuit—to try appeals from justices' courts, in the town where they were first tried—or to allow parties to appeal to this court, before tried, so as to have it tried in the first instance before a county justice, and save a second trial. They might hold law terms together, if desired to settle such questions as might arise before them not requiring a jury; but it seemed to him well to have a set of county judges who would go to the place where parties, jurors and witnesses live to try the causes as they might arise, rather than incur the expense, public and private, of a general attendance of parties, witnesses and jurors at the county seat, waiting perhaps day after day, and often a week or more, for an op-

portunity to be heard in these little matters.—The sections he should present were designed to effect these objects, but to leave the particular manner to the legislature. He felt constrained to remark that he differed from two of his associates who had addressed the Convention in presenting their several plans, as to the construction which they had placed upon one part of the report of the majority of the committee. He had understood two of those gentlemen to attribute to that report, that it perpetuated the distinction between law and equity jurisdiction. Such he was confident was not the intention of the majority in making that report. On the contrary, and he spoke from his knowledge as a member of that committee and of that majority, it was not the intention of the report of the majority to perpetuate that distinction. It refers to the tribunals of law and equity as matters past. It provides for a common tribunal to have general jurisdiction over the whole matter, uniting them as to the court, but leaving the matter of blending the practice or not, to the future and to experience. It was the intention of the committee to leave it in this form and to avoid any provision by which the practice hitherto distinct, should be necessarily kept separate or necessarily combined. The system if adopted and left untrammelled by any unconstitutional restrictions in that respect would work out its own result. He proposed that these county justices should hold their offices for four years, and that provision should be made by law securing their rotation in office, so that all should not be elected at the same time after the first election. With this system of a local tribunal for the transaction of the business of the kind he had referred to, it seemed to him that the system proposed by the committee, of having but one state court to try all causes usually tried at circuit and county courts, and combining law and equity jurisdiction, possessed great advantages over other plans proposed. It would prevent delay, as all causes would be tried in the same court, and all issues joined in the county might be tried at the first circuit. It saves the necessity of drawing distinction between the jurisdiction of two or more courts, and for equalizing their business. But he would not here undertake to show its advantages. In respect to courts of justices of the peace as now organized, he did not propose to take away or change their jurisdiction—but he saw no objection to permitting litigated causes in that court to be tried, if one of the parties desired, in a higher court, in which one or both of the parties might have more confidence.—Parties litigant often suspected the bias of a justice of the peace, before whom they are required to have their rights adjudicated. This was all the explanation he deemed it material to give; and when the subject should come under consideration, he intended to move the three sections, which he now submitted. With that exception, or rather, with that addition, he again repeated, that he should cordially support all the leading features, if not the entire report, of the majority of the committee.

He then submitted the three following sections:—

§ — There shall be established a County Court in

each county, to consist of two county justices and as many more as the business of the county may require, but such number shall not be increased so as to exceed one county Justice for every 10,000 inhabitants. Such justices shall hold their offices for four years. The legislature shall fix the number for each county at the first session after the adoption of this constitution, and such number may be increased or diminished within the above prescribed limits at every fifth session of the legislature thereafter and at no other time.

§ — The county courts shall have such original and appellate jurisdiction as may be prescribed by law, and the trial of issues of fact and of appeals from justices' courts may be had before any one of such county justices in any town where the parties reside or the cause of action arose, or in an adjoining town or elsewhere as may be directed by law. Two or more law terms shall be held before such justices in every county each year. The legislature may confer on one or more of the county justices, the judicial powers and duties of surr gate and such other powers and jurisdiction in law and equity, subordinate to the supreme court, as it may deem expedient.

§ — The county justices shall be elected by the people of the several counties, at such times and in such manner, to be prescribed by law, as shall ensure rotation in office; and for that purpose, part of the justices at first elected in each county, shall hold for periods less than four years, to be determined between them by lot, under the supervision of the board of supervisors. Vacancies occurring by death or otherwise, shall be filled for the residue of the term unexpired, by the appointment by the board of supervisors.

Mr. BROWN said he desired that the report of the committee should go out to the country, accompanied by some views of his own, in regard to the subjects it embraced, and with the indulgence of the Convention, he would present them now. With the proposition of the honorable member from Herkimer to reform the Justices' courts, he could not concur. As now organized, these courts had not been the subject of any just complaint. They settled many controversies, and disposed of a large amount of litigation, with a very small consumption of the time of suitors, jurors and witnesses, and no expense whatever to the public. He was not aware of any useful reform which could be applied to them, and he would, therefore, suffer them to remain, as they now are, subject to such modifications as time and future experience, may point out. In regard to the surrogate's courts, he would have them substantially as they now are, with two exceptions. The proof of a will before the surrogate, so far as real property is concerned, was of no value whatever.—Months—he might say, years—were some times consumed in the proof of wills at great expense to the parties in interest, and in respect to any real estate claimed under or affected by the instrument, the question was as open to be controverted after the decree as it was before. He would, therefore, remove this defect, by transferring all issues upon the due execution of wills or codicils as soon as they were formed, into the supreme court for trial and final adjudication. The other exception which he took, was to the manner of the surrogate's compensation. This is derived from fees, taken from suitors and the estates of deceased persons, taxed usually by the surrogates themselves. Such a mode of compensation leads to many abuses, and much injustice—visited too often upon those who had no means of redress. The judiciary committee proposed to make the surrogate a salary office, and with those two reforms, those courts would occupy a most useful place in the judicial administration. The work entrusted by the Con-

vention to the judiciary committee, was one of great magnitude and surrounded with many difficulties. To frame a judicial system for a great and growing state, which should prove effectual to the protection and preservation of the numerous and complicated interests committed to its charge, is a work upon which hon. gentlemen might well entertain a conflict of opinion. And if the report which they had submitted, through their chairman, did not in all its details and minor parts command the concurrence of all the members of the committee, he hoped it would encounter no disfavor on that account.—The result of the deliberations of a committee so numerous—and indeed the result of the deliberations of the Convention itself—must, to some extent, be brought about by compromise. Entire unanimity was wholly out of the question. All governments of opinion were governments founded upon compromises. And unless the members of the Convention were prepared to yield their preferences for particular objects, to a limited extent, as the members of the judiciary committee had done in framing their report, all hope of the introduction of useful and wholesome reforms, into our system of government, must for the present be abandoned. It afforded him great satisfaction to know, that upon all the prominent features of the report, there was no difference of opinion. The necessity for a large increase of the judicial force, and for the separation of that force and its distribution over the territory of the state, was too apparent to admit of any doubt. How that force should be created, what it should be denominated—what should be its powers and duties—when and where those powers should be exerted, and how those duties should be performed, and for what periods of time they should be exercised, were questions upon which the committee did entertain some differences of opinion. But many of these differences were such as could be reconciled without compromising established principles. The first leading proposition of the report is the creation of thirty-six judges, for the supreme court and the court of appeals.—His own judgment was, that the number should be increased to forty. Such was his judgment at the commencement of the session, and all the protracted discussions in committee, and all the statistics furnished the Convention had served to confirm that judgment. All the business now done in the court of errors, in the supreme court, the court of chancery, and the courts of common pleas, are to be imposed upon these judges. The Convention, he thought, would concur with him, that the number was barely sufficient for the duties to be performed. The second leading proposition of the report of the committee, was the separation of the state into eight judicial districts with general and special terms of the court to be held in each district.—This second proposition was a necessary consequence of the first. For it was apparent, if the unity of the court was to be maintained, and the judges all to sit at one time and in one place as they now do, an increase of the judicial force was useless and unnecessary. No useful or beneficial application of the additional force can be made until it is severed and separated, and properly distributed. He was not

insensible to the advantage resulting from the unity of the court. Nothing but the severest necessity could justify its separation into distinct parts or benches acting independently of each other. Harmony of action, uniformity of decision, the dignity and the influence which belonged to a united and indivisible tribunal are objects which cannot be too highly valued. He would submit to many inconveniences and make many sacrifices in order to attain them. But in a state like this, with its vast population, its growing business, its wide territory, its foreign and domestic commerce, the enterprise and diversified pursuits of its people, the unity of the Supreme Court, is no longer compatible, with the due administration of justice. We must therefore submit to see the court separated in the manner proposed in the report, and its terms held in the various judicial districts of the state. In no other way can civil rights be asserted and property made secure by means of our courts of justice. The third leading proposition of the report is to unite the common law and equity jurisdictions in the same tribunal. This feature of the report had his entire approbation, and in this respect he was sorry to find himself at variance with his friend from Essex, (Mr. SIMMONS.) He was aware of the force of that gentleman's influence whenever he chose to exert it. But with the opinion of some of the ablest English judges concurring with that of the committee—with the successful example of some of the English courts—the Supreme Court of the United States, the courts of several of the states of the Union, and the equity powers exercised by the circuit judges of our own state for the last twenty years, he was encouraged to look for the happiest results from this proposition of the report. He would refer in this connection to another recommendation of the report, which he was sure would command the approbation of every member of the Convention—that was the duty imposed upon the judges to take the testimony in equity causes the same as in cases at common law. This provision will remove one of the principal causes of the delays which mark the progress of a chancery suit.—He had always regarded the practice of taking testimony before an examiner as an enormous abuse and a perversion of justice. It was oppressive upon the judge or officer whose duty it was to try the cause; it was oppressive upon, and oftentimes ruinous to the suitor who paid the expenses, and benefited no human being but the examiner who wrote down the testimony.—While his honorable friend (Mr. RUGGLES) was the Vice Chancellor of the second circuit he had seen vast bundles of depositions brought before him upon the hearing of a chancery cause, the bare sight of which was sufficient to correct all unhappy aspirations after the judicial office.—The expense of taking the evidence in this form sometimes amounts to many hundred dollars; and if he was not mistaken the gentleman from Oneida brought to the notice of the committee a case where the expenses amounted to several thousand dollars for examiners' fees alone.—When the judicial administration becomes productive of such results, it fails to preserve the interests committed to its charge. The duties which the government owes to the citizen are to

protect him in the enjoyment of life, liberty and property. But if property cannot be preserved, if civil rights cannot be enforced or defended without such enormous burthens and expenses, he submitted whether the government had not failed to fulfil one of the principal ends for which it was instituted. The fourth leading proposition of the report is the abrogation of the courts of common pleas. With very few exceptions, these courts have long since lost the public confidence. Holding their terms three or four times a year, they necessarily impose large expenses upon the county treasuries, in addition to the loss of time to parties, witnesses and jurors, without any corresponding benefits. Imperfect in their organization, feeble in their administration, few will behold their abrogation with reluctance or regret. The fifth proposition of the report is one upon which the committee had no divided opinion. It is the provision for permanent salaries to judicial officers, and the prohibition to take fees or perquisites. He had no desire, in the mode of appointing the judges, to put them beyond the reach or influence of public opinion; but in regard to the duration of their official terms, the security in which those terms should be enjoyed, and the liberality of their compensation, he would have them wholly independent. He would have them untouched, untainted and uncontaminated by a miserable traffic in the fees of office. Nothing in his judgment tended so much to lessen the dignity and impair the influence of the judicial office, or to bring reproach upon judicial administration, as this system of compensation by fees. All the propositions to which he had referred had the approbation of a large majority of the committee, and if they could be embodied into the constitution by a concurrence of a majority of the Convention, he was sure they would be attended with the happiest results. There were some other provisions which he should have been glad to have seen engrafted upon the report. It was his wish that the terms of the Court of Appeals and the terms of the Supreme Court should be justly distributed amongst the proposed judicial districts by constitutional provision. It was far easier and more appropriate for the courts to follow the people, than for the people to follow the courts; and he hoped to see the time when the necessity of sending causes from one extremity of the state to another, for argument and decision would no longer exist. Provision should also have been made in the report for the election and compensation of a clerk of the supreme court for each of the eight judicial districts. In addition to their duties upon the common law side of the court, they will be required to perform all the duties now performed by the registers and clerks in chancery.—The office will be one of great responsibility, requiring more than common ability. He hoped the Convention would make them elective, and remunerate them by salaries. The fees of the clerks of the supreme court had heretofore been the subject of some complaint, and of some legislation. The people of the state had seen—what he hoped they might never see again—judges come down from the bench, to reap those rich rewards as mere clerks of their own courts which legislation denied to learning and to in-

tellectual labor of the highest order. As a means or measure of compensation, fees were justly obnoxious to many objections. They are the legitimate offspring of monarchical government, and are often the source of the most flagrant abuses. They afford the only measure of compensation by which the real amount received is concealed from public observation and large contributions levied upon the labor of the people, without their consent. Under an administration of government designed to benefit all alike the standard of compensation for public services should be known, and established by law, and the temptation to multiply unnecessary services and to make unjust and illegal exactions should be withheld.—The report of the committee omitted another provision which he hoped might still be inserted. He alluded to a commission to be composed of competent men to dispose of the unfinished business in the Supreme Court and the Court of Chancery. It had been said before the committee—with what degree of truth he was unable to say—that there were at this moment some 1500 litigated causes ready for hearing pending and undetermined in those two courts. The number was doubtless very large. This vast accumulation of unfinished business will derive new accessions during the coming year and will become a subject of serious public concern. Suitors whose property is dependant upon or locked up in those causes have a right to look, and do look, to this Convention for relief. Shall this business be thrown upon the tribunals we propose to establish, or shall provision be made without any delay to dispose of it before the time appointed for the new constitution to take effect, which will not be sooner than the first of January, 1848. He would greatly prefer the latter alternative. To say nothing of the injustice which would be done to the new system by thrusting upon it at the commencement all the accumulations of past years, it was due to the parties interested in those suits and to the wholesome administration of justice itself that they should be heard and determined at an earlier day.—He, therefore, hoped that authority would be given to the Governor or to the Governor and Senate, the moment the new constitution is ratified and adopted by the people, to appoint a commissioner to hear and determine causes depending in the Supreme Court, and another commissioner to hear and determine causes depending in the Court of Chancery—the judgments or decrees of the commissioners to have the same effect as if pronounced by the judges or chancellor themselves. And all the powers of the commissioners to cease at the time appointed for the new constitution to take effect. By this plan a large portion of the unfinished business would be disposed of and the new system go into operation unoppressed by the accumulations of past years. There is a large amount of money, the property of suitors, infants, married women, widows, persons of unsound mind, and unknown and absent owners of real estate, in the custody or under the control of the various courts of record in the state.—In the Court of Chancery alone it amounts to near three millions of dollars, but how much

remains with the other courts the documents before the Convention do not disclose. This fund is invested in the trust company deposited in banks or loaned out upon the security of bonds and mortgages. The government by its agents and instruments—the courts of law and equity—has undertaken the management of this large property, and should, in his judgment, be responsible for the due and faithful execution of the trust, yet while a large portion of this money comes into the custody of the courts without the agency or the assent of the owners, and constitutes in many instances the sole support of age and infancy and those borne down and rendered helpless by physical and mental infirmity, it cannot be controverted that should the fund be lost or wasted by the failure of the trust company, the banks, the insufficiency of the bonds and mortgages or the mal-conduct of the officers of the courts, the importunate and helpless owners would find themselves without the shadow of a remedy. The state is constantly borrowing money at interest, and must continue to be a borrower for money years to come. It could, therefore, use this fund with profit to itself and with manifest advantage to those to whom it belongs. He therefore, hoped to see embodied into the constitution about to be framed, and which should have been a part of this judicial report, a provision by virtue of which the state shall take into its own hands the fund to which he referred, and hold the same upon such terms and at such rate of interest and under such regulations as the legislature may prescribe. The security of the money, and the stability of the government would then become identical: they would stand or fall together, and the state would then become—what every free state should be—the protector and the preserver of the property and interests of those whose age or infirmities, or whose peculiar condition in society puts it out of their power to protect themselves. He would disturb no vested interests, nor introduce any sudden or inconvenient changes in regard to these funds, but he would by prospective provisions take away the instability and insecurity which under our present laws too often await upon the fortunes and subsistence of those who may find themselves suddenly bereaved of their parents and protectors. He understood that an Hon. friend of his (Mr. WHITE) designed at the proper time to submit an amendment of this kind. He hoped that gentleman would do so now, that it might be printed and made public with the report of the committee. The very able and lucid exposition which the chairman of the committee (Mr. RUGGLES) had made to the Convention rendered it unnecessary that he should say more than to express his sincere belief that, should the proposed judicial system be adopted even in a modified form, it would confer benefits upon the people of the state in the prompt, economical and enlightened administration of the law, which would more than compensate them for all the time lost and expense incurred in calling this Convention.

Mr. WHITE offered the following additional section, which he said he should at the proper time move to add to this report —

§ —. The legislature shall provide by law that all moneys in the custody or under the control of any of the courts of law or equity, for the benefit of suitors and others, at the time this Constitution shall take effect; and all moneys which shall thereafter be paid into any of the courts of record of the state, for the benefit of suitors and others, shall be paid into the treasury of the state, at such times and under such regulations, and to be held by the state for the benefit of such suitors and others, at such rate of interest as the legislature may prescribe.

Mr. TALLMADGE moved that all the re-

ports be printed, the usual number and 500 extra copies, (1300.)

Mr. CROOKER suggested that 1600 would be desirable.

Mr. TALLMADGE assented, and so amended his motion. Agreed to.

The Comptroller transmitted an answer to the resolution offered by Mr. F. F. BACKUS, as to the value, &c., of the canals, &c.

The Convention then adjourned.

MONDAY, AUGUST 3.

Prayer by the Rev. Mr. MEYER.

FUNDS IN CHANCERY.

Mr. MANN called for the consideration of the following resolution, which he offered some days ago:—

Resolved, That the Chancellor of this State be requested to direct the Register, Assistant Register and Clerks, to furnish to this Convention the separate and distinct items, with the names of all the estates, heirs, owners and parties claiming and interested, for whose benefit, and for what purposes the funds are held, whether in trust or otherwise, with the dates of the receipt of all the funds, comprising and making the aggregate amount reported or furnished in this Convention by the Chancellor, as subject to the order and control of the Court of Chancery, up to January, 1846.

Mr. M. said it was very desirable that the resolution should be adopted, that it might be known to whom the large amount of funds and property in Chancery belonged.

Mr. SIMMONS doubted the propriety of exposing the facts which the passage of this resolution would elicit.

Mr. TOWNSEND hoped the resolution would be sent to a committee.

Mr. BASCOM had doubts about the propriety of adopting the resolution. An answer would be voluminous, and he doubted whether it was necessary for the basis of any action by the Convention. There was one branch of the subject upon which he would like more information than contained in the Chancellor's report. He would like a more detailed statement in relation to what is described as "floating balances," or "floating fund." This fund, as would be seen by the Chancellor's report, was now nearly \$166,000.

In the 1st Circuit it was.....	\$36,534 18
" 2nd "	39,167 37
" 3rd "	2,938 17
" 4th "	1,879 39
" 5th "	8,799 47
" 6th "	157 64
" 7th "	9,363 08
" 8th "	16,037 09

This floating fund was made up of funds of suitors, deposited by order of the court. It was kept in banks, at interest, until it was more permanently invested or paid over to those entitled to it. If he was not misinformed, the interest that had accumulated upon these deposits in bank, or a part of it at least, had been used for the purchase of books for the Chancellor's or Vice-Chancellors' libraries, and for other purposes, in which suitors, to whom the money belonged, had no particular interest. It might be right to use the interest accumulating upon the funds of individual suitors, for such purpose,

but he could not understand why it was so. He had drawn an amendment which he had thought of offering to the resolution, to call out information in relation to this floating fund; but as he had some doubts as to its necessity or propriety, and as he did not wish to embarrass the resolution, he would not now offer it. He would like the information, but he did not see clearly what action we could take upon the subject, when we should have obtained it.

Mr. SIMMONS had not heard a resolution offered that appeared to him so irrelevant to their business. It was improper, inasmuch as it would be the means of causing the people to entertain erroneous ideas of the Court of Chancery, and because all the information sought for was in the legislative documents. If any portion of the money had been expended in the purchase of books, the gentleman from New York might rely upon it that it was done under the authority of law. But if these details should be obtained, what was to be done with them? The Convention could not legislate upon them. He hoped the gentleman would not press his motion.

Mr. MANN said the information was wanted by the people. The Convention had called for and obtained aggregate returns and of what use were they? He desired to have the items; and he had heard the expression of a general anxiety to obtain the details.

Mr. MURPHY was anxious to have some reason for this call, more satisfactory than the one which had been given. If this was anything which was connected with the business of the Convention, it would be proper to pass the resolution; but from the explanation of the gentleman from New York, it appeared that the simple object was to gratify what the gentleman called the public curiosity. It might be that it was desired to publish a statement of unclaimed funds, that their existence might be made known to those to whom they belonged, that they might make application for them, as was the practice in relation to unclaimed dividends in Banks. But he should object if the object was to spread before the public the private interest of individuals in the court of chancery, to satisfy the curiosity of some men who had a design on those funds. He thought this was not the legitimate business of this Convention, and he, therefore, moved the reference of this resolution to the Judiciary committee.

The motion to refer was agreed to.

Mr. CHAMBERLAIN presented a petition from citizens of Madison county, in relation to the revenues and canals of the state. Referred to the committee of the whole, having in charge Mr. Hoffman's report on that subject.

STATE OFFICERS.

The Convention then went into committee of the whole, and again took up the report of the sixth standing committee, Mr. JONES in the chair.

The question was on striking out in the first section the provision for salaries.

Mr. STRONG believed that this question of salaries would have to be decided here in Convention, or otherwise it would become a fruitful source of electioneering, and state officers would be elected upon the principle of high and low salaries and before election the candidates would be interrogated as to whether they were in favor of high salaries or low ones, and unless they could take the course of gentlemen from New-York, and answer both ways, it would lead to a reduction below a fair rate. He was for giving fair salaries, and having them fixed and permanent, and not fluctuating by change of parties. He believed the people had more confidence in this Convention than they would have in the next legislature, and it was our duty to determine this question and relieve the legislature from the duty of fixing the salaries of some 50 officers, and from the crowd of lobby agents who would besiege them for an increase of the salaries of their friends.

Mr. MARVIN offered the following as a substitute for the matter to be struck out :

"Each of the officers in this article named shall at stated times receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office."

Mr. PERKINS believed this amendment would substantially reach his object in the report which he had submitted on Saturday.—And after some explanations he assented to it. His views in differing from the majority report were that in the course of a long period of time, changes in the value of money, and the expenses of living, would take place, rendering a change in the amount of salaries necessary. Again, if these salaries were fixed in the constitution, it would lead to lengthened discussion among the people in regard to them, and by this means their attention would be withdrawn from the more important principles of government. He was willing for his own part, to trust this matter to the legislature. In his section of the state there had been no complaint at any time in regard to the amount of the salaries of state officers, and he did not believe there was any such feeling among the people generally. It had been urged against giving this matter to the legislature, that the efforts of partizans would be directed against these state officers, by attempts to reduce their salaries. But by taking it out of the power of the legislature to reduce or to enlarge the salaries of officers during their term, this objection would be removed. While, by this privilege of fixing them in prospective, when found too limited or too large, they might be corrected in regard to those who were to receive them in succeeding terms. The action of

the legislature had heretofore been governed by great propriety, and the salaries given were fair and equal. He was still willing to give this power into their hands, believing that they would perform the duty with well-considered and just attention to the merits of the matter.

Mr. NICHOLAS said, as a member of committee No. Six, he had differed with the majority of the committee on the subject of salaries, and reserved his right to object to the salaries of the state officers being fixed in the constitution. He believed this to be a legislative duty, and he wished to devolve it upon the legislature, and as we had commenced this system in regard to the salary of the Governor, he thought we had better adopt the same rule in all cases. It has been said that we have already deviated from this rule in regard to the pay of the legislature, which we have specified in the constitution, but they are not analogous cases for the reason that the legislature would fix *their own* compensation, if it is not limited in the constitution, and there is certainly a propriety in the compensation of the chief agents, the representatives of the people, being determined by the people themselves thro' the constitution, leaving it to their representatives to decide what shall be the compensation of all other officers of the state. The duties of these officers will necessarily vary. There is now, and it is proposed to continue a material disproportion in the compensation of these departments, and perhaps as great in their labor and responsibility. Now if the latter should hereafter be changed—if the labors and responsibilities of one department are diminished, and those of another increased, their relative compensation should undergo the same change. Insert the salaries in the constitution, and you preclude the possibility of future necessary alterations, as well in the duties of these departments as in the salaries. Mr. N. need not allude to the fluctuations in the value of labor, property, subsistence and money itself, which render it difficult to decide now what will be proper salaries for the next quarter of a century. He could not see the danger predicted by gentlemen here, if this question of salaries is left to the legislature, that it will become an issue which will influence your elections; that candidates for the legislature will be brought forward with reference to the salaries. He (Mr. N.) feared no such result. If the constitution leaves the question with the legislature, there will be no danger of salaries extravagantly high, and the people of this state would not approve of insufficient compensations. They know very well that to secure the services of competent men they must be allowed a fair remuneration for their time and labor and official responsibilities.

Mr. HOFFMAN desired to retain the advantages presented in the report of the committee, and also those of the pending amendment. For the ensuing five or ten years, this Convention could well determine what these officers should receive, and he would advise that the salaries should be fixed for that or some other limited period. Gentlemen were mistaken in supposing that the legislature could fix these salaries without difficulty. When these lobbies should be thronged with the office-seeking and office holding aristocracy, this would be found to be a diffi

cult if not a dangerous task. He would advise that we should fix the compensation for a limited period, and then for the future beyond, allow the legislature to determine, but require that whenever they shall so act, the increase or diminution of salary shall not take effect until after the expiration of the term of the incumbents then holding.

Mr. CROOKER suggested that Mr. MARVIN should except the Speaker of the Assembly from the operation of his amendments, and Mr. M. assented.

Mr. CHATFIELD at some length advocated the proposition of the committee as it stood.

Mr. HART was in favor of fixing the salaries, if there could be a principle of flexibility obtained in it, and to produce this he had prepared the following amendment, which he sent up:—

The salaries prescribed in this Article shall be subject to alteration by law at every successive period of ten years; but such alteration shall not affect the salaries of the incumbents then in office, during their respective terms.

Mr. PATTERSON thought these salaries should not be fixed in the constitution, for the reason that they would be so inflexible. No change could be made in them without an amendment of the constitution. He was in hopes that the constitution would be sent to the people without any provision of this nature. No fears need be entertained that the legislature would be besieged or influenced by lobbies in regard to this matter. He would give to the next legislature the power to fix these salaries. It could not be expected that the duties of the state officers would always remain as they now are. He was in favor of taking some portion of the power of the Comptroller out of his hands and distribute it among other state officers—to the Treasurer or Engineer and Surveyor. The Comptroller held the canals in one hand and the banks in the other. He had power to draw money from the treasury to any amount, and apply it to private uses, instead of for public purposes. To guard against this he would have the Treasurer, or some other officer, examine every matter before it went into the Comptroller's hands, and find whether there was a real claim against the state for the funds drawn, and then he should himself examine to see if it was correct. This was, as was said, a matter of legislation. And while it was given to the legislature to prescribe the duties of the state officers, he would also give them the power of fixing salaries appropriate to the extent of those duties. He had no complaints to make in regard to the amount now paid to the Comptroller; it was none too much for the duty he performed; but as heretofore had been the case, the pay of officers should be graduated in accordance with the expenses of living, &c.

Mr. RICHMOND did not like the amendment. The party in power would have these offices, and they could reward favorites or punish opponents. He thought, however, that the duties of these offices might be equalized. He would not object to leaving this with the legislature, provided you left it unrestricted. But adopt the amendment, and when the salary of a Judge was once fixed it could not be reached for 8 or 10 years. Now, why not meet this whole

question here? We are the representatives of the people and they are to pass upon our acts. But not so with the legislature. Mr. R. could not consent to the amendment.

Mr. A. W. YOUNG was opposed to fixing salaries in the constitution. First, because the duties of the state officers changed. Experience had taught this, and who would wish that the legislature should be tied down by the constitution in the matter of salaries? He believed the legislature was always sufficiently desirous of pleasing their constituents, to be guided by prudence and justice in settling such question.—There was no fear that they would increase these salaries to an extravagant extent. The legislature of the past winter was a proof of this. The people would not desire, either, to be tied down from instructing their representatives to lower salaries when too high, or increasing them when not affording a fair remuneration to the public officers. He believed that this was not a question which should engage the time and attention of the Convention. It was too small a matter, and not to be placed in the way of the settlement of the more weighty questions of the principles of government.

Mr. SIMMONS was in favor of fixing the salaries for a certain period, when they should be revised, going on from period to period. He had no plan prepared; but he gave the practice in Vermont as an illustration, where they called a Convention every seven years, for the purpose of revising their arrangement of government.—He proposed that it should be provided that a similar Convention should be held in this state every twenty or twenty-five years, for the purpose of taking our bearings and seeing where we were. There would then be no chance for getting up a political excitement by one party or another for the sake of popularity in relation to calling such a Convention. It would come round periodically, and as a matter of regulation. He would not propose that the salaries should be fixed for the period intervening between these Conventions, but for five, seven or ten years; and after they were settled he would not have them go into effect for a short time. But he did not like the organization of the departments of this state. In France there was a greater appropriateness in the public officers. There was the minister of the interior, the minister of finance, the minister of public justice, and the secretary of state. He thought this state suffered for want of a functionary to superintend the administration of justice. The secretary of state was not engrossed with too much labor. His duties should come up to his name, and he should not be merely a secretary of the legislative department. He desired to see that officer make an annual report on the business of the judicial departments, with statistical statements of crimes and convictions, civil suits, &c., so that the duties of secretary of state would embrace those of the officer who in Europe was called the "minister of justice." He went on to say that in the duties of the Comptroller, perhaps some subdivision could be made. He thought some of his duties in connection with the canals were incongruous. He ought not to be both the receiving and the disbursing agent. His duties

might be divided and diminished, whilst those of the Secretary of State might be enlarged.

Mr. HARRIS rose to suggest that the provision in relation to salaries should be stricken out, and go on with the remainder of the article. Hereafter the question might be disposed of all at once in a distinct section. He believed time would be saved by taking this course.

Mr. CHATFIELD did not assent to this proposition. If this was passed over now, he believed the Convention would not find itself disposed again to take up this question, and there would be nothing done in regard to this matter. He did not know whether the gentleman from Albany was in favor or opposed to fixing salaries, but his proposition seemed to be a convenient method of giving this subject its quietus. He proceeded to give his views in favor of the committee's report.

Mr. HOFFMAN followed in favor of fixing the salaries for a term of years, and in answer to Mr. PATTERSON'S allusions to the duties of the Comptroller, and his power to draw money. The Comptroller never had been allowed to draw money from the treasury unless he could point to the law and the section by which he was authorized to do so. Nor had there ever been a dollar of money lost in the Comptroller's office. He believed the duties of the Comptroller, for a very long period, at least, could not be lessened. He hoped the day would come when he would be of no more importance than any other citizen, but until that day should arrive, the watchful vigilance of the legislature was sufficient to make the great financial interests in his hands secure.

Mr. MARVIN had supposed this whole principle of fixing salaries in the constitution, had been settled in the discussion and decision of the Convention upon the article in relation to the executive department. Mr. M. stated the rule which he supposed should govern our action. It seemed to him not to be good policy to fix the salaries of the officers of government in the constitution. Suppose the time should come when some of these officers should have next to nothing to do, and should become a sinecure? Would it be well in such a contingency to continue the salary of such an officer unchanged? If so, it would be the beginning of a pensioning system. We had already had one officer whose duties had become almost next to nothing—the Surveyor-General, and the committee had done well to dispense with that office and substitute for it that of State Engineer and Surveyor—a very wise change in his estimation. Now might it not be, that the like result would happen in relation to some others of these officers? We could not fix a rule that would operate equitably in all time to come. This power must be left with the legislature.

Mr. PERKINS continued the debate in support of the views formerly expressed by him, and in remarks upon the powers and duties of the Comptroller.

Mr. VAN SCHOONHOVEN urged the importance of fixing these salaries in the constitution, with reference to the quieting of a subject which had been one of constant agitation in the legislature, and not unfrequently of party agitation. Such had been his legislative experience. Un-

less the amount of salaries was fixed in the constitution there would always be an agitation in regard to them. Parties would always believe that there was something to be made or lost by it. And he believed it would be wise either to fix a certain sum for a definite period, or else to settle a maximum and minimum for these salaries. He had at one time believed that there could be no sum fixed, which would be at all times right and just, in consequence of the contingencies which might arise affecting the expense of living. But he now believed that these things might be easily arranged. There never had been a time, and never would, in his opinion, when the salaries paid to our state officers were not amply sufficient to afford them a comfortable living. And if new duties should be thrown upon them hereafter, the legislature would always have authority to give them the aid of additional clerks. He had always been disposed to pay the public officers liberally.—He believed there would be no time when the sums named in the article would be too much. They could at any time, by devoting themselves to their private pursuits, realize double the amount of their salaries. They saved nothing out of the amount, or at least, not, by the strictest economy, more than four or five hundred dollars. He believed they should have an opportunity to lay up something from their pay every year. This was no more than every officer had a right to claim. Unless these salaries were fixed, it would every year be a subject of discussion and vexation in the legislature, and although it might occupy this Convention three days or three weeks in settling this question, so much time would be saved every year to the state. And it would also save the partizan conflicts upon this matter, for it would always be found that political parties would legislate in favor of their friends. He believed it was perfectly practicable for the Convention to fix salaries for at least ten years.

Mr. BASCOM said he believed he was egotistical enough to claim that he had remembered during this debate which had extended over almost every point, what the question really was—viz: whether we should fix the salaries of the state officers in the constitution, or leave it to be settled by the legislature. He intended to make a motion, but before doing so he would explain his reasons. He observed that while in committee of the whole, members did not remain in their seats giving their attention to business, having no interest in the debate, and supposing that no question would be taken, at least no votes that would appear upon the journals. For the purpose of ascertaining whether there was a quorum now in attendance, and he believed there was not, and with a view, when we got out of committee, to move that this Article be discussed in Convention, where votes could be recorded, he would move to rise and report.

Upon putting the question there were ayes 20, noes 25. No quorum.

The CHAIR again put the question, believing that there was a quorum present, and there were ayes 26, noes 34. No quorum.

The Secretary was then directed to count, and five or six members coming into the house, a quorum was found to be present.

Mr. PATTERSON found himself obliged to depart from the course he had marked out for himself, and for once to deviate from the question before the committee—in regard to which he had seen no reason to change his views. But he rose rather to answer the challenge—to point to the instance in which money had been drawn from the treasury without authority of law—and to rebut the presumption that this could not be so, from the alleged fact that legislative committees had been appointed for the last quarter of a century to examine the accounts of the state officers. The truth was that until 1833 no committee was ever appointed to examine the accounts of the canal commissioners and of the commissioners of the canal fund. But in proof of his remark that large sums of money had been drawn from the treasury without authority of law, Mr. P. went on to quote from a report made to the legislature of 1839 by Chester Loomis of the Senate, and Azariah Smith and Fortune C. White of the Assembly. In that report it was stated that during the past year different sums to the amount of \$1,290,000 had been drawn from the treasury on the warrant of the Comptroller without the authority of law. Mr. P. pointed out these instances. By the Revised Statutes it was required that the accounts of the state printer, be audited by the Comptroller. And yet the committee say, that his accounts to the amount of \$23,000 had been paid by the Comptroller without being audited. There was another item of \$400 paid to the Clerk of the Assembly, before the law authorized the same to be paid. Mr. P. read from the law to show this. Now, as to the next item of \$1,260,696 43, the Comptroller took that sum from the treasury and loaned it out to the several counties on bond and mortgage. The United States Deposit Fund was to be paid to this state in four instalments. Three of them were paid, but the fourth was withheld. The Comptroller drew his warrant on the treasury for the same amount of \$1,260,696 43 and loaned it on bond and mortgage. There was not the shadow of the authority of law for this warrant, and so this committee say. The law of 1837 authorized the loan only of what was received from the United States in the state treasury. There was another item \$2,561 paid to sheriffs and deputies for the transportation of convicts to the Auburn prison. The law of 1835 required these sums to be paid by the agents of the prison.—There was no authority for the Comptroller to advance this sum. As to the assertion that the Treasurer was a check upon the Comptroller, Mr. P. would ask where the Treasurer found the law which authorized this warrant for \$1,290,000? and yet he paid it. Mr. P. did not say nor believe that any of these moneys had been squandered. He only showed that a power had been exercised by the Comptroller which a dishonest man might use to his own advantage, and to the injury of the state, and that some such check as an auditor was essential. Mr. P. closed with some remarks on the overshadowing power of the Comptroller. He literally held the banks in one hand and the canals in the other. No other officer of the government had such power. It was too much to entrust in the hands of one man. He was in fact, "Monarch

of all he surveyed—his right there was none to dispute." But, this being a mere question of fixing salaries, he would only add that he would leave it to the legislature.

Mr. HOFFMAN said his remark in regard to the annual examinations by legislative committees, of the accounts audited by the Comptroller and paid by the Treasurer, was literally true, and applied to the last quarter of a century. He agreed that the legislature deserved some of the reproach of the gentleman from Livingston; but they were not justly subject to the reproach of having permitted an officer of the government to draw warrants, directing the Treasurer to pay money at his will and pleasure. They had directed him to draw warrants according to law, and it was only those warrants that had any validity. In every Comptroller's warrant he had seen, reference was made to the law authorizing it, with a single exception; and in that case the officer was not able to find it. Mr. H. was rather of opinion that it existed, if not in one law, in a large number. The officer probably was right by construction—certainly by necessity. As to the sum paid to the State Printer, Mr. H. believed it was the settled construction of the then law, the State Printer being under contract, that the Comptroller was to advance to him. As to the other instances named, the gentleman would find that they were according to the settled construction of law, known to the legislature, reported through its committees, and adopted by them, except in relation to one million item. The authority for that was considered unquestionable. Whether that construction was right or not, he would not argue.—Whatever was done, was done with the knowledge of the legislature. And Mr. H. submitted that the legislature was quite competent to judge whether warrants had been drawn without their authority. He had no interest in defending the Comptroller. His own feelings and prejudices were on the other side. The legislature had been remiss on this subject. It had abandoned its duty, and had given over to Executive officers a power they never should have had. As to this million and a fraction, taken and loaned out with the deposit fund money, a difference of opinion might exist. Whether it was the duty or within the power of the Comptroller, to make the loan or not, he did make it, under his construction of his power and duty, and Mr. H. believed it was the very best construction he could have given. It placed beyond hazard of loss all that money. For had it been left, as other moneys were, in the failing banks, it would have gone with them in '41 and 42. He would not quarrel with the Comptroller for saving this million and more; and Mr. H. believed he was right in his construction of his powers. The legislature never attempted to call this money back. And this was all the vindication he had to make of the Comptroller and the legislature. The former did right in taking care of these funds; and the legislature in not bringing them back into peril and danger.

Mr. CHATFIELD quoted at length from the statute defining the power of the Comptroller, to show that if there was any blame to be attached to any person in the matters alluded to, the Treasurer and the officers of the deposit

banks had their share in it—and to show that there was now as complete a system of checks upon the disbursing officers as could well be desired.

Mr. PATTERSON disclaimed having made any imputation upon the Comptroller of having squandered this money. He only stated facts, and neither the gentleman from Herkimer or Otsego had controverted a single position he had taken—that the Comptroller had drawn money from the treasury without authority of law. It was for this reason that he wanted some check upon him in the shape of an auditor.

Mr. MARVIN remarked that there was but a single principle to be settled here—and that was this question of fixing salaries in the constitution. That settled, we could go through this article very quick.

Mr. BASCOM moved to amend so as to fix the salary of the Comptroller and Secretary of State at \$2,000, instead of \$2,500. Lost.

The committee then refused to strike out that part of the section fixing salaries, as moved by Mr. KENNEDY, 30 to 38.

Mr. MARVIN moved to strike out that part of the section fixing salaries, and to insert:—

“Each of the officers in this article named, shall at stated times, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office.”

Mr. KIRKLAND, the house being thin, moved that the committee rise, which was done.

A report was received from the Comptroller, in answer to Mr. MURPHY's enquiry into the amount of stocks held by citizens of New York in the city banks and other moneyed corporations, compared with the amount held by others. [The report states the portion of the \$54,000 held by citizens of New York, to be about \$30,000.]

The Convention then took a recess.

AFTERNOON SESSION.

The committee of the whole, Mr. JONES in the chair, resumed the consideration of the article adopted by committee number six.

Mr. MARVIN'S proposition was negatived, 22 to 35.

Mr. DANA moved to amend so as to reduce the Treasurer's salary to \$1000. Lost.

Mr. SALISBURY moved to amend so as to forbid the officers named in the first section from receiving any fees or perquisites, beyond their salaries—but after some conversation withdrew it.

Mr. PERKINS moved to amend by striking out the word Treasurer, with a view to a further proposition, should that prevail, to elect the Treasurer by the legislature annually, as now. Mr. P. explained at some length the importance of having this officer, who was the only one that had in reality the keeping and disbursement of the public money, directly under the cognizance and control of the legislature, to whom his report was annually made, and to whose scrutiny and supervision he was annually subject, through a committee of the two houses. And he urged that it would be unwise to bring the election of this officer before the people once in two years, when it must be obvious that they could not be

fully informed of the manner in which he had conducted in office, or of the necessity for a change. The mode of appointment now in vogue had worked well, and he did not believe that there was that call for a change in that mode, that perhaps existed in regard to other officers, whose patronage was larger. He should also propose a change of the term of the other state officers, and a classification of them, so that one of them should be elected every year. This he regarded as important, so as not to have the entire government, executive and administrative liable to be changed once in two years—or if these officers should be elected in different years from the executive, so as not to have the executive and administrative officer in conflict politically with each other. If elected one each year, there would be more likely to be an infusion of men of both parties in the boards, which were composed of the state officers, who would operate as a check upon each other. As to the Attorney-General, who was in fact the legal adviser of the executive, it was proper that he should come in and go out with the executive; and he should not propose to change his term. He should prefer also to have the Attorney-General appointed by the Governor and Senate—but he should not press this change. He urged further, that to elect the Senate once in two years and all the state officers, and at a different time from the Governor, might bring all the branches of the state government in conflict—or if elected at the same time, might produce a clean sweep in every department, without that salutary check which parties always had upon each other. And the tendency would be, unless there was some alternative, to give the elections one year an exciting character, to be followed by a general apathy in regard to them the next.

Mr. SIMMONS concurred with the gentleman from St. Lawrence, in regard to the Treasurer. He was the holder of the public purse, and of all officers, ought to be subject to the annual and scrutinizing supervision of the representatives of the people, and removable at their will and pleasure. It would operate as a salutary check upon that officer, to know that he had not twenty-four hours that he could call his own. And he mistook public sentiment very much, if there was any call for throwing off upon the people themselves the care of the public money, which had thus far been so safely confided to their representatives in the legislature.

Mr. BASCOM opposed any change in the mode of appointing the Treasurer—and deprecated with some warmth the other changes proposed in this section—which he urged would be throwing into the hands of a state caucus, or rather of the interested lobby which would control the caucus, the nomination, and as matters stood now, the virtual designation of the officers who were to form your Canal Board, with its immense patronage. The men interested in having their favorites nominated by the state convention, would be the active men at the elections, and would claim and secure at the hands of those elected, the places they wanted. In this way, these high places would be liable to be filled by those who had a direct interest in apportioning them among the candidates. The principle of electing judicial officers, and mem

bers of the two houses, in small districts, when the electors could know who they were voting for, stood on a different principle from state officers, who could not be known to a tithe of the electors. Nor did he believe that the people demanded so radical a change in the mode of appointing state officers, as was proposed in this article. His constituents certainly did not ask for it.

Mr. RICHMOND argued that the state Treasurer was in fact appointed now by a majority of a majority caucus of the legislature. He might in fact be appointed by a majority of one of the majority members, and that being done, all of the majority had to go it, or be read out of the party—and there were few men—perhaps there never was one—who had the courage or independence to stand out against a caucus nomination. But a man who was nominated by a state convention generally had his merits canvassed, and after being nominated had got to pass the ordeal of an election, and must get votes enough to elect him, not by a viva voce vote, but through the ballot boxes. And all were aware of the influence which the central power had in controlling the nominations of a legislative caucus. Whatever might be the views of the constituency of Seneca on this subject, he could tell the gentleman that his constituents had expressed themselves warmly in favor of the election of these state officers by the people.

Mr. R. CAMPBELL here said he had been requested by a large number of delegates to make a few remarks—the substance of which was that they had fully made up their minds, and wished the privilege of voting.

Mr. SIMMONS thought the committee were proceeding under a sort of impulse which did not admit of due consideration. He confessed it was with some surprise that he found so many here who were willing to make the Treasurer elective, and for two years. There seemed to be a wonderful charm in adding names to the ticket. The complaint in his county was that there were so many elective officers—because it imposed on the people so much labor. He heard a gentleman from Clinton county say—and he lived among a very intelligent population too—that there were so many names on the town ticket now, that he would pledge \$100 that he could get his horse elected supervisor, and nobody would know it.

Mr. STETSON:—That probably was some disappointed gentleman who had lost his election.

Mr. STRONG did not see why the people could not nominate and elect a Treasurer as well as a Governor. Nor did he see why Treasurers elected by the people might not be made responsible and removable, at the pleasure of the legislature, as well as a Treasurer elected by the legislature.

Mr. SIMMONS farther explained his views—He wanted some security. Bail was good for nothing. We must have the security in the qualifications of the man.

The motion of Mr. PERKINS was rejected.

Mr. PERKINS then moved to strike out the words, "and shall hold their offices for two years." He intended to follow this up with a motion to classify these officers.

The motion was lost.

Mr. TAGGART moved to amend so that no one of the state officers should receive any fees, or perquisites besides the annual salary. Agreed to.

Mr. DANFORTH moved to amend so as to make the Commissary General also elective by the people. He had never been able to see why a distinction should be made between the Commissary General and other state officers. One of the leading objects of this Convention was, by giving the election of these officers to the people, to break up the central power here—and the principle of popular election, if applied to some of them should be applied to all. He was aware that this office was not generally considered as one of much importance—but to him there had always been a sort of necromancy about it, for it was eagerly sought after. If it was an office of importance, every section of the state ought to have the privilege of having its candidate. As it was, the selection would perhaps always be made from the city and county of New-York.

Mr. CHATFIELD opposed the motion, not without reluctance—for he generally deferred with pleasure to the views of the mover. The committee fully considered this matter, and regarding this officer as a purely military officer, not one of the Executive cabinet, they concluded to leave the matter of his appointment to the military committee, with the Adjutant General. As to its being an office much sought after, it was because to military men it was a post of distinction worth having without regard to emolument.

Mr. STETSON could not see the reason for the distinction between the man who held the purse and the man who had the custody of the military property of the state—nor why the one should be elective and not the other. As to this article generally Mr. S. said he should probably approve of most of it, except that in relation the inspection of state prisons. And when we came to that part of the article, he would attempt to picture out the course by which irresponsible men would creep from the ditch into positions where they should not be. He was only surprised indeed that further provision was not made in this article that you should elect those who were to be under the care of the inspectors. Popular or unpopular, he would endeavor to avoid the momentary impulse that fed the minds of some—for he had rather stand right with those who should come after him, than feed the breath of a morbid public sensibility in some directions. How, he asked, would inspectors be appointed?

Mr. CHATFIELD called to order. The gentleman was not discussing the question.

Mr. STETSON was willing it should be out of order. He was only going to say now that the people were fully competent with respect to all officers where they had the means and opportunity of judging. But in putting off all these duties on the people, we should see that we did not overtask, not their ability or judgment, but the machinery by which nominations were made in convention—and Mr. S. went on to describe the mode in which nominations were usually made in conventions—and to say, that

after the fatigue of disposing of some of the more important nominations had been gone through with, the minor offices—the little some-things—were usually given to appease disappointed persons and to make up a strong ticket, so that while the first nomination would be good, those made at the end, would be the worst that could be made. So it would be in nominating inspectors of state prisons. They were officers that should possess peculiar qualifications—and in his judgment it was far less objectionable to elect a judge than an officer of a low grade of duty comparatively, in which the public felt no general interest.

Mr. CHATFIELD regretted to see here so frequent a disposition to discuss every thing but the question. The committee would bear witness that he had on every occasion endeavored to confine himself to the matter in hand, and if others would do the same, we should get along with business in less than half the time.

Mr. STETSON rose here, but

Mr. CHATFIELD would not be interrupted.

Mr. STETSON would not permit the gentleman to read him a lecture.

Mr. CHATFIELD would not permit the interruption. He had the floor, and the gentleman would be good enough to take his seat.

Mr. STETSON: The gentleman should not be impertinent.

Mr. CHATFIELD went on to say that the gentleman's speech was but the ebullition of an over-excited zeal. He could not account for it, unless it was that Clinton county was favored with a state prison, and had but one member of assembly. When we got to the section in regard to prison inspectors, if we ever did, he would state the reasons for the action of the committee, and if unsatisfactory, the committee would cheerfully acquiesce in the decision of the Convention, for they had no pride of opinion to sustain here, nor did they arrogate to themselves all the wisdom of the body. What he rose to say was that we had better confine ourselves to the question instead of anticipating questions that were to come before us. As to the argument of the gentleman, he had only to set off the last part of it against the first and it would stand about balanced. If the State Convention could not select inspectors of prisons without going down into the gutters—

Mr. STETSON: The gentleman misrepresents. I said no such thing.

Mr. CHATFIELD: Then I entirely misunderstood the gentleman:

Mr. STETSON: You did, or you were willing to.

Mr. CHATFIELD: The gentleman did say it.

Mr. STETSON: No sir.

Mr. CHATFIELD: Other ears than mine heard it.

Mr. STETSON: No ears could have heard it. I never said so.

Mr. CHATFIELD went on to reassert that it was as he stated—

Mr. STETSON: Order—I call the gentleman to order.

The CHAIR directed Mr. C. to take his seat. Mr. CHATFIELD demanded that the point of order be put in writing.

Mr. SIMMONS hoped this matter would be

dropped here, (addressing himself to Mr. STETSON.)

Mr. STETSON had no feeling on the subject, but he did not wish the representation of the gentleman to go out—

Mr. CHATFIELD: I call him to order. If he has any point of order to make, let him make it. He has no right to make a speech about it.

Mr. NICHOLAS hoped the gentleman from Clinton would withdraw his point of order.

Mr. STETSON: If the gentleman from Otsego would allow him to state what he did say, he had no objection. He had no object that would not be appreciated by the Convention. If the gentleman would waive the formality of reducing his point of order to writing, he would explain—

Mr. CHATFIELD said there was no need of it. Explanations would be in order by-and-by. He understood well what he was about. If he understood anything, he understood the gentleman to argue the impossibility of selecting good men at the tail end of a convention.

The CHAIR interposed. The point of order had not yet been sent up.

Mr. STETSON sent up a statement in writing, to the effect that he called the gentleman to order for stating that he said that the people would go down to the gutters or ditches for their candidates.

Mr. CHATFIELD: That is a question of fact, not a point of order.

The CHAIR remarked that it was not a question which the Chair could decide, as a matter of order.

Mr. STETSON urged that the gentleman had no right to get up there and use discourteous language, or to impute to him language he never uttered. He denied that he said so. He did say that persons that ought to lie there would get into office. That was a different thing from the people going down there.

Mr. SIMMONS thought there was no general misunderstanding as to what was said.

Mr. CHATFIELD: As the gentleman himself has it, the people would take up a man after he had got down into the gutter.

The CHAIR remarked that the gentleman from Clinton having denied the expression imputed to him, the Chair not recollecting the precise language used, the gentleman from Otsego was perhaps not strictly in order in not accepting the disavowal.

Mr. CHATFIELD had done with it. There was no use in spending time about it.

The CHAIR hoped the gentleman would not impute language that was disclaimed.

Mr. CHATFIELD:—I probably, and some 25 others about me, misunderstood him.

Mr. STETSON:—The gentleman has not heard 25 say so. He has not had time to compare recollections with so many.

Mr. CHATFIELD:—Perhaps not with 25, but a good many. The gentleman spoke with zeal, and Mr. C. thought with a design to attack the committee of which he was one. The gentleman was entitled to his views, and when he advanced them in a proper and gentlemanly way, he had no right to find fault. But he was saying that the last part of the gentleman's argument answered the first—for if we should not

elect inspectors, why elect a commissary-general? He had only to say farther that the committee did not act upon the principle of withholding the election of officers because they were minor officers, but because they must stop somewhere, and because they believed that this office of commissary was a military office which belonged properly to another committee.

Mr. STELSON at some length recapitulated what had occurred—repelling the imputation that he had treated the subject or any member in an ungentlemanly manner—and especially disclaiming any intended disrespect to the committee that reported this Article.

The matter here dropped.

Mr. SIMMONS further opposed the amendment of Mr. DANFORTH.

Mr. RHOADES appealed to the gentleman from Jefferson, as a member of a peace society,

to withdraw an amendment that had well nigh brought us to a declaration of war. What might we not expect, when we come to make a nomination of this officer, and when the people at large came to vote on guns and pistols? [A laugh.]

Mr. SHEPARD urged that this officer came properly under the cognizance of the military committee.

Mr. CROOKER sustained the amendment.

Mr. DANFORTH insisted that the Commissary General was in no sense a military officer, but stood at the head of a department, or bureau; and as such had considerable patronage.

The amendment of Mr. D. was lost.

The committee then rose and reported progress, and the Convention

Adjourned to nine o'clock to-morrow morning.

TUESDAY, AUGUST 4.

Prayer by the Rev. Mr. MEYER.

Mr. STETSON rose to a question of privilege. He read a sketch of a speech in the Argus of this morning which was attributed to him, but which he disowned, first because it was the property of another and next because it contained sentiments of which he disapproved.

[The error was corrected as soon as discovered.]

Mr. KIRKLAND objected to these matters being brought before the Convention. Newspaper errors should be corrected by a letter addressed either to the editor or the reporter.

Mr. STETSON defended his right to make the correction here.

Mr. BRUNDAGE said he found in the same report of Friday's proceedings published in this morning's Argus, that his name was not recorded in the affirmative on the motion of the gentleman from Kings (Mr. SWACKHAMER) which was lost by a tie vote. [The motion was to limit the sessions of the legislature to ninety days.] He certainly voted in the affirmative and he did so because this was one of the reforms which was earnestly advocated by his constituents. This feeling in his district grew out of the disgraceful scenes which occurred in the legislature last winter, which elicited a burst of indignation throughout the western country. He went on to explain his views on this subject, and then asked permission to have his vote recorded.

Mr. CROOKER said that would make an entire change in the day's proceedings.

Mr. STRONG thought the explanation of the gentleman would answer his purpose.

Mr. BRUNDAGE said the record of his vote would not change the result as the proposition to which the amendment of the gentleman from Kings was offered, was itself rejected.

Some further conversation ensued and Mr. BRUNDAGE withdrew his application to record his vote.

COMMISSARY GENERAL.

Mr. BRUCE offered the following:—

Resolved, That the comptroller be requested to report to this Convention the amount paid by the Commissary General as such, for his service during the year 1845.

Mr. PATTERSON suggested an amendment to include his travelling expenses. His salary was \$700.

Mr. BRUCE amended the resolution accordingly.

Mr. PERKINS moved to add "and the amount of money expended by him."

Mr. RICHMOND thought that would not do. Some men spent more than they received.—[Laughter.]

Mr. TALLMADGE suggested a change of phraseology so that it should read, "the amount of money disbursed by him."

Mr. PERKINS assented to the amendment.

The resolution, as amended, was adopted.

Leave of absence was granted to Mr. SIMMONS for 8 days and to Mr. W. TAYLOR for one week.

DEBATE IN COMMITTEE.

Mr. A. W. YOUNG offered the following:—

Resolved, That the report of standing committee number six shall be taken out of committee of the whole at half past one o'clock and reported to the Convention.

Mr. YOUNG said his object was not to cut off debate, but to accelerate the business of the Convention. It must be apparent to all, that in committee, they protracted debates until the Convention got out of all patience; and, although it was unpleasant to allude to the fact, alarm had been expressed by many members as to the result of their labors. He began to fear they could not complete their work in the time to which they were limited, unless they could drive the labor of three or four months into one. It was apparent that some other course must be adopted. It seemed to be the opinion of some, that this Convention was a dull body—that it was so obtuse as to be unable to receive any impression, unless two or three days were devoted to the discussion of a proposition. He differed from those who entertained that opinion. He thought brief explanations of two or

three minutes would have more effect than a three hours' discussion. There was scarcely a member that was not competent to understand the meaning and bearings of a motion, when it was made. Why then spend so much time in fruitless—he had almost said in degrading discussion? He thought they had better confine their debates to the Convention. For several days they had been discussing the question of the salaries of public officers, and he believed they were as well prepared to take the vote now as they would be at any other time. Besides, in committee of the whole, they have very few members present. A vote in committee of the whole decided nothing; but in Convention, members would be present, because the yeas and nays might be taken, and gentlemen desired to have their votes recorded.

Mr. SHEPARD hoped his learned and excellent friend from Wyoming, having made his speech, would now withdraw his motion.

Mr. CHATFIELD presumed, as this Convention was such a remarkably dull body, that they could not understand this resolution without a speech—and to give all time to consider it, he moved to lay it on the table.

Mr. JORDAN asked the gentleman to withdraw his motion.

Mr. CHATFIELD: What for?

Mr. JORDAN: I want to show why that resolution ought to pass.

Mr. CHATFIELD: Then I can't withdraw it.

The motion to lay on the table was then lost, only 19 voting for it.

Mr. JORDAN then said he believed discussion was in order. He thought with the discussion they had had, and the reflection they had been able to give to this report of committee number 6, was amply sufficient for safe action; and he hoped the resolution would pass because it would be the means of saving much time. If they acted on the report in the Convention, they should give it something like conclusive action; and when they had done, they would consider it finished, unless for some good reason the Convention should see fit to take it up again. He thought somewhat with the gentleman from Wyoming that in committee of the whole they should scarcely be able to keep a quorum present. They had frequently had barely a quorum, and yet they went on and discussed, and after long discussion they took a vote, but the vote in committee was not recorded. When they came to act on the report in Convention, the announcement of the fact that they proposed so to act would operate like an alarm bell, and probably they should have a full house—the absent half of the Convention would come in, and think on the subject matter for the first time, and they were then just as likely, for he spoke from experience, to reverse what they had done in committee, as to confirm it. He submitted to the good sense of the Convention if it was not better to take up the report in the house, fix their minds upon it, and act upon their responsibility than to spend so much time in committee of the whole without accomplishing anything.

Mr. CHATFIELD hoped the resolution would not pass. He was satisfied no gentleman would

believe there had been any unprofitable or unnecessary discussion on this report.

The resolution was adopted, 49 to 24.

Mr. BASCOM offered the following:—

Resolved, That all resolutions having for their object the saving of the time of the Convention, shall be considered without debate.

Mr. B. was in hopes that this resolution would be adopted without any discussion.

Mr. KENNEDY said probably it would be as well to add that all speeches intended to effect the same object, shall be handed over to the reporters. [Hear, Hear.] He perceived for the last month that one gentleman, not now in his seat, had indulged in lectures on the waste of the time of the Convention. During his absence that subject had been taken up by the gentleman from Wyoming, and he should have supposed it would have fallen with greater propriety to the lot of any other man, for possibly there was no one who had wasted so much time needlessly as the gentleman from Wyoming. It would be recollected that that gentleman had endeavored day after day unjustly, to obtain an additional member for his own county, and that he had left no means untried to accomplish his improper object.

Mr. BASCOM said if many speeches were to be made on his resolution he should prefer to withdraw it.

The resolution was then withdrawn.

STATE OFFICERS.

The Convention then went into committee of the whole, and resumed the consideration of the report of committee number six.

The first question was on a motion to reconsider the vote taken on the words which forbid officers to take fees and perquisites.

Mr. PATTERSON thought it was better as it originally stood. These officers have been in the habit of receiving fees, but they have gone into the public treasury.

Mr. CHATFIELD was opposed to these officers being allowed to receive fees at all. If he sold a piece of land he was bound to give the purchaser a title; he, therefore, could not see why the state should charge a man for a deed.

Mr. PATTERSON stated the following fact as bearing on the subject. The Holland Land Company purchased an extensive tract of land in the western part of this state, and they procured a survey and map; and it cost them from \$300 to \$500 to get a certified copy of a map of that land. Now, he asked, if they would require the Secretary of State to furnish that map and get a certified copy of the original title without any charge? The title, from the letters patent of King James to the Plymouth Company, which were confirmed by Charles I, were matters of record here, and, when copies were furnished, they should be paid for.

Mr. TALLMADGE was in favor of holding up these fees in terrorem. If we had not some such check, there would be lawyers who would apply for copies of all the records in the offices of the Comptroller and Secretary of State.

Mr. PERKINS supported the motion to reconsider, and it was agreed to.

Mr. TAGGART withdrew the amendment he offered yesterday, and substituted the following, to be inserted in the eighth line, after the

word dollars: "But neither of the officers mentioned in this section shall receive any other or further fees, perquisites or compensation for any services performed by them, or either of them, in their official capacity," which was adopted.

The first section was then agreed to, as amended.

Mr. SMITH proposed as the second section of the article, one providing that a state superintendent of common schools shall be elected for two years, with an annual salary of two thousand dollars. Mr. S. said he offered this because he believed the office of superintendent of common schools should be a distinct office.—It originally was so, until it was done away by the legislature on account of the deficiency of the incumbent, whom they could not remove.—There were now eight hundred thousand scholars under instruction, and an expenditure of \$275,000 of the public funds annually. If they made the office of superintendent a distinct office, he thought it would have a tendency to elevate the standard of our common schools. If this section were adopted, he meant to follow it up by another to take away from the Comptroller duties attached to his department—the canals and banking for instance—for there was no reason why there should be one or two state officers holding an over-shadowing power. All this could be done without any additional expense by making head clerks with salaries of \$1500 or \$2000, heads of departments. Thus they would be brought on an equality by a distribution of their powers.

Mr. RICHMOND believed the superintendence of common schools had been very well managed under the present system. and while this was the case he would not elect another officer with a much greater salary than that now paid for the same duty. There appeared to be too much consolidation in this. He would never be for adopting the Prussian system of having a minister of public instruction, who should select all the books, and have the entire control of the schools.

The proposition was negatived.

The second section was then read, as follows:

§ 2. The state Engineer and Surveyor shall be chosen at a general election, and shall hold his office for two years; but no person shall be elected to said office who is not a practical engineer, and has not pursued civil engineering as a business and profession for seven successive years before his election. He shall receive an annual salary of two thousand dollars and his necessary expenses while travelling on official business on the line of the canals and public works of this state.

Mr. RHOADES moved to strike out "two" in the second line and to insert "four" as the term of service of the State Engineer. Two years would not be more than sufficient to make a man acquainted with his duties, and he wished to prevent an office of this important character from being subject to the frequent mutations of parties. An experienced officer should be retained.

Mr. NICHOLAS said when an engineer of good standing and experience in his profession is elected to this office, if he discharges its duties well, those duties being important to the state, he will or should be continued in office by a re-election, but should the incumbent prove an inefficient or incompetent officer, it would be de-

sirable to make a change at the end of two years.

Mr. RICHMOND said history showed that officers of this kind only learned by their experience to entrap the people by their false estimates, for the purpose of individual or party advancement. If an officer proved himself competent and faithful, the people would re-elect him, and if he was neither, he should not serve for so long a term as four years.

Mr. HOFFMAN feared that by adopting the plan of electing this officer, much mischief would be done, and made permanent. A trade should never be converted into an office. Any thing which has sustained itself as a profession or trade, should be allowed to remain so, and emancipated from the shackles of political party. He was opposed to this whole scheme, preferring the old mode of electing a Surveyor-General, leaving to the legislature to devolve upon him such duties as they might see fit.

Mr. CHATFIELD was surprised to meet with opposition to this section in the quarter from which it came. The committee were satisfied that much of the embarrassments which the state now experienced, was directly attributable to bad engineering. The state had been deceived and deluded by false estimates to undertake works which would otherwise have been left alone. As to the objection that this was making a trade an office Mr. C. would ask the gentleman if we had not already done the same with two other offices? We had made the office of Surveyor-General. The Attorney-General must be a practicing attorney and counsellor. Mr. C., in reply to an allusion of Mr. H. to the debate on the qualification for Governor, asked him if he had been consistent? Did he not then vote to restrict the people in their choice? Why then should he object to this provision? Heretofore our engineers had been interested in the undertaking of public works that thus they might obtain employment. Hence the secret of false estimates. For this reason he would have a Chief Engineer, whose salary should be fixed, and not at all dependent upon the fact whether the state was carrying on public improvements or not.

Mr. PERKINS saw no advantage in making the tenure of this office longer than that of other state officers.

Mr. LOOMIS was opposed to the whole section. The idea of electing a state engineer and surveyor was not at all to his taste. The man at the head of this department should be a man of strong, sound, practical common sense, and should not be tied down to the mere technicalities of a profession. Millions upon millions had been expended under the direction of these engineers, which men of sober common sense would not have authorized. The corps of engineers had appropriated more money to the canals of the state than had the legislature. He should vote for striking out the whole section hereafter substituting something else which he indicated.

Mr. CHATFIELD said the committee supposed they could do nothing more properly, in framing the Article, than to decide the elementary principles which shall govern the departments, leaving to the legislature to decide upon their appropriate powers and duties. If there

were certain powers provided for, they might be supposed to be restricted to those powers alone, whereas there might be others coming legitimately and properly within the scope of their department. The committee, in examining the duties of the Comptroller, found it necessary to divide them, and place one branch under the charge of another department, and they decided that it should be in the department of the canals, as one in which the greatest interests were involved. If gentlemen did not like the term by which the office was described, they might substitute something else. He believed that it was proper to have a practical engineer in this office.

Mr. SALISBURY suggested that the amendment of Mr. NICHOLAS should be modified so as only to strike out after the words "practical engineer," in the third line, to the end of the sentence. This would accomplish the object of the gentleman without further addition.

Mr. NICHOLAS assented.

Mr. LOOMIS replied to Mr. CHATFIELD. In the course of his remarks he stated that at Little Falls, where the locks were excavated out of the solid rock, the engineers had directed an excavation of three or four feet below the bottom of the canal, that it might be filled up again with timber, on which the mason work of the lock was built. And in another place, on the enlarged canal, it had been excavated for three-quarters of a mile through solid rock, when all that was saved in distance was but twelve rods. This was done to preserve the engineer's line of beauty—which was a straight line.

Mr. WATERBURY followed, giving his experience in relation to the Delaware and Hudson canal.

The amendment of Mr. RHOADES was negatived.

Mr. NICHOLAS, after a few explanatory remarks, moved to strike out the words—"but no person shall be elected to said office who is not a practical engineer and who has not pursued civil engineering as a business and profession for seven successive years next before his election," and insert, "He shall be a practical engineer."

Mr. RHOADES approved of so much of the amendment as proposed to strike out, but not of the rest. Doubts and perplexities would arise if these words were retained in any shape.

Mr. NICHOLAS would not insist upon the addition of these words if it was thought inexpedient. He thought, however, it would be much easier to ascertain whether a man was a practical engineer, than it would whether he had been so engaged for seven years previous to his election.

Mr. PERKINS was in favor of either retaining the words of the section or striking out all reference to qualifications.

Mr. BURR should vote for the amendment as being better than the original section. But he would like still better to strike out all that refers to qualification. Practical engineering was his trade and he knew that the number of years engaged in this business was no test of competency. He had some doubts whether the section was at all needed. But if there was a necessity for a Surveyor General, this proposition

was much preferable to the former provision. Mr. WHITE objected to any qualification whatever. He believed the people were capable of judging, and he would not do anything to obstruct the free choice of the people in the selection of their officers.

Mr. E. HUNTINGTON had not intended to say a word on this section until a motion should be made to strike it all out. He agreed that it was important there should be a competent head to this department. He had not a doubt but millions of the public money had been lost for for want of such an officer. But he was opposed utterly to entrust the selection of such an officer to politicians acting in a nominating convention. They would know about as much about the qualifications of such an officer as of the geology of the moon. With all respect for the people, Mr. H. must say that this was a question upon which they could not pass understandingly. This man should be appointed by the commissioners having charge of the canals. It would then be made their duty to investigate the qualifications of the man they should appoint. With a salary of \$2000 you could never command the services of an engineer who should be fully competent for the place. Engineers of the first class now get \$4000 or \$5000 per annum from private corporations, who know that it is for their interest to place their works in the charge of men of the best talent. Besides, two years would not be sufficient for a man to become fully acquainted with the canals of the state. This officer should hold his place during the pleasure of the appointing power. But he objected in toto that he should be selected by a political caucus, and be elected by a political party. We should run a great risk, in the first place, of not getting a good man, and if we did, he might be turned out of office in two years.

Mr. RHOADES, from what had been said, was led to believe that there existed an imperative necessity for the creation of such an office as was here provided for. The false estimates alluded to, and the statements of the gentleman from Herkimer (Mr. Loomis), proved that it was necessary to have an officer, who was responsible directly to the people for the proper performance of his duties. This would also prevent his having a personal interest in the work on which he was engaged for the state.—He should be a practical engineer, to prevent his being deceived by the subordinate officers and agents whom he might have under his direction. He hoped the section would remain.

The motion of Mr. NICHOLAS was agreed to.

Mr. SALISBURY moved to strike out the provision for paying the travelling expenses of the engineer.

Mr. PERKINS hoped those words would not be struck out: he thought \$2000 with those expenses, would not be too much. The evil of giving a fixed salary with no provision for travelling expenses had been exemplified in the case of the canal commissioners, of whom it had been complained that they did not visit the public works often enough.

Mr. PATTERSON would give a fixed salary, not to be fixed by the constitution but by the legislature, and forbid all fees and perquisites whatever. This officer was to be stationary

here, and need not require nor incur travelling expenses; but if he were such, a provision like this would tempt too frequent visitations

Mr. BRUCE thought this officer was required to travel—for that purpose the people wanted him; and if he were not paid his travelling expenses, he would send out his deputies and the same system of incompetent surveys would be pursued.

The motion to strike out was lost.

Mr. MARVIN moved to strike out all of the section which prescribes the salary of this officer. Lost.

Mr. RICHMOND moved to amend so that the sum paid for travelling expenses should in no year exceed \$200.

Mr. WATERBURY moved to fix the sum at \$500.

Mr. RICHMOND opposed travelling fees being allowed without restriction. He alluded to the system of giving gentlemen an opportunity to bring in bills for extra services, as leading to that branch of compensation which had become well understood as "stealings in." He enumerated officers whose "stealings in" exceeded their salaries, some of them getting \$2,800 per annum when the people imagined they were getting less than half that amount.

The amendment to the amendment was negatived.

The amendment was then adopted on a second vote, (on the first count there not being a quorum,) 37 to 23.

Mr. LOOMIS then offered the following substitute for the whole section:

§ 2 A commissioner of public works shall be elected by the electors of the state, to hold his office for two years. He shall have charge of the department heretofore belonging to the Surveyor-General, and also of the record, documents and business in the Comptroller's office, pertaining to the canals and state prisons, public buildings and lands, subject to regulation by law.

Mr. CHATFIELD opposed the amendment, which, he said, would degrade this officer to a mere keeper of records.

Mr. KIRKLAND also opposed the amendment.

Mr. PATTERSON moved to amend by striking out all after the words "Surveyor-General," and insert, "and also of the Canal Department as now exercised by the Comptroller." Mr. P. wished to divest the Comptroller of his present control of the canals. He would make this man the head of that Department now known as the canal department—and at the same time leave the Comptroller one of the Commissioners of the Canal fund and of the Canal Board.

Mr. PERKINS urged the retention of the section as reported, and opposed the amendment.

Mr. VAN SCHOONHOVEN also opposed the amendment of Mr. Loomis.

Mr. LOOMIS replied that his amendment created no additional office. It merely carried out the intention of the Committee in a shape more acceptable to himself.

Mr. CHATFIELD explained that the intention of the committee was to superadd to the duties of Surveyor General the duties of State Engineer—not to create any new office.

Mr. HARRIS regarded the office of Surveyor General as unnecessary—and urged that that officer had no duties to discharge that might not

be devolved on some other officer. He regarded the section as abolishing in effect the office of Surveyor General and creating another—and viewing it in this light, he moved to strike out the section.

The question was first put on Mr. PATTERSON's amendment to Mr. LOOMIS' proposition, and then on the latter, and both were negatived.

Mr. HARRIS' motion to strike out the section, was then agreed to—42 to 32.

The 3d section was then read as follows:—

§ 3 Three Canal Commissioners shall be chosen at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one shall hold his office for two years, and one shall hold his office for three years—The Commissioners of the Canal Fund shall meet at the Capitol on the first Monday of January next after such election, and determine by lot which of said commissioners shall hold his office for one year, which for two years, and which for three years, and there shall be elected annually thereafter one Canal Commissioner, who shall hold his office three years. The annual salary of a Canal Commissioner shall be sixteen hundred dollars, and his necessary expenses while travelling on the line of the canals of this state on official business as such commissioner.

Mr. STRONG moved to strike out all that gives to these officers travelling fees. Mr. S. briefly explained his reasons for offering this amendment, and it was agreed to.

Mr. PERKINS then moved to strike out so much as fixes the salary. Lost, 35 to 37.

The 4th section was then read, as follows:

§ 4 Three inspectors of state prisons, shall be elected at the general election which shall be held next after the adoption of this constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The Governor, Secretary of State and Comptroller shall meet at the Capitol on the first Monday of January next succeeding such election, and determine by lot which of said inspectors shall hold his office for one year, which for two, and which for three years; and there shall be elected annually thereafter, one inspector of state prisons who shall hold his office for three years; said inspectors shall have the charge and superintendence of the state prisons, and shall appoint all the officers therein, and shall receive four dollars each for every day actually occupied in official duty at the prisons or at the Capitol, and ten cents for every mile actually travelled on official business. All vacancies in the office of such inspector shall be filled by the Governor, till the next election.

Mr. PERKINS moved to strike out "ten cents" and insert "five cents." Agreed to.

Mr. ST. JOHN moved to strike out "four dollars" and insert "three dollars."

Mr. PERKINS opposed the motion, but it was agreed to, 41 to 29.

Mr. TAGGART moved to strike out all that relates to compensation. Lost, 34 to 37.

Mr. KENNEDY thought we might save another shilling, and he moved to strike out "\$3" and insert "\$2 87½." Lost.

The fifth section was then read as follows:—

§ 5 The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney General, and State Engineer and Surveyor, shall be Commissioners of the Land Office.

The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the Commissioners of the Canal Fund.

The Canal Board shall consist of the Commissioners of the Canal Fund, the State Engineer and Surveyor and the Canal Commissioners.

Mr. BRUCE moved to strike out the words "State Engineer and Surveyor" wherever they occurred. Agreed to.

Mr. MARVIN moved to strike out the whole

section. It was time, he thought, to stop legislating and go to work to make a constitution.—All this had been regulated by law.

The hour of 1½ o'clock having arrived, the committee of the whole rose and reported the article to the Convention.

Mr. KENNEDY moved that the House again go into committee of the whole on the report.

The PRESIDENT decided this motion not to be in order.

Mr. KENNEDY then moved to recommit the report.

This was opposed by Messrs. STRONG and JORDAN and rejected.

Mr. SHEPARD moved that the Convention take up the report where the committee of the whole left off. Agreed to.

The question then recurred on the motion of Mr. MARVIN to strike out the fifth section.

Mr. SHEPARD urged that these boards might be found to be an unnecessary part of the machinery of government—and it would be unwise to fasten them on the state, and beyond the reach of the legislature.

Mr. CHATFIELD, after expressing his regret at the vote abolishing in effect the Surveyor General, went on to sustain the section as one of the most important points in it. It designated the officers or boards that were to have charge of the three great interests of the state, the canals, the canal fund and the public lands, which belonged to the school fund—and these boards would be necessary so long as we had canals, a canal fund, and public lands.

Mr. SHEPARD replied, and Mr. PERKINS followed in opposition to the motion to strike out.

The motion to strike out was lost.

The sixth section was then read as follows :

§ 6. No law shall be passed creating or continuing any office, for the inspection of any article of merchandise, produce or manufacture (except salt manufactured within this state) and all existing laws authorizing or providing for such inspection, and the offices created thereby, are hereby abrogated.

Mr. MURPHY moved the following substitute for the section:—

"No law shall be passed creating or continuing any office for the weighing or measuring or inspection of any article of merchandise, produce or manufacture, or delegating any authority to create any such office; and all existing laws authorizing or providing for such weighing or measuring or inspection, or delegating such authority, and the offices created for such purposes, are hereby abrogated. Nor shall any laws be passed granting licenses for carrying on any trade, calling, business or profession and all licenses and laws authorizing the same are hereby abrogated. But nothing in this section contained shall prevent the legislature from exercising such control over the salt springs and salt manufactured from the same, as they may deem proper, or from enacting such sanitary laws as the public welfare may require."

Pending this motion, the committee took a recess.

AFTERNOON SESSION.

Mr. MURPHY sent up a modification of his substitute for the sixth section, as follows:—

All offices for the weighing, gauging, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing herein contained shall prevent the legislature from exercising such control over the salt manufactur-

ed from the springs belonging to the state as it may deem proper.

Mr. NICHOLAS (Mr. M. having waived his motion) moved an additional section, as follows:

§ 8. The Treasurer may be suspended from office by the Governor until thirty days from the commencement of the next session of the legislature, whenever it shall appear to him that such Treasurer has in any particular violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer.

Mr. RHOADES suggested that there might be such a thing as collusion between the Comptroller and Treasurer—and that the requisition of a report from the Comptroller should be struck out.

Mr. NICHOLAS assented to that.

Mr. HARRISON suggested that this provision might be more general.

Mr. NICHOLAS said he made it applicable to the Treasurer only because, he was the keeper of all the public funds.

Mr. PERKINS urged that if the Treasurer was to be elected for two years, and before any examination of his accounts by the appointing power, the slow process of impeachment would not be an adequate remedy in case of a defaulting Treasurer.

Mr. NICHOLAS explained that the only object of the section was to enable the Governor to turn over to the legislature a Treasurer suspected of malversation in office, that he might be either impeached or restored to office. Nor did he see that this power would be likely to be abused.

Mr. BAKER said this section would address itself better to his appreciation if the authority to the Governor should be limited to the time during the recess of the legislature. By the present reading of it, the Governor was allowed to remove this officer in February, and appoint a successor, who would hold his office until the next year at the same time. He moved to amend by inserting after "Governor," in the second line, the words "during the recess of the legislature, and."

This was agreed to, after some conversation, and

The section was then adopted

Mr. MURPHY now offered his substitute for the last section, (as above) and went on to say, that in proposing the amendment to the section reported by the committee, he only sought to carry out more fully the principle asserted in the section. There were many offices besides those of inspection, partaking of the same character, and equally impolitic and unjust, which ought to be abolished; and he had framed his amendment so as to embrace them. For one he returned thanks to the committee for bringing the question of our inspection laws so directly before the Convention. They had performed a noble duty to the country and to public opinion. If there were one subject more than another of general legislation settled in the public mind, it was the abolition of those laws: and we should illy perform our duty here if we did not conform to its wish,—evidences of which crowded upon us on every side. The legislature in 1843 acknowledged it when they abolished compulsory inspection, weighing and measuring,—yielding to the demands of the producer, trader and coa-

sumer. The public press and political conventions in various portions of the state have urged it upon us; and none more so than in his own county. He felt grieved that he could stand here acting in consonance with that public opinion and at the same time according to the dictates of his own judgment. He had always considered those laws as improper interferences with the private dealings of individuals on the part of the government, whose province was to extend equal protection to the lives and property of its citizens, but not to regulate their business transactions with each other. When government has provided such protection it has discharged its principal duty. It might, for the purposes of such protection, tax its citizens and adopt regulations for the collection of public revenue; but it should not legislate between individuals. Men were sharp-sighted to see their own interest. Left to themselves they would not be subject to frauds in any such degree as they now are by these attempts to affix a value to the articles of trade. The assumption of this office on the part of the state begets laxity and induces a reliance upon an official brand to which it is not entitled. The officer generally is a mere partizan, not selected with exclusive reference to his qualifications, but for his political services. Carelessness, ignorance, avarice, frequently lead to bad inspection, for which there is no remedy. He was, therefore, opposed to the whole system from principle.—He knew, however, that it was due to the subject, especially when it is proposed to adopt a constitutional provision in regard to it, to look at the origin and effects of the system as it has existed, and this he would do very briefly.—Laws for the purposes of inspection were passed as early as 1784. In one, enacted in 1790 the object is in a preamble declared to be “to render the commodities more valuable in foreign markets.” Under such a pretext has grown up the gigantic system which has established several hundred of the officers in question, whose support, as he would show, was a tax upon the industrial classes of the state, without effecting the object originally designed. If the object of those laws had not been accomplished, all candid men would agree that they should be abolished. He would state a fact which had been communicated to him by a respectable constituent of his own, showing that the price was not raised in the foreign market by our inspection. The standard of potash inspected in New York was ten per cent inferior to that of Montreal. Why this was so was perhaps immaterial to inquire. All we wanted for the purposes of this enquiry was to know if the fact were so. That it was so, he repeated he had good authority for saying; and with that one fact the whole reason for the laws as stated in the act of 1790 failed. He found another stated in a memorial to the legislature by the New York Chamber of Commerce in 1841, equally conclusive, and that was, that in many cases the New York flour brand is of positive injury to the article in Brazil, because the James river flour was more highly esteemed in that market. Now if our inspection served to mark the inferiority of our commodities, to those of other states, it was not likely that their value

would be enhanced by it. To his mind the system had utterly failed to accomplish its object. Its practical operation, therefore, was merely to tax the industry of the state, build up valuable offices and to restrict commerce, as he would proceed to show. In general taxes were said to fall upon the consumer; but in this case the expense of inspection operating as a tax fell upon the producer. The article is taken to a foreign market to compete with the same kind of commodity from other parts of the world, or perhaps with the home production which is not inspected. The New York producer, therefore, must enter into competition with the other producers, and every charge at home operates to reduce his profits abroad. The inspection in New York as well as the transportation is a charge to get his produce to the foreign market, while he obtains no higher price in consequence of it, but oftentimes his produce is even depreciated by the brand. The amount of this inspection tax was enormous. He would take the case of pot and pearl ashes to which he had already alluded. He found in the legislative documents of the last year that the amount of fees and other expenses attending inspection on 77,107 barrels of ashes inspected in New York was \$43,855—equal to sixty-three cents on each barrel, and to two and one-half per cent on the whole value of the article. Such a tax as this was enormous, and it came out of our own citizens producing the article. It was the enormity of these fees which called for our interposition. The legislature had in vain attempted to correct the system. The year after compulsory inspection, weighing and measuring, was abolished, a law was passed requiring all those who did have their commodities weighed, inspected, or measured, to employ official weighers, measurers and inspectors. The consequence was that the evils of the system remained in as full force as before. The impracticability of accomplishing the reform in the legislature, presented the necessity for our action. Weighing, measuring and inspecting could be done better by private persons than by public officers. Industry, character and ability would soon render private inspection more desirable. Monopoly and extortion would be prevented. Men free to go where they would be best and cheapest served, would obtain all the advantages of superior inspection at a less price; and the honest man would not be compelled to see his labor depreciated by official ignorance or carelessness. The effects of our inspection laws have been equally injurious to our commerce. They have prevented New York shippers from being the carriers of much western and southern produce. No commodity could be sent to New York for exportation without being subjected to the expenses of inspection. The consequence has been, especially under the discriminating duties in favor of American productions from the British colonies, that large portions at one time went to the Canadas in order that the expense might be avoided; and in the case of Richmond flour, before alluded to, much exportation from the city of New York has been prevented in consequence of the inferiority of our brand. Thus our commerce has been shackled, and the just advantages of our great seaport lost. He would

detain the committee no longer on this question; but would observe in conclusion that the adoption of the provision under consideration in the constitution, would abolish a great number of officers not only useless, but positively injurious to the community. We would get rid of a vast amount of troublesome executive patronage. We would do a lasting service to the people in leaving them to the management of their business transactions unburdened by official interference, alike offensive, unnecessary and unjust.

Mr. PERKINS sustained the amendment—urging that these officers were troublesome to the Executive, the source of combinations and a great deal of difficulty in New-York, in the election of members of assembly, which had operated injudiciously to city and county, and had resulted in an onerous tax on the business of the state.

Mr. PATTERSON preferred the substitute because it went further than the original, and included weighers and measurers. The whole system of inspecting, weighing and measuring he regarded as a fraud on the people, and as the means of filling the pockets of the few, without any real benefit to trade. In the article of flour, for instance, it was not the inspector's brand that was looked to for the character of the article, but to the miller's brand.

Mr. HARRISON opposed the amendment, believing that if the system of inspection was rigidly enforced, as it once was, our exported articles would stand much higher than they now do. Many persons, in purchasing articles, fish especially, trusted to the brand of the inspector. The extravagant fees paid to the inspectors was the great evil, and this might be remedied; but he trusted that the whole system would not be swept away.

Mr. BASCOM followed in support of it. A circumstance which had come under his personal observation would illustrate the positions that these inspectors were of no advantage to our commodities in foreign markets. A company wishing to purchase a quantity of potash, applied to the manufacturers in his neighborhood, to furnish them a pure article, trusting to the faith of the manufacturers, and offering a large advance from the prices for first rates in the city of New-York.

Mr. RHOADES suggested that the amendment was so broad as to cover a class of officers appointed by the Canal Board—inspectors of boats, weighers, &c.

Mr. MURPHY said he had added a clause making an exception in favor of salt, not because he thought it necessary, but because he found it in the original section. The state could appoint its own inspectors, &c., for its own purposes, as an individual could. He only intended to reach cases between buyer and seller—as well inspectors appointed by corporations as by state authority directly. He would abolish the whole of them.

Mr. SHEPARD, though opposed to a compulsory system of inspection, thought it unwise to forbid any future legislature, whatever the necessity might be, however much it might contribute to the purposes of commerce, to pass laws for the inspection of certain articles of merchandise. He differed with the gentleman

from Kings in regard to the effect of an official brand upon our exports in foreign markets. He knew that this did give a better character to them, and he referred to such works as McCulloch's in proof of this. He was not prepared to say that there would arise hereafter circumstances demanding the passage of inspection laws nor was he prepared to believe that the legislatures would not act wisely and justly in making such laws. He would go against the compulsory features of these laws and against all interference between buyer and seller; but he could not agree to an iron rule here forbidding all inspection laws, and annulling those in existence. Nor did he think the gentleman from Kings had fairly quoted the returns of inspectors, in giving gross receipts instead of actual profits, which were comparatively small.

Mr. MURPHY said he quoted these returns to show what the tax on the producer was. To him it was of no consequence whether these exactions went into the pockets of the inspectors only, or whether they were divided with the cartman, the cooper, &c., &c.

Mr. KENNEDY supposed it would be useless to detain the Convention upon this subject, as they now seemed to have decided upon adopting this section. Indeed from all he had seen in the action of this Convention, he was led to the conclusion that it was called for the purpose of, in every possible way, preventing the city of New York from enjoying any benefit from legislation, and of crippling its prosperity; and he might as well sit still and allow this section to pass without saying a word. But he felt called upon to oppose its adoption. He was opposed to compulsory inspection laws. Those features had been allowed to go out of use, and no person was now obliged to have an article inspected unless he desired it. The inspection was no injury to the manufacturer, if he was honest, and if he was not, it would not injure the buyer to know it. He gave a description of the condition of potash as he saw it in the warehouse of the inspector in New York. Barrels which had been broken open were found to contain masses of stone, which had been concealed in the ashes when in a molten state. If this article was sent to a foreign market in such a condition, the impurity reflects not upon the character of the manufacturer, but upon the market from which it was shipped. It was therefore proper to protect the character of our markets by an inspection of articles exported. The purchaser was interested in this, because he would be likely to get a better and purer article. He could not inspect it himself, because it was not a thing to be handled, even if he was acquainted with its qualities—and if we were to have inspections at all, the expense of storage, cooage, &c., must necessarily be considerable—and of this amount but a small portion went to the inspector. Mr. K., in the course of his remarks, stated as a fact that such was now the character of the New York brand, that flour had been brought there from other markets, to be reinspected, and because the New York inspection gave to it a higher character and a better price.

Mr. NICOLL inquired of his colleagues if the article of largest export from New York (cotton) was not free from inspection?

Mr. KENNEDY replied that cotton was an article that all who dealt in it were well acquainted with.

Mr. NICOLL said it would be so with flour and other articles. The great question was whether we could not reduce the patronage of the government. Here were over 500 officers thus holding power, and he believed we could safely get rid of them. He should vote for the amendment.

Mr. MANN could not agree with his colleague in the opinion that this Convention was determined to break down the city of New York.—He believed these inspections were of use. Pass this amendment and you do not do away with the evil. We should have twenty inspectors where we now have one. Each heavy dealer in New York would have his own inspector, instead of one appointed by law. This would not tend to protect the public. The amendment of the gentleman from Kings would go the whole length of abolishing all inspection of weights and measures, and we might have nine ounces to the pound, three quarts to the gallon, and three pecks to the bushel. He did not believe this would be wise. He was not in favor of compulsory inspections but would leave the whole matter open.

Mr. CHATFIELD repelled the idea that either the convention or committee intended any injury to the city of New York. These inspection laws operate upon the people of the country. It was upon their products that this onerous tax was levied. But one great object in view by the committee, was to relieve the Executive from the hordes of office seekers and office abettors who hang around this office every year. He would ask gentlemen from New York if their statements were to be believed, what sort of a community had they there? It was said that the merchants had weights and scales and yet no one would trust them. Mr. C. would not believe they were thus lost to all sense of honesty. He read from a document to show that during the past year \$125,000 were paid in New York for inspections. Who paid this large sum? The producers of the country. It was said that this whole matter should be left with the legislature. He had seen enough since he had been here to despair of any reform being effected there. Since this report had come in, inspectors from New York had been here besieging him, and he doubted not that other delegates had been in like manner besieged. When a legislature should reform this inspection, and should we find white crows and the sky would rain larks. He would abolish all this inspection and put every man in the community upon his own honesty. He denied that the system of inspection either gave a character to an article in the foreign market, or protected the community against fraud.

Mr. WHITE:—As one of the delegates from the city and county of New-York, I desire to tender my thanks to my honorable friend from Otsego (Mr. CHATFIELD), the chairman of the committee who reported this section for the abolition of all inspection laws; and for the important services rendered to my constituents by this measure of sound policy, and of practical wisdom. I desire also to make my acknowledg-

ments to my honorable friend from Kings (Mr. MURPHY), for the very able support which he has given to the report of the committee upon this important subject. I profess myself to be a decided advocate of the doctrines which give to industry the utmost freedom of action, and which leaves unrestrained individual enterprise and individual sagacity. I hold to the opinion that every regulation of trade, is a restriction, and that all laws affecting such pursuits, are not only unwise, but in violation of private rights, and subversive of the principles of free trade. It was well and eloquently remarked by my honorable friend from Herkimer (Mr. HOFFMAN), that it is neither right or expedient "to convert a trade into an office"—an opinion which I would not repeat in terms less forcible than his own, and in which I entirely concur. The acuteness of the American people renders them perfectly capable of taking care of themselves in all the transactions of life; and we have laws to enforce the fulfilment of contracts, according to their plain, obvious and honest import. That is all the interference of government that is wanted. We want no guardians, legislative or political, and all such evidences of antiquated ignorance should be erased from the statute book. We have inspectors of flour, tobacco, ashes, grain, lumber, hides, leather, &c., amounting in number with the weighers, gaugers, measurers, &c., to 330. What has been our experience as to the benefit derived from this costly system? I hold in my hand a document addressed to the senate of this state by the chamber of commerce of New York, against these inspection laws, which demonstrate from actual knowledge of the facts that commerce has been thus shackled and fettered; and that no advantage but positive injury has been the consequence of their enactment. The inspection of flour is peculiar to this country and it is entirely unknown in France and England. But it must be conceded that in effect it has ceased to give a character to the article in this market. The brand of New York adds nothing to its value nor any facility to its sale. Every person conversant with this branch of trade must know that flour is ordered for foreign markets, not according to the brand of the inspector; but according to the name and reputation of the miller or manufacturer of the article—that name is the best and surest warranty that the barrels contain a certain weight of flour of a given quantity and fineness. This is found in practice to be effectual. It becomes therefore his interest to be honest. Frauds were formerly practiced to a very great extent in packing the great staple article of our country—cotton. But since the planter has been required by law to put his name on the bale, they have become of very rare occurrence. It cannot be disguised that persons have been frequently appointed to such offices from connections of a political character, and not from any aptitude to judge and determine the quality of the commodity they were selected to inspect. These several inspection laws have in my humble judgment failed to accomplish the purpose they were intended to effect. And they are a heavy and onerous charge either to the producer or consumer. In opposing the appointment of this class of officers by the state, I desire, however, to be understood as

solicitous that every one of my fellow citizens may be, if he so elects, an inspector, gauger, weigher, measurer, broker, &c., one that may execute any and every employment which the usage of trade and the custom of commercial men may demand. This is their natural and unalienable right. And I shall ever maintain the right of the people to follow whatever profession, employment or calling they may please, unrestricted by the power of the state. And all that can be required by the state authorities is to protect them by law from imposition, and to punish those who practice it. I shall therefore feel it to be my duty to vote for the amendment of the honorable member from Kings.

Mr. SHEPARD offered the following amendment:—

"No laws shall be passed compelling the inspection, weighing, or measuring of any article of merchandise, produce or manufacture, (except salt manufactured within this state) or prohibiting any person from acting as inspector, weigher or measurer of any such article."

Mr. RHOADES knew something about the abolition of this compulsory feature of the inspection laws. The same arguments now urged were those put forth against that alteration. He believed the present law was in effect but little better than compulsory, for every man from the country going to that city, was compelled to submit to this inspection. The year after compulsory inspection was abolished, the Inspectors of beef and pork in New York did but little business. Application was made next winter to appoint an Inspector General and a law was passed for that purpose. It was generally supposed then that the only object for obtaining this office, was that he might give employment to some dozen or more of Inspectors, who could not get a living in any other way—and the result was that inspection was now compulsory. Mr. R. knew something about the inspection of salt. It had never been of the least use. More than twenty years ago the inspectors were indicted for passing bad salt as good. The only guard the public had was in the character and standing of the manufacturer. Mr. R. said he had been told by the late Attorney General a fact which went far to elucidate the operation of the inspection laws in New York. It appeared in a suit that by an arrangement between an inspector of lumber and the purchaser, that lumber at first marked "second rate," was afterwards re-inspected as "first rate," thus making a change in one operation of some \$8,000. He had not supposed that a single member of this Convention would have voted to retain these useless provisions. He should vote for the entire abolition of all inspection laws.

Mr. O'CONOR hoped his colleague would withdraw his amendment. It would in effect operate to accomplish all that was proposed to be accomplished by the original section; though in a less direct manner.

Mr. SHEPARD explained his object in offering his amendment.

Mr. TALLMADGE conceived that this subject had no business here, and he should vote against all the propositions which might be made in relation to these paltry inspection laws.

Mr. TILDEN continued the debate in favor of the amendment of Mr. SHEPARD.

Mr. PATTERSON hoped the pending amendment would be rejected. He should vote for that offered by Mr. MURPHY, and hoped it would be adopted.

The amendment of Mr. SHEPARD was rejected, as follows:—

AYES—Messrs. Bouck, Cornell, Jones, Kennedy, Mann, Shepard, Smith, Stephens, J. J. Taylor, Tilden, Townsend, Wood—12.

NOES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bowdish, Brayton, Bruce, Burr, Cambreleng, D. D. Campbell, R. Campbell, Jr., Chatfield, Clark, Cook, Cuddeback, Dana, Danforth, Dodd, Dorion, Flanders, Forsyth, Gebbard, Harris, Harrison, Hotchkiss, Hunter, A. Huntington, E. Huntington, Hyde, Jordan, Kemb'le, Keran, Kingsley, Kirkland, McNeil, McNitt, Marvin, Maxwell, Miller, Morris, Murphy, Nellis, Nicholas, Nicoll, Parish, Patterson, Perkins, Porter, President, Rhoades, Richmond, Riker, St. John, Salisbury, Sears, Shaver, Shaw, Stanton, Stetson, Stow, Strong, Taft, Taggart, Tallmadge, Tuthill, Vache, Waterbury, White, Willard, Witbeck, Worden, Young, Youngs—76.

Mr. RHOADES moved to add to the amendment of Mr. MURPHY the words "and over the canals and other public works of the state," to come in after the word "salt."

Mr. PATTERSON moved to strike out all that related to the inspection of salt.

The debate was briefly continued by Messrs. PATTERSON and RHOADES, when the amendment of the latter was rejected.

Mr. WORDEN moved to modify the amendment of Mr. MURPHY, so that it should provide that the legislature should have control over the manufacture and inspection of salt.

Mr. MURPHY assented.

The motion of Mr. PATTERSON to strike out was negatived.

Mr. STOW dared not vote for this amendment because he feared the effect of the phraseology. We had the office of weigher of boats on the canal, which might be abolished by this section. The same might be said of the office of inspector of boats.

Mr. ST. JOHN moved the previous question, but it was not seconded.

Mr. MURPHY modified his amendment so as to add the words, "or shall interfere with the collection of the canal tolls of the state."

His substitute for the whole section was then adopted, as follows:

AYES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bowdish, Brayton, Bruce, Burr, Cambreleng, D. D. Campbell, Chatfield, Clark, Conely, Cuddeback, Dana, Danforth, Dodd, Dorion, Flanders, Forsyth, Gebbard, Harris, Hotchkiss, Hunter, A. Huntington, E. Huntington, Hyde, Jordan, Kingsley, Kirkland, Loomis, McNeil, McNitt, Marvin, Maxwell, Miller, Morris, Murphy, Nellis, Nicholas, O'Connor, Parish, Patterson, Porter, President, Rhoades, Richmond, Riker, St. John, Salisbury, Sears, Shaver, Shaw, Stanton, Stetson, Stow, Strong, Taft, Taggart, J. J. Taylor, Townsend, Tuthill, Vache, Waterbury, White, Witbeck, Worden, Young, Youngs—73.

NOES—Messrs. Bouck, Cornell, Harrison, Jones, Mann, Shepard, Smith, Tallmadge, Tilden, Willard, Wood—11.

The section thus agreed to is as follows:—

All offices for the weighing, gauging, measuring, culling, or inspecting any merchandise, produce, manufacture, or commodity whatever, are hereby abolished; and no such office shall here-by be created by law: but nothing herein contained shall prevent the legislature from exercising such control over the inspection or manufacture of the salt made from the springs belonging to the State, as it may deem proper; or shall

interfere with the collection of the tolls and revenues of the State.

Mr. STOW moved a reconsideration. Lost.

Mr. WHITE moved that during the rest of this month, the Convention hold but one session

a day, from eight until two.

Mr. MORRIS moved to lay the resolution on the table. Agreed to.

The Convention then adjourned to nine o'clock to-morrow morning.

WEDNESDAY, AUGUST 5.

Prayer by the Rev. Mr. MEYER.

Mr. BOUCK presented a petition from Oneida county, in relation to the elective franchise; and also in relation to the construction of the two houses of the legislature. Referred to the committee of the whole having in charge the report of committee number Four.

STATE OFFICERS.

The Convention then proceeded with the unfinished business of yesterday.

The first question was on agreeing to the last section of the report of committee number Six, as amended.

Mr. MURPHY, by consent, submitted a substitute for the section, which was received by unanimous consent, as follows:—

All offices for the weighing, gauging, measuring, culling, or inspecting any merchandize, produce, manufacture, or commodity whatever, are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the interests of the state in its property, revenue, tolls or purchases or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

The question was then upon adopting the section as amended.

Mr. TALLMADGE again repeated that he should vote against this proposition in any and every form.

Mr. PATTERSON, as a general thing, was opposed to putting any thing in the constitution that was more properly matter of legislation.— But he had seen enough of legislation on this subject. In 1343, a law was passed abolishing compulsory inspections. And yet a horde of these officers came here besieging the legislature of 1344, until they got a law passed forbidding any man to discharge the duties of inspector, except one who had been regularly appointed. Since this Convention met, some of those officers had been here opposing the adoption of this section.

Mr. TALLMADGE said if the lobby had become so powerful that they controlled all three branches of the legislature, it would be idle for us to attempt to nail down what all three of these could not keep still. His word for it, there would be a reaction on this subject, and the Lazzaroni in New-York would come up at the other end of the heap.

Mr. MANN inquired of Mr. PATTERSON, if any of these officers had besieged him? If so, he had been more unfortunate than the New-York delegation.

Mr. PATTERSON replied that he had not been spoken to by any of them, nor had he ever been approached when he was a member of the legislature.

Mr. SHEPARD said he was acquainted with

most of the inspectors from New-York, and he had not seen one of them in this capitol. He said the mind of that man was not rightly constituted who could not tolerate honest differences of opinion; and the man who saw a rogue in every one, who was not of his party, was a rogue himself.

Mr. O'CONOR was sorry to hear these imputations upon his city and the delegation. They were all unfounded.

Mr. PATTERSON said if he had been understood as making any charge against the inhabitants of the city of New-York, as such, or its representatives, in reference to their action upon this question, he had been misunderstood. He did not wish to impute anything improper against those who voted upon this question contrary to himself. Nor should the gentleman from New-York (Mr. SHEPARD) who had read him a lecture here this morning, impugn his (Mr. P.'s) motives with impunity. He did not wish to apply any rule to the city of New-York which he was not willing to have applied to the country—he had no ill-will toward that city—he admired both it and its representatives. But these inspectorships, which existed as well in the country as in the city, were not needed in either—the inspectors of lumber, leather, &c., were entirely unnecessary, and he should vote for the proposition to do away with them. In regard to the other matter, he had heard an honorable member state that there were eight inspectors in this chamber yesterday. He was not certain that he said they were from the city of New-York, and in this he might have been in error. But that there were inspectors here he believed could not be contradicted.

Mr. SHEPARD, after the explanation of the gentleman, withdrew all imputations on his part. But he would take this occasion to say that while he should never seek collision by unjust imputation on any one, gentlemen might rest assured that when it did come he should never shun it.

Mr. RHOADES related the circumstances which led to the passage of inspection laws.

Mr. TALLMADGE, in allusion to the feeling which had been exhibited this morning, called the attention of the Convention, particularly of the farmers present, to the well known fact that a certain bird by fluttering as though its wing was broken, and by cries of distress, allured men from its nest. It might be so here.

Mr. STRONG made a few remarks more particularly in relation to the love of everything in the old constitution exhibited in some quarters. He said he was not wedded to old opinions, and should go for what he considered right, old or new.

Mr. LOOMIS hoped the vote he should give

on this question would not be taken as an indication of his opinions, for he was opposed to putting such things in the constitution, and should vote accordingly. In the capacity of a legislator he should vote for the section, but he did not think it prudent to make it a constitutional provision.

Mr. BASCOM was as averse as any gentleman on this floor to lumbering the constitution with provisions that do not of necessity belong to it; but he desired to call the attention of the gentleman from Herkimer to the consideration that we are here to say what offices there shall be, and how those offices shall be filled.

Mr. JONES said the gentleman from Herkimer (Mr. Loomis) had anticipated him in almost all he had intended to say. Inspection laws had been in existence in this state for more than 60 years, and a diversity of opinion existed among dealers in articles subject to inspection, whether these laws could with propriety be abrogated.—His own opinions, founded however upon little or no practical knowledge upon the subject, were not very favorable to the continuance of inspection laws; and were he a member of the legislature, and were this question pending there, he would cheerfully vote for a proposition similar to this, inasmuch as he should be perfectly willing to have the experiment tested whether we could well and safely get on without any of these laws, and tested too in a way that would put it in the power of a subsequent legislature to rectify the error, if the experiment should prove to be impracticable, or, in any important respect, detrimental to the interests of trade. He was not, however, so perfectly confident of the soundness of his views upon this question, as to justify him in voting to engraft the principle into our organic law. It was not easy to change our constitution, and a subject like this, relating to the trade and business of the community, involving questions of disputed propriety and practicability, should not be placed beyond the reach of a reasonably prompt and proper corrective.

For these reasons, therefore, and disclaiming, with the gentleman from Herkimer, to have his vote at all involve the policy of inspection laws, Mr. JONES concluded by saying that he should vote against the proposition now pending.

Mr. TILDEN spoke in favor of the amendment.

Mr. CAMBRELENG regretted to hear the expression of opinion against abolishing inspection laws; and yet gentlemen avowed that they should vote against the provision, on the ground that it was a subject for legislation. What were they here for, but to reform the constitution? What was it but to dispense with every useless office? And what were they here told respecting these officers? Why, that they were not only useless, but mischievous and oppressive. What were the questions here involved? It was whether the government is better able to ascertain the quality of an article, or the trade. Whether the government is better qualified to judge of hops and potash, than those whose business it is. He hoped all this Executive patronage would be abolished. Take the article of cotton, and how was that disposed of? By brokers. Their lives were devoted to that branch of business, and

their experience was worth more than all these inspection laws. Who were these tobacco inspectors? Were they tobaccoists? No—no more than he was who never used the article.—They were politicians who were put into the office, and he wished to see such offices abolished and that patronage taken from the Executive.—Gentlemen then who desired an abolition of the inspection laws should take this opportunity to accomplish that reform.

The vote was then taken, and the section was agreed to, yeas 92, noes 10, as follows:

AYES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bowditch, Brayton, Bruce, Brundage, Burr, Cambreng, D. D. Campbell, R. Campbell, Jr., Candee, Chamberlain, Chatfield, Clark, Clyde, Conely, Cook, Crooker, Cuddeback, Dana, Danforth, Dodd, Dorlon, Gebhard, Harris, Hawley, Hotchkiss, Hunt, Hunter, A. Huntington, E. Huntington, Hyde, Jordan, Kemble, Kernan, Kinsley, Kirkland, McNeil, McNitt, Marvin, Maxwell, Miller, Morris, Murphy, Nellis, Nicholas, O'Connor, Parish, Patterson, Pennington, Perkins, Porter, Powers, Rhoades, Richmond, Riker, St. John, Salisbury, Sanford, Sears, Shaver, Shaw, Sheldon, E. Spencer, Stanton, Stephens, Stetson, Stow, Strong, Taft, Taggart, J. J. Taylor, Tilden, Townsend, Tutbill, Vanschoonhoven, Waterbury, White, Willard, Witbeck, Wood, A. Wright, Yawger, Young, Youngs—92.

NAYS—Messrs. Bouck, Corneli, Harrison, Hart, Jones, Loomis, Mann, Shepard, Smith, Tallin—10.

Mr. MARVIN moved that the Convention return to the 1st section as amended, which was agreed to.

Mr. PERKINS moved to strike out the word "Treasurer," with the view of moving so to amend that he be appointed by the legislature, and hold his office for one year. He gave a few reasons why that should be done.

Mr. LOOMIS said it had been remarked that in correcting past evils, human nature was prone to run into the other extreme. He had so viewed the report of the committee on this pending question. He approved of the amendment of the gentleman from St. Lawrence. In relation to the other officers mentioned in this section, he expressed the fear that in endeavoring to take away Executive patronage, they might endanger that balance which should be preserved between the departments of the government. The idea of taking the appointment of the cabinet of the Governor from the legislature was one which did not originate with those who started the subject of calling a Convention. It was a whig project, and there was no evidence that it was called for by popular sentiment.

Mr. PERKINS called for the yeas and nays, and they were ordered, and being taken, resulted thus—yeas 10, nays 89.

AYES—Messrs. Bascom, Bergen, Brayton, Cornell, Hunt, Kemble, Loomis, Mann, Perkin, Stetson—10.

NAYS—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bouck, Bowditch, Bruce, Brundage, Burr, Chamberling, D. D. Campbell, Candee, Chamberlain, Chatfield, Clark, Clyde, Conely, Cook, Crooker, Cuddeback, Dana, Danforth, Dodd, Dorlon, Flanders, Gebhard, Ha ris, Harrison, Hart, Hotchkiss, Hunter, A. Huntington, E. Huntington, Hyde, Jones, Jordan, Kernan, Kinglev, Kirkland, McNeil, McNitt, Marvin, Maxwell, Miller, Morris, Nellis, Porter, Powers, President, Rhoades, Richmond, Riker, St. John, Salisbury, Sanford, Sears, Shaw, Sheldon, Shepard, Smith, E. Spencer, Stanton, Stephens, Stow, Strong, Taft, Tallmadge, Tilden, Townsend, Tutbill, Vache, Vanschoonhoven, Waterbury, White, Willard, Witbeck, Wood, A. Wright, Yawger, Young, Youngs—89.

Mr. MARVIN renewed his amendment, which

was to strike out all that relates to the salaries of the officers, and to insert a provision that the legislature should have control of this matter—no change, however, to be made during the continuance of any incumbent in office—such officers to receive no fees or perquisites made from their salary. He said it was the same he had offered in committee of the whole a few days ago, except that he had added the words “during his continuance in office.” He offered this now, because the house was more full than when it was voted down before. He offered it too, because it was in his judgment, contrary to the genius of republican institutions to fix these salaries by the constitution. He quoted from the constitutions of other states to shew that very few embodied such a principle, thereby preserving the accountability of these public servants, and the amount of compensation they shall receive, to the representative body. He concluded with some remarks correcting some misrepresentations of his observations on a previous occasion by the gentleman from Kings (Mr. SWACKHAMER).

Mr. CROOKER feared if they lumbered up the constitution with salaries of officers they should endanger the adoption of the constitution by the people.

Mr. KIRKLAND also protested against filling the constitution with dollar and cent provisions. Our fundamental charter should only consist of general provisions and simple rules, for there may be a changing value of money in these changing times, to meet which, power should be left with the legislature. He defended the legislature against the aspersions which he had heard on this floor. He said he was willing on this matter to trust the legislature which was amenable to the people.

Mr. RICHMOND wished this matter to be clearly understood. Gentleman here professed to be desirous to leave this matter to the legislature—it had gone forth to the world through the published debates that these gentlemen were willing to trust the representatives of the people; but what next? Why they next proposed to tie up the hands of the legislature during the occupancy of office by any one man, and his salary could not be touched until he died off.—Now he was opposed to this. If the legislature was to have no power to reduce a salary if fixed too high, he should prefer that the whole matter should be settled by this Convention.

Mr. MARVIN explained that many of these officers were but for two years, and as an appointment was in the nature of a contract it was right, and not that it should not be touched during the time for which the appointment was made. But the legislature was not divested of the power to reduce or increase these salaries for future incumbents.

Mr. RICHMOND contended that it was necessary to fix these salaries by the constitution or the existing evils would be continued. He was in favor of leaving it unrestrictedly to the people; but if that could not be done, he desired that it should be done here.

Mr. HARRIS was in favor of the proposition of the gentleman from Chautauque, (Mr. MARVIN.) He mentioned a historical fact that when Gov. Clinton recommended the legislature to re-

duce salaries, they reduced his own and left all the rest untouched. He thought that the provision was a proper one to prevent a partizan majority from reducing the salaries of incumbents of office for party purposes. They could at all times be reduced once in two years in reference to the greater part of the offices.

Mr. TAGGART thought they were stepping out of the line of their duty and establishing new precedents which the people will not tolerate in fixing these salaries by the constitution. And those persons who make their political capital by crying down salaries will do it by crying down the constitution.

Mr. BASCOM asked the gentleman what answer he would give to the democracy of Genesee if he should aid in perpetuating high salaries for a quarter of a century which the legislature had fixed? He thought, as they could not foresee the circumstances and duties of the future, they should not enter into the details of these salaries in the constitution.

Mr. VAN SCHOONHOVEN was in favor of the provision to fix this matter in the constitution, not because he doubted the ability and honesty of the legislature, but to save trouble and expense, for if it were left open there would always be agitation in the legislature in respect to these salaries.

Mr. MARVIN argued in favor of the amendment. He had listened to the argument of the gentleman from Rensselaer and he could hardly ascertain on what side of the question he was. The gentleman told them in one breath that he wanted to have these officers share the fate of the people in both good and bad times, and yet, he was in favor of fixing these salaries in the constitution. That the officer would thus share the fate of the people in good times he could understand, but how, when his salary was fixed by the constitution he could share the fate of the people if a revulsion should ensue, Mr. M. did not understand. He went on to contend that the principle which the gentleman contended for, was an aristocratic principle which was not congenial with our institutions. In relation to the gentleman's position that he wanted to get rid of the constant agitation of what this salary question would be prolific if left to the legislature. Mr. M. asked if it had come to this—were they weary of liberty—were they exhausted with the exercise of power? Was it come to this that they should withdraw from the people the exercise of power in the regulation of salaries to avoid agitation? A government might be established to avoid the agitation and excitement of debate and discussion on the part of the people. Go to very despotic governments and there they would find that the people slept in quiet—they were not disturbed by discussions on questions respecting popular rights or by such only as they were permitted to engage in by the grace and will of a sovereign. The gentleman could have such quiet in countries so governed; but was liberty there? There the gentleman could have officers removed from the action of the people, but Mr. M. desired them to be part and parcel of the people which had induced him to offer his amendment.

Mr. VAN SCHOONHOVEN rose to reply to Mr. MARVIN.

Mr. F. F. BACKUS rose at the same time, and the PRESIDENT said he was entitled to the floor, not having spoken.

Mr. VAN SCHOONHOVEN said he knew what the gentleman meant to say, and he could say it after he (Mr. V. S.) was through.

Mr. BACKUS said he did not take up much time in talking, and did not know how the gentleman could know what he intended to say.

Mr. VAN SCHOONHOVEN said he could read it in his countenance.

Mr. BACKUS replied that perhaps he was mistaken.

Mr. VAN SCHOONHOVEN claimed the right to the floor, as he had already begun to address the Chair.

The PRESIDENT said the gentleman from Monroe was entitled to the floor.

Mr. F. F. BACKUS had but a word or two to say on the disposition manifested to continue this debate. We had been told eighteen hundred years ago, that everything under heaven and in the sea might be tamed except the tongue. He thought he could appeal to this Convention for the proof, that this rule yet held good. The tongue is absolutely untameable. He did not rise to cast any blame anywhere, for he considered this to be a disease, which unless soon remedied, would prevent us doing what we were sent here to do—to make a constitution. The only remedy that he could think of, would be to avoid the committee of the whole hereafter.—To-day we had had the same gentleman speaking, who spoke in committee of the whole, and precisely the same speeches, even to the crossing of t's and dotting of i's. These gentlemen must suppose that we who listen, either have very bad memories or were very dull of comprehension, or else they were advocates of the old theology, which gave line upon line and precept upon precept.

Mr. VAN SCHOONHOVEN and Mr. BAKER rose, and the floor was given to the latter.

Mr. BAKER said he rose to do what he could to stop this debate. He was about to make a motion having this object in view. But if any gentleman would rise and say he was not prepared to vote and desired farther information, he would not make the motion. (No response was given.) Mr. B. said further that if any gentleman would rise and say he believed he could change a single vote by anything he might say, he would forbear. (There was silence still.) There being no response, Mr. B. said he would move the previous question.

It was seconded, and the amendment of Mr. MARVIN was adopted, as follows:—

AYES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bouck, Bowditch, Brayton, Bruce, Burr, Cambreleng, D. D. Campbell, C. Andee, Chamberlain, Conely, Cornell, Crooker, Dodd, Flanders, Gebhard, Harris, Harrison, Hawley, Hunt, Hunter, E. Huntington, Jordan, Kemble, Kirkland, Loomis, Marvin, Murphy, Nellis, Nelson, Nicholas, O'Connor, Parish, Patterson, Penniman, Perkins, Porter, Powers, President, Rhoades, Riker, Ruggles, St. John, Salisbury, Sanford, Shaw, Shepard, Smith, E. Spencer, Stanton, Stephens, Stetson, Stow, Taft, Taggart, Tallmadge, J. J. Taylor, Tilden, Tuthill, Vache, Waterbury, White, Willard, Worden, A. Wright, Young—73.

NAY—Messrs. Brundage, R. Campbell, jr., Chatfield, Clark, Clyde, Cook, Cuddeback, Dana, Danforth, Dorlon, Hart, Hotchkiss, A. Huntington, Hyde, Jones,

Kernan, Kingsley, Mann, McNeill, McNitt, Maxwell, Miller, Morris, Richmond, Sears, Shaver, Sheldon, Strong, Townsland, Van Schoonhoven, Wood, Yawger, Youngs—33.

Mr. CHATFIELD moved to restore the second section, heretofore stricken out. He was desirous of retaining some shred of his report to take home with him, as a sort of amulet to protect him from those troublesome visitors called witches. From the way in which the Convention had gone on, there was reason to fear nothing would be left of it. He complained that by the springing of the previous question, after the friends of the mover had spoken to their heart's content, he was prevented from defending the first section of the report. He then went on to advocate his motion.

Mr. RHOADES rose to offer a substitute which he thought would be satisfactory to the Convention. It was as follows:

§ 2. A State Engineer and Surveyor shall be chosen at a general election, who shall hold his office for two years, and whose powers and duties in relation to the canals and other interests of the state shall be prescribed by the legislature.

Mr. R. briefly advocated the amendment and Mr. STETSON opposed it.

Mr. VAN SCHOONHOVEN continued the debate in reply to the argument of Mr. MARVIN on the amendment to the first section.

Mr. DANFORTH followed, chiefly in reply to Messrs. HARRIS and MARVIN, and the ground taken by them in favor of striking out the salaries. Mr. D. believed that the people were willing to pay public officers a full compensation for all services rendered by them, and that they would never call on the legislature to reduce a salary, because a public officer happened to receive a dollar more than their actual expenditures, in consequence of an increase in the value of money. The idea that public officers were to be pensioners, and that they ought to receive a bare support; and that this matter was to be left to the legislature, in order to keep salaries always within that precise limit, was an idea which the people never would sanction. The position, therefore, that the matter of salaries must be left out of the constitution, that the people might raise or cut them down according to the value of money, was a fallacy. He had no objection to having it there, if the Convention saw fit, but not on any such grounds.

Mr. CHATFIELD, in reply to what had been said as to the matter of salary, remarked, that in this respect nothing would be gained by abolishing the office of Surveyor-General, and substituting a clerk—for the latter would have to be paid a salary equal to that of the original officer. The proposition of the committee would result in a saving of more than half the salary proposed to be paid to the engineer and surveyor—and the office of chief engineer, which now costs the state \$2000 annually, was to be abolished. It would be a saving also, in that it would not only retain an officer of the Canal Board, but would give us the official responsibility of a sworn officer, instead of the irresponsible man upon whom the board and the people have had to depend heretofore, for the correctness of estimates.

Mr. HARRIS said it was not without some hesitation that he moved to strike out this sec-

tion. And he confessed that he had since somewhat changed his view of the question, under what had been since said of the importance of divesting the Comptroller of some of his immense power and patronage—which it had been a subject of frequent remark, exceeded those of all other executive officers put together. If therefore the section could be amended as he had indicated, he should be glad to see it restored, and should vote to restore it, with that view.

Mr. JORDAN rose to enquire whether it would be in order to move an amendment to the motion of the chairman of the committee. He had voted to strike out the section in committee of the whole, because he was opposed to creating a new officer upon a salary of \$2000, not knowing at the time what were to be the precise duties of that officer. He was not advised whether if the state should undertake new public works, or proceed to finish those already begun, this officer's duty would be to take charge of those works professionally, or whether a chief engineer would be professionally employed, and the duty of this officer merely to supervise his proceedings for the purpose of detecting errors and false estimates, and have a general superintendence of the canals. He (Mr. J.) had supposed, if the former, that no competent scientific and practical man could be obtained for the salary proposed. If the latter, then the sum fixed might be altogether disproportioned to the services he would be called on to render.—He agreed with the honorable Chairman of the committee that it might be, and in his judgment was, of great importance to the interests of the state to have in commission an officer of scientific attainments and practical experience, capable of understanding and correcting the errors and false estimates alluded to; and inasmuch as the amendment of the 1st section moved by the gentleman from Chautauque (Mr. MARVIN) had been adopted by the Convention, which in its terms applied to all the officers mentioned in the article, he should vote to restore the section with a view to an ulterior motion to amend it by striking out all after the 31 line, so as to bring the office within the operation of the amendment to the first section. He was willing to entrust it to the legislature to fix the salary, believing that they could apportion the salary according to the services required. The immense magnitude of the public works already constructed and began—their importance to the revenues of the state, and the manifest propriety, he might say, the cogent necessity of having them well cared for, by a responsible official, would induce him to restore the section under consideration.

Mr. STETSON opposed the restoration of the section, urging that it contemplated the creation of a new office, and without any demand for it on the part of the people—and that the tendency of having a professional engineer in the Canal Board would be to enlarge and increase the duties of engineers, and to give employment to professional engineers.

Mr. RHOADES alluded to the original estimate of the cost of the Genesee Valley canal, and to its actual cost—asking to whom the gentleman would look as the responsible man for the first estimates?

Mr. STETSON held the Canal Commissioners responsible—and if you relieved them of responsibility for the acts of subordinates, and threw it off upon an engineer, who was to be elected as they were what security was there that we would do any better? If three Canal Commissioners could not select a good engineer, how could you expect to get a good one by this mode of selection? He was not opposed to an elective system, but he did not want to see it pushed beyond proper bounds. He would not elect presidents of colleges, nor a principal of the Normal school. He characterized this section as a proposition to create a chief of a department to recommend such public works as might be required, when the occasion for it had gone by—as the creation of a great state establishment with a new officer at its head to lead off in new schemes of public improvement, and to tease your tax-payers for the means to carry it out. Besides, after spending day after day in selecting candidates for governor, judges, &c. &c., he should despair of seeing a state convention selecting the best men for state engineer. And if we made a mistake there, how would it be remedied?

Mr. CHATFIELD. Then we had better dispense with elections by the people altogether.

Mr. PERKINS said the gentleman's objections applied as well to other officers as to the Surveyor and Engineer. Mr. P. believed the people were as competent to judge of the qualifications of one class of officers as the other.

Mr. STETSON interposed. The Governor's duties and the Comptroller's, were of a general political character, such as were known to the public. Scientific attainments were not generally known.

Mr. PERKINS replied that the Comptroller's duties required financial talent, those of the Attorney-General, legal talent and acquirement—and both were as much matters of science as engineering. Mr. P. went on to urge the importance of having not only a practical and professional engineer to revise and review the acts of subordinates; but to have him a sworn officer of the government, and responsible for all that was done in the way of engineering. Hitherto this officer had been a mere hired servant, under no oath of office, and utterly irresponsible, and the state, under the erroneous estimates of such men, had been led into enormous expenditures. As to the salary of this officer, he, Mr. P., said if we could save any considerable portion of the half million now annually expended in canal repairs, he did not care a pin whether we paid the officer \$1,000 or \$5,000. The Convention here took a recess.

AFTERNOON SESSION.

Mr. CHAMBERLAIN corrected a statement of Mr. RHOADES as to the Genesee Valley Canal—saying that the gentleman had placed the original estimate too low, and the cost of completion too high. It was true the cost had far exceeded the original estimate—but it could be shown to the satisfaction of every reasonable man, were there time to go into it, that there were two sides to that question—and that the increase could be easily explained. As to the cost of completing the canal, the highest esti-

mate by any fair minded man was \$1,300,000.

Mr. CROOKER saw no propriety in restoring the section stricken out. All that was secured by it would be obtained by inserting the word Engineer or Surveyor before Attorney General, in the first section. He was in favor of such an officer, but he did not want a whole ticket taken up in reciting his titles. Neither would he limit the selection of such an officer to a person who had been engaged seven years in the pursuit of the profession of an engineer—it might as well be provided that none but a practical lawyer of seven years standing should be Attorney General.

Mr. STRONG: That would be very proper.

Mr. CROOKER: Well, then, if it is proper, make it consistent and apply it all around.

Mr. LOOMIS understood yesterday that the intent of this section was to retain the office of Surveyor General, and he offered a substitute carrying out that idea. But he now understood from the friends of the section, that this officer was not to be a substitute for that, but that he was to be a practical engineer, to do the engineering on the public works. What need was there of such an officer? Were we about to start on a new system of internal improvement? Was this to be the commencement of this new impulse? Were we going now to commence a new system of public works? He apprehended the universal response here would be no. What then were to be the duties of this officer? Was he to superintend the repairs on the canals? If so, what were we to do with the canal commissioners? If he was to be a substitute for the present chief engineer, then it was a mere question of the mode of appointment—whether by the canal commissioners as now, or by the people. The present canal department, with its subordinate officers, could perform all the duties which would fall within his range of service.—And if an engineer was to be appointed at all, a general election was not the proper way of selecting him. There was no likelihood that a political caucus would know who were the scientific men best fitted for such an office. He believed that in this Convention, with all its knowledge, there were not twenty-five members who knew the name of our present chief engineer. And if it was given to them to select one, they would not depend upon their own knowledge, but would refer to such men as the distinguished gentleman from Schoharie (Mr. Bouck), who has long experience in such matters, to ascertain who were the best persons to fill the post. And gentlemen would be governed by his opinion—not merely influenced, but absolutely governed—in the absence of other information.—For these reasons he could not vote to restore the section stricken out.

Mr. CHATFIELD regretted to be obliged to reiterate again the statement that the intention of this section was not to abolish the office of Surveyor General, but to retain it, and to superadd to it the duties of Engineer. Nor was he disposed to stand in the attitude in which the gentleman from Herkimer had placed him, of having in view the commencement of what had been called a new impulse.

Mr. LOOMIS only intended to say that that was the tendency of the proposition.

Mr. CHATFIELD said the gentleman inquired gravely if this was to be the commencement of a new impulse—and that, and the general scope of his remarks, amounted to a direct charge, that such was the intent of the section. He repelled the imputation. Mr. C. was free to admit that he did not come here with a single idea in his head, and to make every act of his tend to one particular result. He supposed there were other interests in the state than those embraced in what were called the "People's Resolutions." He was not here to secure that and that only. Nor would he tolerate the idea for one moment, that we were to declare that there shall be no more public improvements in the state. Did the gentleman suppose that there was never to be a single step of progress made in our public improvements—or that this constitution was to endure only until our debt was liquidated? Mr. C. was looking forward to the period when this state might safely resume the policy which was her crowning glory—when we might rise and go forward in the work of internal improvement. He would go with the gentleman to place the finances of the state on a safe and secure basis—to make ample provision for the payment of the present debt. But having done that, he was not bound to stop there, to fold his arms and say his work was done. It seemed to be the opposite idea that influenced the gentleman from Herkimer, who urged that now was the time when an officer of this kind may be dispensed with. That there was no longer a necessity for such an one. He asked if the Canal Commissioners had not retained in their employment such an officer? The fact that they had done so, was proof that they believed there was a necessity for such an agent. The commissioners were not practically acquainted with the scientific knowledge necessary for a proper discharge of the duties of such an officer, and for this reason they had retained the services of a scientific man. He thought there was as much safety in electing a Governor in the same way. The principle of popular election had been applied to the state officers heretofore appointed by the legislature and the Governor; and the gentleman from Herkimer would not dare to oppose that. There was no good reason he believed, why the same principle should not apply to this officer.

Mr. E. HUNTINGTON thought gentlemen were fighting at cross purposes in regard to this matter. If it was desired by the committee to break up the great central power in the hands of the Comptroller—if it was intended that he shall no longer hold the canals in one hand, and the banks in the other, as was said the other day by the gentleman from Chautauque—if it was intended to erect a department of public works, at the head of which should be an officer upon whom would devolve the duty of the Surveyor-General, he should not interpose any objection to such a measure. But if it was intended that this Chief Engineer should have actual charge of the public works of the state—if the services of this officer were to be those of a Chief Engineer, he must protest against it for reasons which he had stated yesterday, and which it was not necessary for him now to repeat. In his judgment, notwithstanding what had been

said by the gentleman from Otsego, it was idle to suppose that there could be obtained, in the mode proposed by this section, a competent engineer, who could perform understandingly the services of a professional man, when such were required. He hoped, therefore, that the section would not be restored; but if gentlemen desired to organize a new department of government, they should draft a proper section, and call the officer by the proper name. He liked to see things called by their right names, and that of Chief Engineer was not at all suited, in his opinion, to the nature of the duties to be performed by this officer.

Mr. TILDEN would not vote to restore this section, without some more definite and tangible notion of his powers and duties than he had been able to gather from the debate. If the object was to retain the office of Surveyor General he had no objection; but if the object was to have an officer to perform the ordinary duty of chief engineer, he was opposed to it, and mainly for the reason that it established permanently an office that might become unnecessary.

Mr. STRONG was struck with surprise by the course of the gentleman from Herkimer (Mr. LOOMIS.) Yesterday he had proposed an amendment changing the name of the officer named in this section to a commissioner of the public works, and said if the gentleman from Otsego (Mr. CHATFIELD) would consent to adopt it, he would vote for the section. To-day, however, a great change had come over his mind. He had discovered a great secret lurking under this section, and the word engineer sounds strangely and harshly in his ear. He sees in this the commencement of a new era in relation to our public works, and this engineer is to be the great entering wedge. This fact he has just discovered. He says that such a project as the resumption of the public works, would meet with an universal response in this Convention against it.

Mr. LOOMIS said he had only alluded to new projects of public improvements.

Mr. STRONG had taken down his words as they fell from his lips, and could not be contradicted. The gentleman asked, "are we to commence a new system of public works? I trust that there will be but one universal response against it in this Convention." Gentlemen did not always know what they did say. In regard to that question, he could inform the gentleman that there was a county or two beyond old Herkimer who had not received the benefit of the enlargement of the Erie canal, as that county had, and who would not be satisfied that it should go no further. But this was not the first attempt of the gentleman to wed the Convention to the report which had just been received from his colleague (Mr. HOFFMAN.) He would not pretend to predict that the Convention would not adopt that report just as it was reported; but he could inform gentlemen that there would be far from an universal response in its favor. It was not in order to allude to this subject at this time, but he knew that the western counties never would submit that they should be deprived of the benefits of the enlargement, after it had been made through the gentleman's county—they would claim to have a voice in his mat-

ter; and that voice would be against their selfish policy. Gentlemen had objected to adopting this section from one reason and another; some, because he was to be a practical engineer. Would not gentlemen have the Attorney-General a practical lawyer? or would they be satisfied that the thirty-six judges to be elected under the new Constitution should be laymen? He could not suppose that it would be a good objection to the new system that they were to be selected from among the wisest and soundest lawyers in the state. These objections raised here seemed to him to be entirely frivolous, and only designed to furnish an excuse for voting against the section.

Mr. KEMBLE thought gentlemen seemed to be laboring under a misapprehension on this subject, and as a member of committee number six, he would endeavor to explain. The committee on examining the subject, found in the canal department two offices—one an engineer-in-chief, under the employ of the canal commissioners, at a salary of \$2000, and the other the surveyor general, which had once been an office of great consequence, but which had been reduced in importance by reason of the appointment of a chief engineer, and his salary had also been reduced to \$1000, making \$3000 for both offices per annum. The committee, in looking at the real importance of the two offices, did not think it necessary to destroy the surveyor generalship; but thought proper to elevate the office of chief engineer in its character, and bring that officer more immediately before the people of the state. This officer was very necessary to the canal commissioners, because they were constantly obliged to apply to him in relation to their votes in the canal board, and in their reports to the legislature, he furnished all the estimates. It was therefore thought best to elevate him to a seat in the canal board, so that he should be personally responsible for his acts, and in making reports. He would make them upon his own responsibility. The canal commissioners, not being engineers, would not assume responsibility for the estimates presented in their reports, but fell back upon their subordinate officer, the engineer-in-chief. The people of the state had been losers to the amount of millions of money on this account,—because there was no one to take the responsibility of their reports. If the committee had erred in regard to this matter, they had erred unanimously; for this was the only point in which they did all concur.

After some explanations in regard to the appropriate duties of this officer, between Messrs. TILDEN, KEMBLE and STETSON, the question was taken upon restoring the section, and it was restored, ayes 73, noes 26, as follows:

AYES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Bowdish, Bruce, Brundage, Cambreleng, Chamberlain, Chatfield, Clyde, Cook, Cornell, Dana, Danforth, Dodd, Dorlon, Gebhard, Graham, Harris, Harrison, Hart, Hawley, Hunter, A. Huntington, Hyde, Jordan, Kemble, Kernan, King-ley, Kirkland, Mann, McNeil, McNitt, Marvin, Maxwell, Miller, Morris, Nellis, Nelson, Nicholas, Parish, Patterson, Porter, President, Rhoades, Riker, Ruggles, St. John, Salisbury, Sanford, Sears, Shaw, Sheldon, Shepard, Smith, E. Spencer, Stanton, Stephens, Stow, Strong, Taft, Tallmadge, White, Willard, Witbeck, Worden, A. Wright, Yawger, Young, Youngs—73.

NOES—Messrs. Bascom, Borgen, Bouck, Brayton, Burr, D. D. Campbell, R. Campbell, jr., Candee, Clark, Conely, Crooker, Cuddeback, Flanders, Hotchkiss, E. Huntington, Loomis, O'Connor, Powers, Richmond, Stetson, Tilden, Townsend, Tutthill, Vache, Waterbury, Wood—26

Mr. BERGEN moved to strike out all that related to the salary and travelling fees of the officer. Agreed to.

Mr. TILDEN moved to strike out the words "but no person shall be elected to said office who is not a practical engineer."

Mr. NICHOLAS hoped not. It had been objected to this new state officer, that the committee had not concurred in any opinion as to the duties of a state engineer. The truth was, the committee wished to leave all this detail to the legislature. He would however say, as a member of that committee, that they expected by this section to secure to the state the services of a competent engineer, who would occupy most usefully in the canal board the old place of the Surveyor-General, and that he would have the supervision of all surveys and estimates to be made by sub-engineers, which had heretofore in different instances, been made so erroneously, not to say dishonestly, as to cause a loss to the state of millions of dollars. The canal commissioners had not been engineers, and had relied upon the estimates of engineers employed as mere agents, and not officers of the state, who had not acted under the responsibility of an official oath; and upon the estimates of agents thus employed, had our public works been constructed. Many of them, he did not doubt, were trustworthy men, and competent engineers; but the losses sustained by the state, proved that this could not be said of all. And had such an officer been appointed many years ago, he would have saved many millions of dollars to the state; and whatever was to be the future condition of our public works, whether they were to be stationary or progressive (and he earnestly hoped they would soon be resumed), the services of a competent State Engineer would be very valuable to the state. The fact that this measure would create no new office, but only a new incumbent

of an old department, with new duties, was an argument in favor of it; also that the state would incur no additional expense; for the principal engineer was now employed by the Canal Commissioners with a salary of \$2000. It had been objected to this officer by one gentleman, that he might be a man of so much science; that the canal commissioners would become subordinate to him; another was apprehensive that a man so scientific would not be as practical as he should be. Such objections Mr. N. must say had surprised him. Science in this department somewhere was indispensably necessary. If the canal commissioners did not possess it (and heretofore they have not been engineers), there should be an officer in this department who was a master of the science of his profession, and had also been a practical engineer; and Mr. N. could not perceive the danger of his stock of knowledge ever being excessively large. And should it occur that the canal commissioners had not official qualifications adequate to their duties, it would be the more fortunate for the state that you had an able and practical officer in this department.

Mr. CROOKER would strike it out because it meant nothing. Any town surveyor, that ever carried a chain and compass, would come under such a qualification.

Mr. RICHMOND had predicted that it was not a practical engineer that was wanted, but a place for some broken down politician. This proposition confirmed his view of it.

Mr. RHOADES thought the term engineer was enough. There was no such thing as an engineer in theory any more than a state carpenter in theory, if we had one.

Mr. NICHOLAS replied that a man might be a scientific engineer, not a practical one.

Mr. TILDEN's motion to strike out, was lost, 30 to 65.

Mr. KIRKLAND then moved to amend so as to say "the Surveyor General shall be State Engineer" &c. Lost, 40 to 40.

Adj. to 9 o'clock to-morrow morning.

THURSDAY, AUGUST 6.

Mr. BRAYTON presented a petition from the Jefferson County Institute, on the subject of the literature fund, which on his motion was read. The petition protested against the diversion of the literature fund to the common school fund. Referred to committee number twelve.

Mr. HOTCHKISS presented a petition from citizens of Warren county, on the subject of the literature fund, which was also referred to committee number twelve.

Mr. WORDEN presented a remonstrance from the Oneida Conference of Methodist ministers, on the same subject. Mr. W. (the remonstrance having been read), moved its reference to committee number twelve and that it be printed.

Mr. WILLARD and Mr. MANN opposed the printing, unless the others also were printed.

Mr. WORDEN explained that this was a respectful argument which it might be useful to print.

Mr. RICHMOND opposed the printing.

Mr. WORDEN withdrew the motion to print, and the remonstrance was referred as desired.

Mr. H. BACKUS presented a remonstrance from the Trustees of the Brockport Literary Institute, Monroe county, on the same subject, which was referred to the same committee.

ORDER OF BUSINESS.

Mr. RUGGLES called for the consideration of Mr. Loomis' report on the order of business.

The report was taken up.

Mr. RUGGLES then moved to amend the report by making the sixth subdivision the third.

Mr. PERKINS thought we had better get through this article first.

Mr. LOOMIS explained why the committee had agreed on the order contained in the report.

Mr. RUGGLES contended that it was important to consider the report of the committee on

the judiciary at an early period. In answer to a question from Mr. MILLER, he said those reports would be furnished by the printers this afternoon.

Mr. JORDAN thought the judicial department was the next in order after disposing of the executive and the legislative. It was evident that all the 18 reports from standing committees could not be considered in the time allowed to them. Gentlemen were disposed to consider every question gravely, both in committee and in Convention, and he should like to know where they were to land on the 1st November next. It was important that they should first dispose of those prominent questions which had brought them together, and if they had then any time to spare they might add the fancy constitution making to the substantial. He hoped also that when they took up this judicial department gentlemen would be found in their seats. He hoped the gentleman from Herkimer (Mr. HOFFMAN) would neglect his business at New York for a time, and give them his attention in the Convention on this important question.

Mr. HOFFMAN in part agreed with the premises of the gentleman from Columbia, but dissented from some of his conclusions. He agreed that they should attend to the business which called them together, and what was it? He spoke of the discontent occasioned for years by our legislation, and yet the Convention had left that department substantially what it was. The efforts for a new judiciary were but of yesterday. He gave preference to the reports of Messrs. LOOMIS and CAMBRELENG, on the subject of banks and chartered companies. He differed from the gentleman from Columbia on the question of finance, which that gentleman seemed to suppose might be deferred. It was the abuses arising out of that subject which brought them together this day. He did not undervalue a good judicial system, but they should first find remedies for the evils which had brought them together and then they might go to the judicial department, and to others of less importance. In reference to the allusion to his absence, he said sickness in his family had kept him away for a few days, but he intended to be present when the important subjects were under discussion. Banking and special charters were questions which should be taken up without much delay, and he hoped no loss of time would be allowed in discussing them.

Mr. TALLMADGE contended that resolutions on the subject of the mode of business were not debatable.

Mr. RICHMOND did not agree with gentlemen that this Convention was not going to get through its business, and therefore that the report of the judicial department should be taken up first. He hoped the laymen would have an opportunity to consider it, before, being called upon to vote upon it. The public had manifested some impatience at the delay of the judiciary committee in making its report; and if it had taken them so long to make the report, it surely would require some time to enable laymen to understand it. He was willing to give his aid in disposing of it before the close of the session, but he did not consider it the subject of

primary importance. He thought the bill of rights was of some importance; for if the people had no rights there could be no necessity for a judiciary.

Mr. STETSON said it was concluded to be impossible to consider all the reports before the close of the Convention; this important question of financial reform was the one on which Constitutional Reform was mainly to depend; and he thought it ought not to be disposed of on a point of order. It might be the course pursued by gentlemen who dared not meet a question, to get rid of it on a point of order. He did not agree with the gentleman from Columbia that many topics which some of them desired to consider were "fancy work" of the Constitution.

Mr. JORDAN had never called these things "fancy work." He thought some of them were very important, but he wished to take up the most important first, and then consider the others as they had time.

Mr. STETSON resumed, and spoke of the importance of many subjects which were on the calendar. He hoped they would be considered in their order, or at all events that they should consider the subject of finance before that of the judiciary.

Mr. RHOADES moved to lay the whole subject on the table.

Mr. BASCOM called for the yeas and nays, and there were yeas 18, nays 79.

Mr. CAMBRELENG spoke of the necessity of having some order of business, to prevent the loss of time which was attendant on discussing resolutions to arrange priority of business. His parliamentary experience had taught him that more business was done in the last month than in the two first of a session. He thought they should get through all their business, but they must have an order of business. He differed from the gentleman from Dutchess, who desired at once to take up the report on the Judicial Department, especially when a majority of that committee, after six weeks' discussion, had only agreed to report, and had not agreed on the subject matter reported.

Mr. KIRKLAND defended the judiciary committee. He said they had agreed on the union of Law and Equity Jurisdiction, and some other points, which certainly were of very great importance.

Mr. MANN was opposed to the judiciary taking precedence of the financial question.

Mr. STETSON called for the yeas and nays, on Mr. RUGGLES' motion, and there were yeas 58, nays 46, as follows:—

AYES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bouck, Bowditch, Brown, Bruce, Burr, D. D. Campbell, Candee, Chamberlain, Cook, Crooker, Dana, Dodd, Dorn, Graham, Harris, Hawley, Hotchkiss, E. Huntington, Hyde, Jordan, Kemble, Kirkland, McNitt, Marvin, Maxwell, Miller, Morris, Nicholas, O'Connor, Parish, Patterson, Rhoades, Ruggles, Sears, Smith, E. Speacer, Stanton, Stephens, Stow, Strong, Tallmadge, J. J. Taylor, Vache, Van Schoonhoven, Waterbury, Witbeck, Wood, A. Wright, Yawwer, Young, Youngs—58.

NAYS—Messrs. Angel, Brayton, Cambreleng, R. Campbell, Jr., Chatfield, Clark, Clyde, Conely, Cornell, Cuddeback, Danforth, Flanders, Harrison, Hart, Hoffman, Hunt, Hunter, A. Huntington, Kernan, Kingsley, Loomis, Mann, McNeil, Nellis, Penniman, Perkins, Porter, Powers, President, Richmond, Riker, St. John, Salisbury, Sanford, Shaw, Sheldon, Shepard, Stetson,

Swackhamer, Taggart, Tilden, Townsend, Tuthill, White, Willard, Worden—46.

Mr. WORDEN then asked and obtained leave to submit a plan of a judiciary, as follows:—

§ 1. The judicial power shall be vested in a court for the trial of impeachments, a court for the correction of errors, a court of equity, a supreme court, county courts and courts of oyer and terminer, and such inferior courts as may be created by law, pursuant to this Article.

§ 2. The court for the trial of impeachments shall consist of the president of the Senate, the senators or a major part of them, the justices of the court for the correction of errors or a major part of them.

§ 3. The Assembly shall have the power of impeaching all civil officers of this state, for mal and corrupt conduct in office, and high crimes and misdemeanors; but a majority of all the members shall concur in an impeachment. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly to try and determine the charge in question, according to evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. When the Governor shall be impeached, the Lieutenant-Governor shall take no part on the trial or decision of such impeachment. A person impeached shall be suspended from exercising his office until acquitted. Judgment, in case of impeachment, shall not extend further than removal from office, and disqualification to hold any office or place of trust under this state; but the party convicted shall be liable to indictment and punishment according to law.

§ 4. The court for the correction of errors shall consist of a chief justice, and not less than nine associate justices. The supreme court shall consist of a chief justice, and not less than twelve associate justices.—The court of equity shall consist of a chief justice, and not less than four associate justices, any four of whom may hold the court; and special terms, for hearing and deciding such questions and matters as may be prescribed by law, may be held by any one of the justices of the court of equity.

§ 5. The state shall be divided into not less than five judicial districts, of which the city and county of New York shall be one; but no county shall be divided in the formation of a district. Terms of the supreme court, and of the court of equity, shall be held in each judicial district, at such times and places as shall be prescribed by law. The terms of the court for the correction of errors shall be held at the times and places fixed by law.

§ 6. The stated terms of the supreme court, shall, whenever practicable, be held by four justices thereof; but may be held by three or any two of them, in case of absence of the other justices. And the justices of the said court shall by lot or otherwise divide the associate justices thereof into four classes, each to consist of three such justices. The justices of each class in rotation, or their successors in office—shall, with the chief justice, hold the stated terms of the said court for two years. The legislature may by law direct that any other of the said classes may hold stated terms whenever it shall be found necessary to dispose of business pending in said court. Special terms of the supreme court may be held by any one justice thereof, for the hearing and decision of such questions and matters as may be prescribed by law, with the right of appeal to the justices of the said court at a stated term in such cases and on such terms as the legislature may direct, or as may be directed by general rules of the said court when authorized by law. Such special terms shall be held in each judicial district at the places prescribed for holding stated terms of the said court. And they may also be held by any of the justices, who are not at the time designated to hold stated terms, in the several counties at the same times and places at which circuit courts are appointed to be held, or at other times and places as shall be directed by law.

§ 7. Circuit courts for the trial of issues joined in the supreme court, or sent to that court to be tried, shall be held at least twice in each year in every county of this state, and of ener in any county when required by law. They shall be held by such of the associate justices of the supreme court as are not at the time designated to hold the stated terms of the said court, in such rotation and order as shall be arranged among themselves; or, in case of their disagreement, as shall be directed by the supreme court at a stated term

thereof. But no such justices shall hold a circuit court in the same county more than once in the same year. The mode of supplying any omission of a justice of the supreme court to attend any stated term or to hold any circuit court, shall be prescribed by law.

§ 8. Courts of oyer and terminer for the trial of such criminal causes as shall be directed by law, shall be held at the same times and places for which circuit courts are appointed. They shall be held by a justice of the supreme court and a judge or judges of the county courts, or justices of the peace of the county, as the legislature may direct.

§ 9. Each of the judicial districts of the state, except that consisting of the city and county of New York, shall be subdivided into two districts; and for each of the said last mentioned districts, there shall be a presiding judge of county courts, and in each of the counties composing such districts, there shall be elected, not more than two county judges, who shall hold their offices for five years. And the county courts of the several counties in said last mentioned districts, shall be held by the presiding judge thereof and by the county judge or judges. And the presiding judge may, alone, try all civil issues brought to trial, or ordered to be tried in said courts. The powers and jurisdiction of the county courts, as now existing, shall remain, until altered by the legislature, which may confer such other additional powers on the said courts as may be deemed expedient.

§ 10. In suits and proceedings in equity, the testimony shall be taken before one of the justices of the court of equity, or one of the Vice-Chancellors, or a presiding judge of the county courts; and issues of fact joined or formed in such suits shall be tried before a justice of the court of equity, or one of the Vice-Chancellors, or at a circuit court, or by a presiding judge of county courts, as the legislature may direct; and the mode of deciding questions and causes on pleadings, or upon pleadings and proofs, or of determining questions of fact and the mode of appealing from such decisions to the court of equity at a stated term, shall be provided by law. And it shall be in the power of the legislature to confer such equity powers and duties on the presiding judges of county courts, and the Vice-Chancellors, from time to time, as shall be deemed expedient.

§ 11. There shall be in the city and county of New York, not less than two Vice-Chancellors who shall possess and exercise, within the said city and county, subject to the appellate jurisdiction of the court of equity, such equity powers and duties as may be prescribed by law.

§ 12. The courts of common law and criminal jurisdiction in the city and county of New York, as they may be organized and exist, when this constitution takes effect, shall continue and remain, subject to be altered, modified or entirely abolished.

§ 13. Inferior courts of equity and common law jurisdiction may be established by the legislature. And appeals and writs of error therefrom may be brought to the supreme court, court of equity, or court for the correction of errors, as shall be prescribed by law.

§ 14. The court for the correction of errors, shall be appellate and shall possess the powers now vested in that court, but the concurrence of six of the members of that court shall be necessary to reverse or modify any judgment or decree. The court of equity shall possess and exercise equity powers. The supreme court shall possess the powers now vested in that court, and equity powers may be conferred thereon.—The number of justices of the court for the correction of errors, of the supreme court and the court of equity and the vice-chancellors of the city and county of New York, may from time to time be increased; but not more than one justice or chancellor shall be added to the said courts in any one year. Nor shall the number of vice-chancellors be increased more than one in the same year: nor shall any such increase be made unless by the assent of two-thirds of all the members elected to both branches of the legislature.

§ 15. The justices of the court for the correction of errors and of the supreme court, the court of equity and vice-chancellors, and vice-chancellors, and president judges of county courts, shall severally, at stated times, receive for their services a compensation, to be established by law, which shall not be diminished during their continuance in office. They shall not receive any fees or perquisites for judicial services. They shall not hold any other office or public trust, and all votes for either of them by the legislature or the peo-

ple during their continuance in office (except for a judicial office), shall be void. They shall not have, and are declared incapable of receiving, any appointing power (except the power to license practitioners in their courts, and to appoint referees and other proper persons to aid in judicial proceedings).

§ 16. All judicial officers except justices of the peace, may be removed from office by joint resolution of both houses of the legislature, if two-thirds of all the members elected to both branches concur therein; but no such removal shall be made unless the party complained of, shall have been served with a copy of the complaint against him, and have had an opportunity of being heard in his defence. The cause of such removal shall first be agreed on by two-thirds of all the members elected to both branches and entered on the journals of both houses, and on the question of agreement or removal the yeas and noes shall also be entered on the journals of both houses.

§ 17. Surrogates shall hold their offices for four years, and shall be elected by the qualified electors of the several counties.

§ 18. The justices of the peace in office when this constitution takes effect, shall remain and continue in office for the residue of the terms for which they were respectively elected, and they shall continue to be elected in the manner and hold their offices for the term prescribed in the present constitution.

Mr. WORDEN briefly explained the provisions of his plan. He proposed to abolish the Court for the Correction of Errors, and to substitute in its place a court to consist of a chief justice and nine associate justices—abolish the Court of Chancery, and to substitute a Court of Equity, under the control of the legislature, to consist of not less than five judges. In regard to the Supreme Court, he proposed to make it consist of no less than nineteen judges, a chief justice, and twelve associate justices, who shall be divided into four classes of three each.—The first class, in which shall be the chief justice, making a class of four judges, shall hold terms in bank for two years; the other nine justices to hold circuits and special terms for the hearing of non-enumerated motions, giving to the legislature power to convene any other of the classes to hold terms in bank wherever the business shall require it. He proposed to divide the state into five judicial districts, of which the city and county of New York shall be one, and to provide for the holding of circuit courts in each of the districts, for the trial of issues, to be held by one of the justices of the Supreme Court. The Court of Over and Terminer to be held as they now are. The judicial districts, except that consisting of the city and county of New York, to be subdivided so as to make eight districts, for each of which there shall be a presiding judge; and in each county two county judges to be elected, who with the president judge shall constitute the Court of Common Pleas. He proposed so to form the system that the equity courts shall be remodelled, leaving, however, the difficult and delicate duty to the legislature to adopt the reforms that may become expedient. He proposed to abolish masters and examiners in chancery, and to leave all testimony taken before one of the judges of the court of equity, or the president judge of the common pleas, so that the vast expense of taking testimony may be done away; and leaving it to the legislature to provide by law for the decision of cases in chancery before a president judge of the common pleas, or any judge of that court. He would have the courts in the city of New-York, as they now are, leaving to the legislature power over those courts. For the pur-

pose of disposing of the equity business of the city of New-York, he proposed to leave it as it is, with two officers, who shall have the power which he proposed to confer on the presiding judges of the common pleas in the several districts. Such was briefly the plan he submitted. In regard to the election of judges, there were already two propositions before the Convention—and he begged leave to say a word: The judicial power of the state was in its nature and character totally different from the legislative and executive. Its variance was essential from both of those departments. While both the legislature and the executive should respond freely to the public will, the judiciary was another branch of our government by which individual rights were to be determined and settled on fundamental principles which can not or should not change or alter, whether one man stand in opposition to the people or the people in opposition to one man. In that consists the dignity, efficiency and purity of the judiciary system. It must not, therefore, be made to depend on the caprice or fluctuation of either public or private opinion. He believed it was possible to frame a system for an elective judiciary on a safer and better plan than that reported by the majority of the committee, and hence he had not agreed to that precisely. He had now only to say that the pole star to guide them was to have the judiciary independent, as far as possible, of the influence of any exciting questions that might arise in the other departments of the government, or amongst the people at large, so that individual and public rights may be settled on great and fundamental principles.

On motion of Mr. TALLMADGE the report was referred to the committee of the whole, and ordered to be printed.

ORDER OF BUSINESS.

The report on the order of business was then again taken taken up.

Mr. MANN proposed further to change Mr. LOOMIS's report, by making No. Five stand No. Four. It embraced the question of internal improvements, &c. Carried.

Mr. CHATFIELD moved to make the report of the judiciary committee the special order for next Monday week. He protested against being compelled to act upon a report before it was printed and laid on the table. Above all, on a report upon which this gigantic committee had spent six weeks. He could not foreshadow the result of the vote just taken. It might be that it was the result of a coalition between certain high legal gentlemen with those who were opposed to all reform on the subject of the finances, to take up so much of the time of the Convention with this subject that the go-by would be given to others.

Mr. BROWN said it was in vain for gentlemen to say that we had time enough to do all the work before us. True, much business was done in the last month of a legislative session, but it was always badly done. He protested against the imputation thrown out by Mr. C.—He desired above all other things that this question of finances should now be settled. Mr. B. had apprehensions as well as that gentleman.—When we saw the gentleman from Otsego, introducing into the Convention, the petty ques-

tion of salaries, he had feared these great questions of the judiciary and of the finances would be crowded off and lost altogether. But he did not know but the vote he had just given was wrong, and if the pending motion was withdrawn, he would move to reconsider the vote just taken.

Mr. TILDEN regarded the vote just taken as a portentous one. It was a vote giving precedence to the report of the judiciary committee over nearly all other questions which had called this Convention into existence. It was perfectly notorious that the report of the committee had not been printed, nor was the subject embraced in it the most important, or even a prominent one in originating the popular demand for a Convention, in pursuance of which each of them held his seat in that house. He went on too, to comment on the character of the majority by which the vote was carried. He said, take away the members of the committee, and how many were there left who were not opposed to all reform?

Mr. MILLER called to order. The gentleman was questioning the motives of members.

Mr. TILDEN proceeded after some explanations had been made, and contended that if the order of business adopted by the committee was to be pursued, there was danger of their postponing some important subjects of reform to a period which would preclude their full consideration.

Mr. PATTERSON wished to call attention to the business before us. We had voted to-day to make this judiciary report number 3 in the order of business. It was now alleged that this would be taken up to-day. This would depend very much upon the length of speeches made on the order of business. Mr. P. showed that if this should be made a *special order* for Monday next, it would then be behind all unfinished business, and might not be considered for three weeks from that time. The Convention should understand this matter before reversing the vote just taken.

Mr. RUGGLES explained his object in the motion he had made, and expressed his opposition to the consideration of the report on the finances before that on the judiciary. Many other members had a like desire, which was an honest and honorable desire, to come to the consideration of the judiciary question, free from the feeling likely to arise from the discussion of the other question.

Mr. JORDAN opposed the postponement of the judiciary reports to so late a day as Monday week, and went on to urge that some other reason must exist for desiring this postponement than that members had not read them. All of us had been supplied with newspapers, by the vote of the Convention, and if all had not read them there, he ventured to say that two-thirds of the electors had. He could account for the gentleman from Otsego not having read them, from the great burthen which fell upon him of sustaining his own report on the state officers. He urged that these reports should be taken up as soon as the one now pending was disposed of, and then, if gentlemen desired further time, they could be made unfinished business, and kept within the control of the body.

Mr. J. disclaimed having entered into a combination or intrigue to give a precedence to these judiciary reports. He knew of no such combination or conspiracy; and any such imputation upon him, came from those who did not know him. And, for one, he could say that on this great subject of the finances, he came here with as hearty a willingness and desire to have them brought forward and considered, as the subject of the judiciary. And when that great subject came up, he intended to bestow the same honest attention and thought upon it, that he had sought to give to the judiciary question. Not that he intended to speak upon it—for he was not one of the corps of gentlemen here who stood charged with every subject that came up, and whose business seemed to be not only to repeat over what others had said, but what themselves had said—and thus keep back ideas which others might have broached perhaps to advantage, had not the patience of the body become fagged out from the eternal debate about every thing and nothing.—Mr. J. was ready to go on with this great subject of finance. He had looked over the report and had already considered the subject. There were many things in the report which he admired, and the necessity of which he was impressed with. And he would almost give up the judiciary, the great anchor of the state, if he thought its consideration first would give the financial question the go-by. But he trusted the order assigned to these reports would be adhered to—and last that the judiciary report would not be postponed to this of finance, in which there probably was combustible material enough to rouse a feeling here incompatible with a calm and proper discussion of the question of the judiciary.

Mr. LOOMIS said he could easily account for the character of the vote taken this morning, and which had been so often alluded to, without presuming any concert of action. It resulted from the degree of importance which gentlemen of different modes of thinking gave to the one subject or the other. The order of business which he had recommended to the body, was arranged without reference to his own preferences—for he could say that he had devoted three hours to the subject of judicial reform, where he had one to the subject of finance. His aim was to facilitate business—and he supposed that whilst the subject of the judiciary would probably draw out the most debate, there were other matters of engrossing interest on which the public mind was better settled, and which would require less time to adjust here—and that these should be disposed of first. At the same time, he preferred to make no special orders, but to adhere to the order laid down heretofore. Mr. L. concluded by moving to postpone this subject until to-morrow.

Mr. CHATFIELD, in order to meet objections, sent up a proposition making the judiciary reports the special order for Monday the 17th inst., 10 o'clock, then to take precedence of all other orders of business. Mr. C. went on to explain a remark which seemed to have given offence in certain quarters. He did not intend to charge that there was a combination between the judiciary committee and any party here. He intended to say that the judiciary committee de-

sired to secure for their report an early consideration,—that that would naturally draw to the support of a motion to give it preference, all the members of that committee—that there were those who sought that opportunity to accomplish a certain object,—that almost all the whig members voted on that side—and that all this foreshadowed a disposition to get rid of a certain subject. But he meant to charge no combination upon the judiciary committee. This was not the first time Mr. C. had been lectured by the gentleman from Columbia, who, to carry a certain point had often availed himself of the feeling here against debate. But Mr. C. was not to be deterred by these castigations from expressing his views here on any subject in which he felt an interest—especially when reproof came from one who had occupied more time in debate than he had. He denied to that gentleman or any other the superiority which authorized them thus to lecture that body. As to the financial report embarrassing the consideration of the judiciary report, even though the former might contain combustible materials, he could not see how that could be the result of its prior consideration. But he had framed his resolution so that by no possibility could the financial report override that from the judiciary—and with this he hoped gentlemen would be content.

Mr. STEPHENS, though he voted to give a preference to the judiciary reports, yet as another had first come from one of the judiciary committee, he was not disposed to precipitate a discussion of it, before any of these reports were printed—and unless this motion prevailed, we might be called on to-morrow to go into it.

Mr. HOFFMAN characterized it as a libel on the Convention to suppose that if they were to act on the exciting subject of the finance report first, they might be hurried through the residue of their labors with unbecoming zeal. The subject of finance an exciting subject! He should be glad to know on what subject you could sleep, if not on the dull subject of finance. Twenty-five millions of debt, that could never be redeemed and paid without paying forty millions interest and principal—was that a subject on which men could go mad, and become incapacitated to consider maturely and calmly a judicial system? If there was any subject calculated to humble us, to bow us down to the earth, to prostrate us in dust and ashes—it was this subject of finance. Gentlemen were mistaken if they supposed that on this dull, prosy, death-like subject they would bring this body into violence or passion. It was not one of those subjects on which the imagination would delight to revel. So of that other branch of the financial report requiring specific appropriations, and allowing the future, when debts were to be contracted, to pass upon the question whether they should be settled on them—what was there exciting in that? Gentlemen were mistaken also, if they supposed that he intended, when this subject came up, to reflect on the past, or to go into the causes or the source of our indebtedness. The ways and means to pay the iron screw of taxation, direct and indirect, these were the things to be considered. It was wholly immaterial who created the debt, or what their motives. Having thus disavowed any design as an incendiary, with a

financial torch, to blow up the judiciary sky high—he trusted the judiciary report would not be put ahead of the financial report, on account of a dreaded explosion.

Mr. WORDEN really thought we could get at some order of business that would be perfectly satisfactory to the Convention. He thought he could see what lay at the bottom of all this debate. He did not believe this Convention was now prepared to take up understandingly, and to advantage, this great question of finance. He was not, and he knew others that desired to become familiar with the subject, and who had not had the opportunity that the gentleman from Herkimer had had.—Others again were not prepared to discuss the judiciary question—and it was reasonable and proper that both sides should be accommodated. Under these circumstances, he hoped the mover of this resolution would consent to modify it, so as to provide that immediately after the judiciary report shall have been disposed of, the financial report should be taken up, as the special order. He moved to amend to that effect.

Mr. TILDEN urged that the financial report be taken up before the judiciary.

Mr. WORDEN, as one of the judiciary committee, had had no time to examine this financial question as he desired to do—and the same might be said of the other twelve, for all of them had been incessantly occupied in the duty cast upon them by the Convention.

Mr. TILDEN was still unable to see any good reason for this extraordinary desire to give precedence to the judiciary report.

Mr. CHAMBERLAIN suggested that it would be always in the power of the majority to control its business. If, when the judiciary report was reached, the body should be unprepared to grapple with it, it would be laid aside and that on finance taken up.

After some conversation between Messrs. PERKINS, BAKER, WORDEN, TILDEN, LOOMIS, WARNER, and others, the question was taken on Mr. WORDEN's motion, and it was agreed to—ayes 56, noes 41, as follows:

AYES—Messrs. Angel, Archer, Ayraut, F. F. Backus, H. Backus, Baker, Bascom, Bouck, Bowditch, Brayton, Brundage, Burr, D. D. Campbell, Candee, Chamberlain, Cook, Crooker, Dana, Dodd, Dorlon, Graham, Harris, Harrison, Hawley, Hoichkiss, K. Huntington, Hyde, Jordan, Kemble, Kirkland, Marvin, Maxwell, Miller, Morris, Nicholas, Parish, Patterson, Peniman, Porter, Ruggles, Salisbury, Sears, Shaver, E. Spencer, Stanton, Stow, Strong, Taggart, Vanschoonhoven, Waterbury, Worden, A. Wright, Yawger, Young, Youngs—66.

NAYS—Messrs. Brown, Cambreleng, R. Campbell, jr., Chatfield, Clark, Conely, Cornell, Cuddeback, Danforth, Flanders, Hart, Hoffman, Hunt, Hunter, A. Huntington, Kernan, Kingsley, Loomis, Mann, McNeil, McNitt, Nellis, O'Connor, Perkins, Powers, President, Riker, St. John, Sanford, Shaw, Sheldon, Shepard, Smith, Stephens, Stetson, Swackhamer, Tilden, Townsend, White, Willard, Wood—41.

Mr. MORRIS moved further to amend so as to make the judiciary report the special order for Monday next. Agreed to.

Mr. WORDEN moved further to amend so as to provide that the consideration of the judiciary report be continued from day to day until disposed of. Agreed to, and

The resolution of Mr. CHATFIELD, as

amended, was adopted.

The Convention then took a recess.

AFTERNOON SESSION.

STATE OFFICERS.

The report of standing committee number Six was taken up for completion.

Mr. KINGSLEY moved to strike out the first and second sections of the article and insert as follows:

§ 1 A secretary of state, comptroller, treasurer, attorney general and state engineer and surveyor, shall be chosen at a general election, and shall hold their offices for two years; but no person shall be elected state engineer and surveyor, who is not a practical engineer.

Lost, without division.

The second section, as restored and amended, was agreed to.

The question then recurred upon the adoption of the first section.

Several verbal alterations were made, and the section was adopted.

The third section was then read.

Mr. MARVIN moved to strike out the salary of the canal commissioners. Agreed to.

Mr. BASCOM proposed the following as a substitute for the whole section:—

§ 3. Two canal commissioners shall be chosen or appointed, who shall hold their offices for four years, except one of those first to be chosen or appointed, who shall hold for two years. The two first chosen or appointed shall by lot determine which shall hold for two years, and which for four years.

The motion of Mr. BASCOM was lost.

The section was agreed to, with a verbal amendment.

The fourth section was read.

Mr. TAGGART moved to strike out the pay of the prison inspectors. Agreed to.

Mr. TALLMADGE moved to strike out the whole section. He understood that there were now five inspectors to each prison, and if these three were appointed, the legislature would appoint as many more; and we might as well allow the whole question to remain with the governor and legislature, who would manage the whole matter connected with the prisons wisely, he did not doubt, and to them it belonged to do it. He did not like the idea of electing officers of this description.

Mr. PERKINS regarded it as a sound principle that all public officers having a large patronage and entrusted with the financial management and concerns of such establishments as our prisons, ought to derive them directly from the people, and come before them at short periods for re-appointment or dismissal according to the manner in which they discharged their trusts.—In years past the management of these prisons had given great dissatisfaction. The law required that the fire inspectors allotted to each prison should reside within a certain distance of it. The inspectors had been political partizans, and the government and patronage of the prisons had become not only a party matter, but the cause of faction in the same party in almost every instance. In the neighborhood of the Auburn prison, for instance, conventions were got

up to nominate inspectors in the first instance, and then another convention to instruct the inspectors who they should appoint for their subordinates. Such a government as this over such important establishments as our prisons, should not be tolerated. The remedy for the evil, and the only remedy, was a popular election.

Mr. STETSON conceded the importance of reform in this matter. But he doubted whether this remedy would to a certainty produce it. Prison discipline and management were in a very imperfect state. The system of inspection had never worked well, and it might be found necessary to dispense with it. Yet here was a proposition to continue permanently this system of inspection, which had worked so badly at Auburn and Sing Sing—but which had been dispensed with in the Clinton Prison, than which no establishment of the kind could be more admirably managed. The Insane Asylum at Utica was in admirable condition, under the supervision of a board of managers who prescribed all the by laws for the government of the establishment. The system there was in a much more mature condition than that of our state Prisons; and the system in vogue there might be with much more propriety be made permanent; but no one proposed to elect the managers of that Asylum.

Mr. PATTERSON supported the section.—He referred to the great power possessed by the agent of the Clinton Prison, and said he proposed now to entrust the control and management of all these prisons to persons chosen directly by the people.

Mr. MORRIS followed in favor of the motion to strike out. He would not fix in the constitution any principle recognizing the present State Prison system. During the time he was recorder of New-York, there was scarce a prisoner convicted of a higher grade of crime, who had not previously been in the state prison. And where a new one was caught, the commission of the crime was traced directly to his association with a previous convict. The present state prison was nothing but a school to educate villains. A convict who should leave there determined to reform, would be traced out by some brother convict and be preyed upon and again led into the commission of crime. He trusted the time was not far distant when there would be a thorough reform, and when the person convicted a second time should be banished.

Mr. TALLMADGE again explained why he had made this motion.

Mr. CHATFIELD followed in the defence of the section and of the committee in reporting it. If the prison system was as bad as represented, the more propriety in adopting something better. And he knew of no more efficient mode of reforming the system than to bring the election of these inspectors directly home to the people.—This was an immense interest to the state, and there should be a competent and efficient supervision.

Mr. ST JOHN moved to adjourn. Agreed to, 47 to 42.

Adjourned to 9 o'clock to-morrow morning.

FRIDAY, AUGUST 7.

Prayer by the Rev. Mr. MILES.

Mr. DANA presented a memorial on the subject of the canal policy. Referred to the committee of the whole having in charge that subject.

SALT DUTIES.

Mr. WORDEN offered the following which was agreed to, after some explanations between Mr. TOWNSEND and the mover:—

Resolved, That the Comptroller be requested to furnish to this Convention a statement of the amount of salt duties received in each year by the state prior to the year 1817, and the amount of specific appropriations out of such duties, and the objects of such appropriations, and of the years in which they were made.—Also, a statement of the net amount of salt duties received into the state treasury since the year 1835.—Also, a statement of the amount of auction duties received in each year by the state prior to the year 1817, and the amount of specific appropriations out of such duties, and the objects of such appropriations, and of the years in which they were made. Also, a statement of the net amount of auction duties received in each year by the state since the year 1835.

STATE OFFICERS.

The Convention then took up the report of committee No. six, as amended in committee of the whole.

The pending question was on striking out the 4th section providing for the election of inspectors of state prisons.

Mr. LOOMIS thought these officers would be incompetent to the duties devolving on them.—If one were to reside at each prison he would take the place of the keeper; but on the contrary they would have to be travelling hundreds of miles from prison to prison and could not then be able to remove all the evils of which complaints were made respecting the discipline. He thought benevolent persons could be found in the neighborhoods of our prisons who would undertake the inspection of them at a small remuneration, without having the appointment of the officers of the prisons. He saw no benefit to be derived from this provision, nor anything but evil. As a legislative act he would not adopt it, much less as a constitutional provision.

Mr. PERKINS defended the provision. He believed it, if adopted, would be of great service to the people of the state. It was wrong to say that this would take from the legislature all control over the internal police of the prison.

Mr. LOOMIS said this section gave to the inspectors absolute control over the prisons, and the legislature would have no right to interfere.

Mr. PERKINS was very much mistaken if any such interpretation could be put upon the section. He read and commented upon the language, contending that it was not open to the objection urged. But if gentlemen wished this guarded farther, he would have no objection.—If it was true, as alleged, that prisoners left the state prison uniformly worse than when they went there, it certainly was a strong argument that the present system was very defective. He doubted not but what our prison system was in its infancy, and that great improvements would be made hereafter. But how the election of these inspectors would interfere with the adoption of any new and improved system, he could

not see. He believed the present system, where local boards were surrounded with extraneous influences, having persons dependent upon them for political patronage, would be the greatest barrier in the way of any such reform. He continued his remarks at length in favor of the section.

The motion to strike out was lost, ayes 30, noes 61.

Mr. STETSON moved to add a provision that the three managers of the State Lunatic Asylum at Utica, shall be elected in like manner and with like powers; also the commissioners of health at New York. Mr. S. said he offered this to aid in destroying the central power of appointment which now exists.

The amendment was lost.

Mr. PERKINS moved to add after the word "therein" in the 12th line the words "subject to such regulations as shall be prescribed by law." Agreed to.

The section as amended was agreed to.

The fifth section was then read.

Mr. CHATFIELD moved to restore the words "State Engineer and Surveyor," in the 3d and 4th lines. Agreed to.

Mr. MARVIN moved to strike out the 5th section, in relation to the Canal Board, &c.

Mr. CHATFIELD opposed the motion; and the Convention refused to strike out.

Mr. WORDEN moved an additional section as follows:—

"The powers and duties of the commissioners of the Land office, of the Canal Fund, the Canal Commissioners and the Canal Board shall be prescribed and regulated by law."

Mr. W. said his design was to make these several boards elective and place them under the control of the people. One of these boards had the control of large sums of money, amounting sometimes to \$3,000,000 per annum. The legislature should have power to prescribe the duties of these officers, which might include the mode of keeping the money in their charge, free from speculation.

Mr. KIRKLAND thought the section proposed would not accomplish the object the gentleman had in view.

Mr. WORDEN said if his friend from Oneida was right the provision could do no harm. He simply wished it to be affirmatively expressed in the Constitution that these officers are under the control of the legislature.

Mr. KIRKLAND said the Canal Commissioners were now required to give bail to the amount of \$20,000, and they are prohibited from holding more than \$10,000 at any one time.

Mr. WORDEN said he alluded to the Commissioners of the Canal Fund.

Mr. R. CAMPBELL jr. objected that this would require the legislature to reenact all the laws now in existence on these subjects.

Mr. BAKER, to obviate this objection, moved to amend by adding the words, "as they now are, or hereafter may be," before the words "prescribed," &c.

Mr. VAN SCHOONHOVEN contended that this provision was wholly unnecessary. The

legislature had full power over all subjects, persons and bodies, where the constitution did not expressly prohibit them to act. By organising these boards, we did not say they might do just what they pleased.

Mr. LOOMIS also objected to the section as unnecessary.

Mr. SALISBURY desired to inquire if, in case the legislature should require of one of these officers a bond, and he should refuse to comply, the legislature could then declare his office vacant?

Mr. CHATFIELD had no doubt they would have that power.

Mr. WORDEN thought he could see why there should be some objection to this provision in certain quarters. He was surprised to see it coming from his friend from Oneida. The history of the action of some of these boards during the past few years, would prove the necessity of this provision. There was now a board known as the Commissioners of the Canal Fund. Now if we recognise the organisation of this board in the constitution, we confer upon it all the immense powers it now exercises. In our present constitution we simply said, in relation to the Supreme Court, that it should consist of a chief justice and two associate justices. And yet it was held that this court possessed all the power exercised by the Supreme Court as it was organised prior to 1821. This is a parallel case. Mr. W. would point to what this Canal Board had done. They had assumed to do certain acts, which they contended pledged the faith of the State, and laws had been vetoed because they threw upon that Board duties which were inconsistent with what they had before assumed to themselves. It was claimed in and out of the Legislature, that the Canal Board possessed powers beyond the reach of the Legislature. Now he would put this question at rest and say in the Constitution that the Legislature should have power to control the action of this Board. He had seen enough of its action during the past five years to convince him of the necessity of this provision. The arguments to the contrary went for nothing, for they were only based on the assumption that this was unnecessary. It could not possibly do harm.

Mr. VAN SCHOONHOVEN inquired if the gentleman ever knew of a case where the Governor vetoed a bill upon the ground that the Legislature had not the power to legislate?

Mr. WORDEN said he was well acquainted with the history of Legislatures for years past, and he did know of cases in which the Canal Board had declared that they were not under the control of the Legislature.

Mr. VAN SCHOONHOVEN had known of no case where a bill had been vetoed on the ground he had stated. He had known that bills had been returned on the ground that there was an implied faith against its passage. If this amendment should pass, he believed it would lead to difficulties in deciding upon the powers of the Legislature to prescribe the powers and duties of these Boards. A bill might be introduced for the purpose of restricting them in some particulars, when some member would rise and question the authority upon which the law was based. By the section already adopted, merely

artificial boards were created, which were at all times under the control of the Legislature, and these needed no special grant of power to the Legislature to make it doubtful.

Mr. BAKER would attempt to obviate another objection which had been urged. He proposed the following substitute for the entire section moved by Mr. WORDEN:—

The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

Mr. WORDEN accepted the amendment.

Mr. PERKINS continued the debate. He did not consider the section as absolutely necessary, but if a fair doubt could be raised, he would vote for the section. The section was adopted, 36 to 30.

Mr. PERKINS offered the following additional section:—

The Governor, Lieut. Governor and Chief Justice of the Court of Appeals, shall constitute a commission for hearing and investigating all suspicions and charges of embezzlement, fraud, oppression, gross neglect, or other malversation in office, of all officers (except judicial) whose powers and duties are not local, and who shall be elected at general elections. They shall have power at all times to compel the attendance of witnesses and the production of papers; to examine books, accounts, acts and omissions of such officers. They may, under such regulations as shall be prescribed by law, remove such officers and appoint others in their places; but before any such officer shall be removed, he shall be furnished with a copy of the charges made against him, and be heard in his defence. Upon the removal of any such officer, a copy of the charges and the evidence taken in support of the same, shall be filed in the office of the Secretary of State. Officers appointed by any body or board of public officers may be removed under such regulations as may be prescribed by law.

Mr. P addressed the Convention at some length in favor of this amendment.

Mr. PATTERSON thought this section as it read, conflicted with one that had already been adopted. He would prefer that this section should be printed before passing upon it. He suggested that course to the gentleman.

Mr. PERKINS was perfectly indifferent as to the disposition of his proposition.

Mr. PATTERSON had no intention to avoid a vote on this amendment. But as they had made so many material alterations to the report, he proposed to have it reprinted with the amendment of Mr. PERKINS, before they finally passed the whole. He moved to lay the report and amendment on the table, and that they be printed. Agreed to.

Mr. VANSCHOONHOVEN moved a reconsideration of the vote adopting section 6, which lies on the table with the report.

RIGHTS AND PRIVILEGES.

The committee of the whole resumed the consideration of the report of the eleventh standing committee, Mr. MARVIN in the chair.

The pending question was on the motion of Mr. BASCOM to insert the words "and political" after the word "social" in the second line of the first section. The section now stands thus:

"§ 1. Men are by nature free and independent, and in their social relations entitled to equal rights."

Mr. TALLMADGE, as the chairman of committee number eleven, made a general explanation.

tion of the provisions of this article. He said it was discussed in committee with great freedom, and the majority agreed to every section; and the out-voted minority yielded with good temper. He commended the spirit in which the committee had conducted its deliberations. He said at the opening of the business of the committee there was presented to it the bill of rights, consisting of nearly three pages of the Revised Laws; but the committee thought that matter had better be left untouched by this Convention. The majority had inserted the two first sections, which were mere abstractions, which might be rejected without injury to the article. At the proper time, he should move to strike out those sections. The third section had been altered simply by striking out the words "or the judgment of his peers." He pointed out those sections which were incorporated into the constitution of 1777, and afterwards into that of 1821 from *Magna Charta*, which, for the benefit of the lay members, he explained to be that charter of British liberties which was wrested from the despotism of the Sovereign, by the Barons, in 1215, the great epoch of British freedom, and the commencement of the freedom now enjoyed in the civilized world. He mentioned the fact that this historical event was commemorated by the monument leading from London to Windsor Castle, a simple inscription of the memorable period being preserved on a boulder stone. After a period of nearly 600 years had elapsed, came the declaration of independence of this country as a result of the first declaration of independence—*Magna Charta*—and hence he justified the incorporation of these sections in our constitution. He said it might be pleasing to see the progress of time in liberal principles; by turning to section three, which was as follows:

"No member of this state shall be disfranchised, or deprived of the rights or privileges secure to any citizen thereof, unless by the law of the land."

And then to section 13, of the constitution of 1777, the difference would be seen. In the latter the citizens were spoken of as the "subjects" of this state, showing at that time they had not got the phrases of liberty. The words which the committee had stricken out "or the judgment of his peers," the committee thought an unmeaning phrase, which if reported now would bespeak a distinction which we do not recognize. He should however hereafter move an amendment of the section by striking out the words "unless by the law of the land," and insert a substitute which he had prepared, to restrain the legislature in its actions on individual rights. He next passed to the 4th section, which guaranties the trial by jury. The old section the committee had altered by introducing the words "right of" before the words "trial by jury"; the object being to enlarge the expression, but from the views of the committee, he expressed his dissent. He also expressed his belief that the system might be rendered less oppressive on jurors, by diminishing the number required in the trial of certain cases. Passing on to the 9th section he pointed out an addition which the committee had made to secure to a party on trial the right "to appear in person and with counsel." This was found necessary in consequence of certain ancient judges

having prohibited an accused party appearing in person when he appears by counsel.—The committee thought a person on trial should be allowed to take part in his own defence even when aided by counsel. The addition in the 12th 13th and 14th lines he explained to be necessary, illustrating it by an example from proceedings in a case of usury. The words introduced were "nor in any case to subject himself to a penalty or forfeiture, or any loss or deprivation in the nature of a penalty or forfeiture," which were inserted after the words, "no person shall be subject to be twice put in jeopardy for the same offence, nor shall he be compelled to be a witness against himself in any criminal case." He said no man should be compelled to be put in peril even in the capacity of a witness. The tenth section relates to the trial by jury. He recounted the struggles recorded in history to obtain the freedom of the press, from a period anterior to the publication of Junius's letters and the mobs of London, coming down to the efforts of Fox, the British statesman, and to the arguments of Hamilton and Spencer in this capitol on the trial for libel of Mr. Crosswell, father of one of the reporters of this Convention, when the great Hamilton put forth all his mighty energies to destroy the old and now exploded maxim, "the greater the truth, the greater the libel." In the Convention of 1821, the article in relation to libel was incorporated into our Constitution, which allowed the truth to be given in evidence to the jury, they to judge of the law and the fact. He considered that section as the proudest monument of liberty we possessed.—But in the recent cases of libel in which Mr. Cooper had been engaged, circumstances had occurred, which showed a necessity for the amelioration of the law of libel. The committee were unanimous in favor of such amelioration, but a majority out-voting him had inserted the words "and in civil actions." Mr. T. had differed from them, not because he was opposed to amelioration but because he feared this would abridge the privileges of the defendant. He gave his views of the operation of this amendment, remarking that he believed the section was broad enough in the present Constitution. But any member who could suggest an amendment that would secure all the privileges of the citizen in this particular, should have his support. The 11th section which relates to the taking of private property for public use, had been amended by a provision that the legislature shall provide for determining the damage, when the property is taken for the use of the state. Also, that the legislature may provide for the opening of private roads in case a jury of freeholders shall determine the road necessary. The committee had also provided, to obviate the complaints now made of inability to obtain compensation after it has been assessed and execution issued, that the compensation shall be "first made therefor," so that time would not be lost and expense incurred in useless litigation. The provision in relation to private roads was made to guard, by the Constitution, against what was deemed an erroneous principle which had been established by a recent decision of the Supreme Court, as found in Hill's reports. Mr. T. next came to the 12th

section, which prohibits the imprisonment of witnesses in criminal cases. The committee were unanimous in this. He pointed out the gross wrongs now perpetrated. In point of truth, witnesses entering complaints were imprisoned more days than the persons accused by them of crime. If the witness was transient, or unable to give bail, the magistrate imprisoned him. Then came the long delays of the law, the poor witnesses in the mean time suffering in jail without a friend to help or pity. Mr. T. referred to the laws authorizing such commitments. He would not impugn the motives of the magistrates who had acted under this law. Now for the practice. These gentlemen rogues were an organized corps and came to the rescue of each other. They knew the laws much better than counsel, and honest men who paid their debts and staid at home. Residents of New York and the other large cities would go unharmed. But the traveller from a distance when crossing the ferry to New York was almost sure to lose his pocket-book, unless he kept his hand on it continually. Now for the result. The pick-pocket hands the pocket-book to a confederate who is ready to go his bail. But the poor non-resident, who has been robbed, has no friends, and he must go to jail, while the robber is at large, being bailed by his accomplice, who holds the pocket-book in pledge. That was one beautiful operation of our present criminal jurisprudence. Mr. T. would cite one or two of the many instances of gross outrages which had been committed under this clause authorising the imprisonment of witnesses. Three villains committed a rape upon a woman, just north of the city of Albany, in what are called the Patroon's woods. She was a cook upon one of the canal boats, and was therefore considered by the magistrate a transient person; and upon her entering complaint against the villains, she was committed to the jail in this city, while the rascals were enabled to obtain bail, and had never been brought to trial. That poor woman lay in jail *fifteen months*, and, until through the intervention of himself, as chairman of this committee, she was at length set at liberty. Not only was our state disgraced with such a law, but he would refer to similar scenes in other states. In Baltimore, a rape was committed by eight desperate villains upon a poor German girl, who had been but a short time in that city. She was in company with her cousin, who strove all in his power to protect her from outrage, and was himself badly beaten. Behold the result. The poor girl and her protector were imprisoned, while the eight villains obtained bail, and were at large. Eighteen months passed by before one of them was brought to trial; and during all this time the poor witnesses were compelled to associate in jail with rogues and felons. The one tried was convicted, but after three or four days' imprisonment, he was pardoned. The witnesses were still left in jail, until rescued by the German Society, when the city of Baltimore paid the young man \$100 and the girl \$50, for the detention of eighteen months. The thirteenth section relates to imprisonment for debt, &c.—the committee deeming it proper to make it a constitutional provision. But if it were deemed proper to leave it to the legislature this section could

be stricken out. The fourteenth section relates to the rights of married women, which he explained at some length; also the nature of the marriage contract, as viewed at different periods and in different countries. The latter sections of this article, he said it was not necessary to explain, inasmuch as they were taken from the old constitution.

The question recurred on the amendment proposed by Mr. BASCOM, to insert the word "political and" before "social"—so that it should read,

"Men are by nature free and independent, and in their political and social relations entitled to equal rights."

Mr. BASCOM asked if we had really come to a period in our history when men dared not by their votes say that men were entitled to equal political rights? He hoped at all events to have the opportunity to record his vote in favor of that single proposition.

The amendment was lost, 33 to 42.

Mr. BURR moved to strike out the section and insert the following:—

"All men are created free and equal, and endowed by their creator with certain inalienable rights—among these are life, liberty and the pursuit of happiness."

Mr. B. need not say that this was a quotation, nor need he say where he found it. He trusted he need not urge its adoption.

Mr. BAKER moved to strike out "social" and insert "political." Carried.

Mr. CROOKER moved as a substitute for the 1st section the whole of the first clause of the Declaration of Independence.

Mr. J. J. TAYLOR suggested that the whole of that Declaration should be inserted! [Laughter.]

Mr. LOOMIS raised the question whether a motion to strike out would not take precedence of these to amend. It was hardly worth while to be spending time upon the section, if the wish of the Convention was in favor of striking the whole out, as he believed it was.

The CHAIR decided that the friends of the section had a right to perfect it before taking the question on striking out.

Mr. LOOMIS appealed, but the CHAIR was sustained.

Mr. HARRIS then appealed to gentlemen to withdraw their amendments, and allow a vote to be taken on striking out.

Mr. HOFFMAN did not regard this section as a mere abstraction. In all Governments, the governing class might apply rules to others that they would not apply to themselves. This had not been usual in this country. But in another part of this report, our attention was called to a class of cases where this rule had been departed from. By the common law, a woman was regarded as a human being, and entitled to dower, if she could stand out against conveying it away under the chastisement of a rod of certain size in the hands of the husband. By the introduction of the Roman civil law, the Court of Chancery contrived to restore a married woman to the condition of a human being, by giving her some rights of property real and personal, and the management of it, under the machinery of trustees. In 1330, by accident or design, the Legislature passed a law which in effect brought

a married woman back to the condition in which she was at common law. The Legislature, however, at the ensuing session restored the former law, and did to some extent elevate the condition of the married woman, but not to the degree required by the wants of a highly civilized society. When he first read this section, he supposed it was intended to assert the principle that the non-voting classes in this State should hold their rights under the same laws as those who were voters—and if it could be made to do that, it might be of great practical use. But there were other cases requiring the application of this rule—which he might allude to; but he would barely mention one, and that was where the rights of property of those who were not residents nor voters came under the jurisdiction of our laws, and was subject to impositions and taxes to which that of a resident was not exposed, and to the injury of trade. But if we were to proceed with mere abstractions, he took very little interest in it. He supposed this was intended to reach the class of difficulties to which he had alluded.

Mr. BRUCE went for the amendment, and he was at a loss to account for the disposition to strike out the section. He should like to know if it was an abstraction to assert what the rights of this people are. This was a government where the power rested with the people; and very properly, the first section made the broad declaration that all men are by nature free and independent. And had this doctrine for which our fathers bled become a mere abstraction?—And yet we were met on one hand with the declaration that this raised the question of color; and on the other, that we had nothing to do with social rights, and an effort was made to confine the remark to political rights. Was that a true sentiment? Were we prepared to say here that we would deal with nothing but political rights? He trusted we should recognize somewhere the doctrine of equal, political, social and religious rights.

Mr. CHATFIELD would like to see a little addition to the amendment. It might be a matter of taste, and he wanted it to express what it was designed to. After the word "rights"—insert, "without regard to color."

Mr. O'CONOR:—Will the gentleman accept an amendment—"age or sex"?

Mr. CHATFIELD:—Oh certainly.

Mr. WORDEN remarked that this amounted to the recognition of a principle which no man dare deny—but of what practical use was it?—It protected no individual. There was nothing practical or operative in it. And he submitted whether it was not better to strike out these two sections—and not to engraft our abstractions on the constitution. When we came to practical questions, he would aid to the best of his ability in giving effect to this great principle.

Mr. CROOKER said, that in offering the amendment now under consideration, he had not designed to say a single word in support of it. He desired to offer it, in order that he might in Convention have an opportunity to bring it to a direct and formal vote. He should not now have arisen, but for the course of remarks pursued by several members of the Convention.—They had denounced this amendment as an ab-

straction. And had it come to this? Was this amendment indeed a "mere abstraction?" Sir, (said Mr. C.,) the author of the language of that amendment received the highest regard and respect of the age gone by. Very many at this day, who, in by-gone times, entertained but little regard for him when in life, are now foremost in shouting applause to his memory. Much has been said in praise of the act of the Barons of England, at Runnymede, when they extorted from the British monarch the Magna Charta of British liberty. Sir, the time and place and occasion that gave birth to the language of my amendment, was as holy as that at Runnymede. The body of men who put it forth, were as much devoted to human liberty. The publication of these sentiments was the first act in the grand drama that led to the freedom of our country. From the sentiments contained in this "mere abstraction," flowed the free institutions of this land. Were the venerable men whose names appear in this instrument, (holding up the Declaration of Independence,) only publishing a "mere abstraction" to the world?—We pride ourselves upon the fact that our country is the only asylum of oppressed humanity. We have thrown open our arms to embrace every foreigner of Europe. We have spent four weeks of the time of this Convention in striking out the word *native*, in order to open the doors of the executive mansion to the foreign emigrant. Sir, all this is well. I can go, and desire to adopt, the amendment of the gentleman from Otsego, "without regard to color." I am opposed to distinctions that rest upon no better foundation. But with all our boasted equality, we deny to a portion of our citizens any participation in some of our dearest political rights.—They are, it is true, in numbers, a small and feeble race. They are not foreigners who come to us asking a boon. They were born and bred upon our soil. And here in the home of their birth we dare to deny them the sacred right of suffrage, on account of the shade or color of the skin. Whence, sir, do we derive the power to deny to that oppressed race the enjoyment of that sacred right? Have not they just as much right to deny it us. It is might and power alone that gives right. It is the robber's right. But I confess that I was not prepared to hear it declared in this hall that the principles of the declaration of independence are mere abstractions. If we have indeed come to this—if we have, as a people, adopted this sentiment, we have very far departed from the "faith once delivered to the saints." We have lost sight of the principles of equal rights, and our government is indeed a despotism.

The committee here rose and reported progress, and the Convention took a recess.

AFTERNOON SESSION.

Mr. CHATFIELD'S amendment to insert "without regard to color," in Mr. CROOKER'S amendment, was agreed to.

Mr. CROOKER'S amendment was then agreed to.

Mr. BURR'S amendment was lost.

Mr. MANN then moved to strike out the entire section, as amended.

Mr. BASCOM hoped, since the section had

been so well amended on the motion of the gentleman from Otsego, that it would not be stricken out.

The motion to strike out prevailed. Ayes 42, noes 19.

The 2d section was read as follows:—

§ 2. All political power is inherent in the people.

Mr. CROOKER moved to strike it out.

Mr. RICHMOND hoped that a section containing so important a principle in so few words would not be stricken out. He had heard it often asserted in this body and elsewhere, that the legislature, and not the people, was omnipotent. He would like to have it decided where the power did actually rest. There had been an opinion prevailing for the last ten years that the legislature had the right to take lands which the state had given with good warranty deeds to one person, and give them to another. The power to take lands had been given to corporations—a power which he considered very doubtful. There was a lurking fear among those people who have lived upon these legislative grants, that there was not so much constitutional right in such things after all. He was sorry to see an attempt here to give more power to the legislature to favor these chartered companies. When this question came up distinctly, he would be found voting against it.—And if it was submitted to the people who live upon the route of travel through the centre of the state, nine-tenths of them would be found with him. He, therefore, considered it as his right to stand up in their behalf, and against allowing these chartered companies to trample upon the rights of the yeomanry of the state.

Mr. LOOMIS concurred fully with the gentleman from Genesee, and would be found going shoulder to shoulder with him in defending private rights against the encroachments of chartered monopolies. He hoped too, that the gentleman would go with him in another proposition, and that was that there were a great many things which were true, but which it was not proper to insert in the Constitution. He moved, therefore, to amend, so that it would read, "all political power is not inherent in the legislature."

Mr. STRONG said the gentleman from Genesee seemed to have a great deal of trouble about this little section. He seemed to think that if this little thing was retained here we should never have another railroad in this state. The gentleman had made the same speech over and over again here on the subject of railroads taking private property. The gentleman ought to be excused for this, as the Tonawanda railroad ran through his wood-land; and no doubt the gentleman thought this little section would stop the locomotive that came to his land. If the gentleman would wait until we came to the proper place, his speech would be better timed.

Mr. SWACKHAMER was proceeding to remark upon the motion, when

Mr. WORDEN rose to a question of order. It was not in order to insert matter in a proposition which would entirely change its character. He hoped the gentleman would withdraw his amendment.

Mr. LOOMIS withdrew his amendment, after saying that he had proposed it only to meet the

views of the gentleman from Genesee. He should vote to strike out the section.

Mr. HUNT proposed the following substitute:—

§ 2 The rights of men are the gifts of God, and are sacred. The first duty of Government is to protect them, the second to let them alone.

Mr. WARD begged the gentleman to withdraw this.

Mr. HUNT would do so if it gave rise to debate.

Mr. CROOKER. Anything, though it come from God, will raise a debate here.

Mr. RICHMOND, in reply to Mr. STRONG, here said that the matter alluded to had been settled two years ago, and had left no feeling on his part, that could influence his action here or elsewhere.

Mr. HUNT, understanding that the Convention did not wish to discuss abstract propositions, withdrew his amendment.

The second section was then stricken out.

Mr. HARRISON moved the following as a substitute for the section stricken out:—

§ 2. The political power of a state is inherent in the people thereof, and the institutions of government are derived from their authority and must be created for their benefit and protection.

Negatived.

The third section was read, as follows:—

§ 3 No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen, unless by the law of the land

Mr. TALLMADGE proposed an amendment, but after some explanations with Mr. WORDEN, assented to a substitute proposed by that gentleman, as follows:—

§ 3. No citizen or member of this state shall be disfranchised or deprived of any rights, privileges or franchises by any thing contained in this constitution, nor shall any vested rights or remedies be destroyed, destroyed, or taken away in any manner whatsoever, except upon the verdict of a jury, rendered according to due course of law in a civil action or in a public prosecution and in pursuance of some general law of the land promulgated prior to the act or matter alleged as the cause of such action or prosecution

Mr. WORDEN explained the effect and intent of the amendment, to be to prohibit the passage of laws acting retrospectively upon remedies as well as rights, and to effect also the object which the gentleman from Genesee was aiming at.

Mr. NICHOLAS said although the amendment of his colleague (Mr. WORDEN) had been assented to by the chairman of the committee (Mr. TALLMADGE,) he Mr. N. preferred the original section as more simple and concise and equally comprehensive, except that the amendment precludes the passage of ex post facto laws. Now, sir, if we need any other prohibition of such laws, than that of the U. S. constitution, let us forbid them by a separate section, which will not require more than one or two lines in the constitution, and retain this provision in the plain form reported by the committee, which is substantially as it exists in the constitution.

Mr. LOOMIS asked the mover of this proposition, if an office was a franchise?

Mr. WORDEN replied in the negative.

Mr. LOOMIS: Blackstone thinks it is.

Mr. WORDEN: It may contain a franchise.

Mr. LOOMIS continued. A corporation might

be regarded as a member of the state. If you would not disfranchise, you could not perhaps turn a person out of office, until his term expired; nor allow the law in relation to existing corporations. He thought it inexpedient to adopt this proposition—certainly not without due consideration.

Mr. WORDEN had no objection to its being passed over for the present.

Mr. CHATFIELD'S own view was that there was no necessity for adopting even so much of the old constitution as had been recommended by the committee. It had no application to such a government as ours; and he felt no disposition to reaffirm principles, that it was necessary to extort from a despotic monarch, for the protection of his barons or the nobility of that day. The idea that a man can be disfranchised in this country, not according to law, was a monstrosity. There was no power existing among us that could arbitrarily deprive a citizen of a right. The section, however, as reported, was perfectly harmless, and he had no objection to its adoption. But he would not say as much of the substitute of the gentleman from Ontario. That was an ingenious, cunningly drawn section, containing principles far above what might strike us at first blush. There was peculiar point in it, so far as it related to persons; but when it approached vested rights, it looked like an emanation from a corporate body, or bank, or other artificial person, intent on securing immunity against law, and perpetuity of existence. It was a mischievous proposition—one which if construed according to its meaning, would perpetuate every corporation in the land, on the ground of vested rights.—There was one kind of vested rights which he would sustain; another that he never would.—Mr. C. alluded not only to corporations, but to certain estates which he thought as much at war with the spirit of our institutions as the government against which our fathers rebelled.

Mr. BASCOM concurred mainly with the gentleman from Otsego. He would amend so as to admit of disfranchising a person on conviction of crime—as our laws now deprived persons convicted of crime from voting and from being a witness.

Mr. HARRIS had no objection to leaving the section as it was reported, because it had proved not to be mischievous, and its meaning was well settled and understood. He agreed entirely with the gentleman from Otsego, that it was not a section that we should have inserted at this day were we making one anew. It was a relic of former times, and he had a veneration for it. But he protested against inserting anything of the character of the substitute. The time had gone by when such a provision could be necessary. He knew not what evil might not grow out of so indefinite and vague a provision. Talk about a vested remedy! Where in any constitution on earth could we find anything about a vested remedy.

Mr. KIRKLAND approved of the spirit of the substitute; but as he read it, it would bear a construction directly the opposite of the intent of the mover. It implied that a vested right might be taken away by the verdict of a jury, and under a law not *ex post facto*. That he

was not prepared to sanction. It could not be done under the U. S. constitution. If he asserted anything, it would be the opposite of that.

Mr. WORDEN said he would like to enquire of Messrs. HARRIS and CHATFIELD whether they intended in the constitution or elsewhere to take away the vested rights of any individual?

Mr. HARRIS would answer that when committee number eighteen made their report.

Mr. WORDEN would tell them that if such an attempt should be made it would be in vain. We could no more take away vested rights, whether belonging to an individual or a corporation, by a constitution, than we could by a statute. They were guaranteed under the constitution of the U. S., and it was beyond the power of the people to destroy them in the one way or the other. He had no reference to corporations or individuals. As to this taking away of private property by corporations, that was a thing of daily occurrence, and your government could not go on without it. Your laws of partition were nothing more than laws which divested one man of his property and vested it in another against the will of the party divested.—And as to vested rights—they were such rights as were secured to corporations or individuals which could not be taken away without a compliance with certain rules of law. That was all he designed by this—and not as seemed to be imagined to sustain vested rights and remedies against the action of the legislature. The bankrupt law, it had been solemnly argued, was against the constitution of the U. S. Whatever might be the power of the general government in this respect, he would have no such power in our own constitution. He would not have laws affecting remedies and taking away rights without just compensation. He might refer to laws which affected rights and proceedings in our courts, which cost parties tedious and expensive litigation. That was what he designed to prevent—nothing more. The gentleman from Otsego had entirely mistaken his object. Mr. W. would go as far as he in liberalizing the law in the particular alluded to by that gentleman, by preventing this vast accumulation of property that built up institutions of a feudal character, and almost created the relation of lord and serf among us. The gentleman did him injustice in supposing that he would cover up here what of all things he desired to see accomplished. We directed rights by operations of law. What he wanted was that you should not destroy remedies as well as rights. He moved that for the present the section be passed over.

Mr. R. CAMPBELL hoped not—but that the question be now taken. He would adopt no new section in our bill of rights, especially if the change avowedly was to prevent the passage of laws affecting remedies. Better leave well enough alone—leaving vested rights and vested remedies where they were now.

Mr. CHATFIELD in reply to Mr. WORDEN, said he should as soon think of locking the great Temple in the desert of Sahara against thieves, as to attempt to prevent the legislature from doing what they could not do. No one pretended to the power or had the disposition to take away vested rights. Indeed his objection to the section was that it did precisely what neither

he nor the gentleman desired. It would perpetuate, he feared, a monstrous evil. There was no telling how far courts might extend this doctrine of vested rights. Their decisions already covered almost every thing, and corporations even could not be touched by the legislature.— But the proposition to perpetuate vested remedies was still more monstrous. To fix such a principle in the Constitution would be almost insane on the part of this Convention.

Mr. BASCOM said there were certain personal rights sought to be protected by this section. It was necessary to give the legislature some control over these rights. There was the right of suffrage. The legislature had excluded from this right certain persons, not excluded by the terms of the Constitution, viz. those convicted of certain crimes. The right to give evidence was also a personal right. He feared if this section stood unaltered the legislature might assume the right to exclude persons from this right, on account of their religious belief. Some states had exercised such a power. And again in relation to color. Ohio and some other free states had excluded the colored man from this right to give evidence. He would confine this right of the legislature to cases of conviction for crime.

The amendment of Mr. B. was negatived.

Mr. WORDEN withdrew his amendment.

Mr. TALLMADGE then, in behalf of the committee, offered the following amendment:—

Strike out the words, "unless by the law of the land," and insert, "unless upon the verdict of a jury rendered according to the course and usage of the law, in a civil action, or in a public prosecution, and in pursuance of some general law promulgated prior to the act or matter alleged as the cause of such action or prosecution."

Mr. PERKINS had some doubts as to the effect of this phraseology. It spoke of the intervention of a jury. There were none such in the Court of Chancery, and this might be so construed as to take away some of the powers of that Court. This might be all well enough, but he should not debate that question now.

Mr. HARRIS professed to be something of a Reformer, but in this particular he was ultra conservative. He trusted the Constitution in this particular would not be altered in the least. Its meaning was well understood, and he should vote against every proposition to amend it.

Mr. O'CONOR agreed with the gentleman from Albany. But he feared the effect of the argument of the gentleman from St. Lawrence,

who was opposed to interfering with this section lest it should deprive the Court of Chancery of the power to disfranchise or deprive an individual of some right or privilege. If gentlemen supposed that might be the effect of the alteration, they might be inclined to alter. All had been said that need be said in favor of this safeguard of the rights of citizens. It was in the very words, with a slight and necessary omission, in which it was written in Magna Charta. It was a most excellent section, and let us have no tinkering with it.

The amendment of Mr. TALLMADGE was rejected.

Mr. BRUCE moved to strike out the word "member," and insert "citizen." Lost.

The fourth section was then read as follows:

§ 4. The right of trial by jury, in all cases in which it has been heretofore used, shall remain inviolate.

Mr. JORDAN moved the following amendment.

Add to the section:—

"The judge may repeat to the jury, and call their attention to all the testimony; but no judge shall argue, advise, instruct, or express an opinion upon any matter of fact, on the trial of any issue in any civil cause."

Mr. J. said the object of this was to restrain the judge to the discharge of his appropriate duties. He had known judges argue on the facts, express an opinion thereon, and almost instruct them how to give a verdict on those facts. At the same time he would tell them they were to judge of the law and the fact. Thus he would do all the mischief without a positive instruction. He believed nine-tenths of the judges were free from this charge, but he knew of instances where both himself and his client had suffered from such conduct in a judge.

The amendment was rejected.

Mr. O'CONOR offered the following substitute for the section:—

The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever, and shall be allowed in like cases arising in any new court or proceeding hereafter instituted or authorized.

Mr. O'C. explained and advocated his amendment. It only reasserted in spirit, though not in precise words, the provision in the constitution of 1821.

Mr. STOW advocated the amendment.

The committee then rose and reported, and the Convention adjourned to 9 o'clock to-morrow morning.

SATURDAY, AUGUST 8.

Prayer by the Rev. Mr. MILES.

Mr. ARCHER offered the following:—

Resolved, That the report of committee number 11 be taken out of committee of the whole this day at 10 o'clock.

RIGHTS AND PRIVILEGES.

The committee of the whole, Mr. MARVIN in the chair, resumed the consideration of the report of committee number 11.

The pending question was Mr. O'CONOR'S substitute as follows:

§ 4. The trial by jury in all cases in which it has been heretofore used, shall remain inviolate forever, and shall be allowed in like cases arising in any new court or proceeding hereafter instituted or authorized.

It was agreed to.

Mr. BASCOM moved to add to section 4, as amended, as follows:—

"But the number of jurors to form a jury may be prescribed by law."

Mr. B. stated that there had been petitions for a reduction of the number to constitute a ju-

ry; but all that he here proposed was to give the legislature power to prescribe the number.

Mr. BROWN said this would give the legislature absolute and uncontrolled power over trial by jury. He was not disposed to experiment on that right. We know what the trial by jury is. It has come down consecrated by a long course of usage, and we ought not to make any innovations, unless it were such as there were no doubts about—such as were clearly pointed out by wisdom and experience. To allow the legislature to prescribe the number would be to say that the legislature should be entitled to say that a jury should consist of one, two, or three, or any other number. Now in all his experience at the bar for twenty-five years, he had found that the present number of jurors was the best in all trials. In England, experience had taught the same fact; and unless some better reason were given than any he had yet heard, he should prefer to adhere to the old rule, than to try innovations which would put such power into the hands of a small number of the legislature.

Mr. LOMIS said the argument of the gentleman from Orange had only added to his previous convictions. The origin of the trial by jury was a grant from the sovereign to the people; and it was to protect their personal rights from the tyranny of the king. It was given to them as their security that they should be tried by their peers. But who was our sovereign, against whom we are to be protected? The legislature is our sovereign; but he had no fears that the legislature would ever abolish the trial by jury, in important criminal cases, especially in state trials. On the contrary, it has been extended to many cases in which it did not exist in our judicial system, and it was now proposed to extend it to chancery cases. He however objected to the wording of the section as it stood. He could not agree with the gentleman from Orange. The legislature should not be prohibited from remedying the great abuses which we had seen growing out of the jury system. Large amounts of money had been expended, and a whole month wasted in getting a jury to try a single person. And the more notorious and atrocious the crime, the more difficult was it to convict the criminal. Courts had held a man incompetent as a juror, who had formed even an opinion that death had ensued. Now he desired that the legislature should have full power to remedy such abuses. He had no fear that they would abuse that power. He was in favor of this amendment, which was good as far as it went; but he would go farther. And he read a substitute, which at the proper time he should offer.

Mr. STETSON inquired how it was that since 1821 the legislature had interfered to change the number of jurors? There were but six jurors in a justice's court, and since their jurisdiction had been increased more property was affected by the decisions of these courts than of all others.

Mr. WORDEN agreed with the gentleman from Orange that this right of trial by jury was of too great importance to be assailed in any way without great consideration. It had been said to be the palladium of individual rights, and doubtless it was so. The trial of questions of

fact by twelve men, and requiring them to concur in the facts which are to deprive a man of his liberty or property, is the great safeguard of individual rights; and he agreed with the gentleman from Orange that twelve men was as few as the rights and property of citizens ought to be entrusted with. His experience had shown him that there are times when even jurors are influenced by considerations that swerve them for the time from a right determination. In such cases when they had the number of twelve, they were very sure to find one of that number who would take a right and proper view of the subject. He did not intend to impeach the integrity of jurors—far from it. His experience had shown him that the actions of jurors entitled them to commendation, and he only wished now to say that he desired that the system should be left as it now is. He knew it was an onerous duty for jurors. He recapitulated the cases in which jurors were called upon to try, and showed that they were often called from their homes to attend the trial of causes which their own good sense told them should never be brought into court. But it should be remembered that imperfections were attendant upon the administration of all human institutions. When great rights and personal privileges were at stake, then it was that they were protected by jury trials. He would not say but what the legislature had the power to decrease the number of jurors. He did not think such a decrease would be advisable. But he would leave this whole question to the sound discretion of the legislature. He would not put this clause in the constitution, for it would invite such changes. Parties, in certain cases, could now dispense with jury trials, and submit their causes to the decisions of the court. Why not leave this in the constitution as it had stood all along? It had worked generally well and with as few evils as could be anticipated from any mere human system.

Mr. O'CONOR said it afforded him great pleasure to concur in the view taken by gentlemen of so much experience as those from Orange and Ontario. He thought there would be but little difficulty in reconciling the scruples of the gentlemen from Herkimer and Clinton. He trusted that this subject would be left quite as well guarded and substantially in the same form as it existed in the constitutions of 1777 and 1821. He believed it would be conceded that the right of trial by jury was the right to be tried by twelve men. That was the ancient Saxon number, and this should always continue to be the number. No right should be given to the legislature to make it any less. If such a right was allowed, as the gentleman from Orange had said, they would have a right to reduce it to three or four, or even to one, and the decisions by boards of three referees might be denominated trials by jury. The legislature have never dared to make any other jury, properly speaking, than a twelve men jury; that number has always been sacredly preserved. The justices' courts had never, previously to a late period, had any jury; the legislature had given them the right of reference to six men, but it was never considered to be a legitimate jury trial.—He believed the gentleman who had spoken

would be sustained by the strong voice of this house.

Mr. BASCOM desired to say one word. He was glad to see the anxiety manifested to retain the right of trial by jury, and if gentlemen desired to extend that right, they would find him going with them. It was a sacred right, and it was rather unfortunate that the people had not been more watchful of interference with this right. He would call attention to the fact that a vast amount property was disposed of, without the intervention of a jury. Look over the overshadowing influence of that court which repudiates jury trials. He regretted that the amendments offered yesterday by Messrs. CONELY and JORDAN had not been adopted. He believed the legislature had exercised this right of reducing the number of jurors. He would not say but what that was an infraction of the constitution. But after the vote of yesterday, placing all our rights within the control of the legislature, and allowing them to say that we shall not in certain cases be witnesses, it was too late to talk about the legislature restricting the rights of citizens by abridging the number of jurors. He was not certain that his own amendment was perfect. It might be well to confine its operation to trials in civil cases. In criminal cases it might be necessary to retain the number of twelve. But in such cases of mere inquest and such like matters of form, he thought it could be done as well with a less number. There was a great expense involved in these trials by jury. In the county of Ontario during the past year, the amount paid out of the treasury for jury fees was greater than the entire amount of verdicts rendered by them in civil cases. Mr. B. trusted this important subject would be fully considered and that the correct result might be reached.

Mr. WORDEN wished to say one word in relation to the expenses of trial by jurors. We had a series of inquiries which were calculated to mislead in regard to this question. The inquiries had been to find out those expenses, compared with the amount of judgments rendered, which had shown a great disparity. But it had been overlooked that a great share of these expenses covered the trials for criminal offences. This was the case in Ontario county.

Mr. PORTER desired to make a single suggestion in reply to Mr. Loomis. He understood him as saying the only object of jury trial in this country was to protect the individual against the legislature. He (Mr. P.) understood, on the contrary, that here, as in England, the object of jury trial was to protect the citizen against the encroachments of the judiciary. In England the judiciary was but a branch of the monarchical power and had no check upon its action. It was very much so here, and against the encroachments of that judiciary he would interpose the jury trial. It was too sacred a right to be interfered with, and he accorded entirely with the arguments of the gentlemen from Columbia and New-York, (Messrs. JORDAN and O'CONOR.)

Mr. STETSON enquired if a case was withdrawn from a court where twelve jurors sat, and was given to a court where six jurors only were required, whether it would be a violation of this section?

Mr. O'CONOR said it would be, if it were done, but he did not believe it was done.

Mr. STETSON went on to show how the legislature had violated the right to trial by jury, by giving justices' courts jurisdiction over cases which formerly belonged to higher courts; and he enquired if the legislature were thus to proceed, where the security of this right to the citizens would be? If as the gentleman from New-York said, less than twelve was not a jury, then the trials in justices' courts were not jury trials.

Mr. O'CONOR said again that when six men were added to justices' courts, something was given and nothing taken away. The trials were previously before the justice alone.

Mr. STETSON: Then the trials have been without a jury because the jurisdiction of the courts above has been drawn down to the justices' courts.

Mr. O'CONOR had not examined the law which applied to the county courts. But if it was as the gentleman from Clinton had said, he hoped the country members had taken care to carry with the enlarged jurisdiction, the right of trial by a jury of twelve men. Whatever the technicalities of this section might be, the only practical question was that of the amendment of Mr. BASCOM, which might be easily decided, and he hoped it would be voted down without further delay.

Mr. LOOMIS was opposed to the amendment, because the adoption of additional words were sometimes of doubtful intent, and might be supposed to give the power only to extend, when it was designed to limit. In this case it designed to limit the number, by giving the legislature power over the matter, and he hoped the section would be permitted to remain as it stood.

Mr. RHOADES said that the debate thus far had been entirely confined to the legal gentlemen composing a part of this Convention. He regarded the subject as an important one, and should venture to make a few remarks explanatory of his own views. The proposition of the gentleman from Seneca, (Mr. BASCOM) had been sustained principally on the ground that the number of jurors should be reduced for the purpose of saving expense. Mr. R. said that there were considerations involved in this question, aside from having the rights of every individual preserved by causing them to be submitted and passed upon by the judgments of his peers, and aside too, from that if having a jury to stand as a shield to secure the rights of the people against the encroachments of the judiciary, and to protect them against the tendency of this branch of the government to the exercise of arbitrary power, which far outweigh any arguments in favor of diminishing expense. The jury keep up and perpetuate an important union between the people themselves, and their courts of justice. The jurors are in truth the immediate representatives of the people, in the administration of their judicial affairs. The trial by jury allays all incentives to jealousy and distrust of judicial power. The jury box is the means of bringing a larger portion of our citizens, the mechanics and farmers, into immediate contact and connexion with our courts of justice, and makes them a part of the same. It enables them to acquire a knowledge of the general

principles of law—the rules which exist as the foundation of all good government and the mode and manner in which their own laws are administered. But few of our citizens have the time or ability to study the laws of this country.—They have not the means, nor the books necessary for such information—yet every man is *supposed* to possess a knowledge of the laws of the land in which he happens to dwell, and by the force and requirements of these provisions in relation to jurors, a large portion of our citizens are brought into a situation to understand these laws and hear many of the leading principles of constitutional, statute and common law, discussed and applied. But few men except those who, belonging to the legal profession, have the taste and disposition of their own accord to acquaint themselves with the laws of the land beyond, that knowledge which is necessary to enable them in their own sphere of action to avoid its penalties. They will not study its principles from the books, and yet a great amount of legal knowledge is obtained and exists in the minds of a large portion of the people of this state, which is acquired from this connection with our courts of justice in the capacity of jurors. The number who are now enjoying these advantages ought not to be diminished.—It is of great importance to the perpetuity and well being of our free institutions, that the public mind should be well imbued with a general knowledge of the principles upon which every department of the government is founded and the manner in which all are administered. As the form of jury trial is now admitted to be secured by the old constitution, in respect to its *numbers* as well as its *privileges*, he hoped it would not undergo any alteration. He should, therefore, vote against the amendment.

Mr. HART moved to insert the words "in civil cases" after the word "jury."

Mr. BASCOM accepted the amendment.

Mr. STOW said if he understood the proposition of the gentleman from Seneca, it was to leave power to the legislature to prescribe the number of jurors. He should just as soon think of allowing the legislature to prescribe the number of which the legislative body should consist. The people had much better surrender the legislative halls than their representation on jurors. No people could be free without this check upon the government against the improper exercise of the laws, or unjust punishment. There could be no question that the right of trial by jury meant nothing more nor less than a trial by twelve men. No power should be given to make this number less.

Mr. RUGGLES believed that in the higher courts the number of twelve jurors should be retained. He also believed that the legislature should have some control over this subject. It had long seemed to him that if there was any doubt as to the constitutionality of the law reducing the number of jurors in justices' courts, it was time that question should be settled. The legislature should have that power if they have not. He was of opinion that the principle of that law should be retained. Cases had occurred where twelve men had been called from their work to sit upon a cause where the amount in controversy was not twelve pence. This was

an abuse which the legislature should correct. This was necessary not so much to protect the parties as the public.

The amendment of Mr. BASCOM was negatived.

Mr. RUGGLES then sent up the following amendment to be added to the section:

"Excepting, however, that in all cases in which the value in controversy shall not exceed \$—, the trial may be by a jury of less than twelve in number, or without a jury, as may be directed by law."

Mr. BROWN moved to strike out the words, "or without a jury." We should be very careful how we tread on this ground. It was not the amount of money involved in a controversy that constituted the magnitude of the cause.—The greatest principle might rest upon a case where not more than twelve and a half cents were at issue. The whole revolution in 1640 and 1642 in England turned upon the twenty shillings ship money demanded from John Hampden. And the gentleman from Oneida (Mr. KIRKLAND) had brought to the notice of the judiciary committee a case where the entire franchises of a turnpike company depended upon a suit where the amount was only twelve and a half cents.

Mr. KIRKLAND followed on the same side, giving the particulars of the case referred to by Mr. Brown. There were a vast many cases where the amount in controversy would be but trifling and yet important principles would be involved, and the right of trial by jury should be retained.

Mr. RUGGLES further explained his amendment, contending that it was not subject to the objections urged. He knew an instance where twelve men were taken from the field in harvest time and kept all day and all night, when the whole amount involved was less than twelve and a half cents. He would secure the public from being thus oppressed by those who were disposed to engage in vexatious litigation. He had no wish to abolish trial by jury in every case, but to submit it to the legislature to say if in cases involving small amounts, the jury may not be less than twelve or no jury at all.

Mr. HARRISON thought they were wandering from the true object. The section first secures the right of trial by jury. The next object should be to secure in all criminal cases the full number of twelve. The next question would be to determine if it was proper in all other cases to call together the same number of jurors. He thought a few words would be sufficient to determine all these points.

After a few words from Mr. JORDAN, the motion of Mr. Brown was agreed to.

Mr. JORDAN said it would be necessary to fill the blank in the amendment before they could determine whether it would be proper to adopt it. He moved to fill the blank with \$100. He proceeded to comment on the constitution of juries in justices' courts. He said it appeared that the legislature had infringed on the constitution by reducing the number, because he believed the trial by jury to be a definite thing.—No other number of men empanelled to try a cause, but twelve, was a jury. If six could be constituted a jury, so could three or one. In

short, the judge himself might be made both judge and jury.

Mr. STOW moved to fill the blank with \$50.

Mr. WORDEN thought there would be an insuperable difficulty in giving application to this rule. Did the gentleman mean to apply it to all the courts in the state? It would be difficult in many cases to decide the amount in controversy. In looking over the books he had found that there were numerous cases where actions in trover turned upon the right of property, and were decided by jury. This amendment did not appear altogether lawyer-like. There was no application of it to any particular court; and if intended to apply to courts of record, he believed it would be entirely without effect, because of the difficulty to decide the amount in controversy. He certainly thought the amendment should apply only to justices' courts, or otherwise it would lead to breaking down one of our most valuable rights.

Mr. STETSON should give his cordial support to the pending amendment. Wherever there is a practical doubt as to the constitutionality of an act, it was our duty here to settle it. Now, what was the practical doubt in this case? "The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate," was the language of the proposition. Now, was it a question involving a certain number of jurors? Gentlemen had contended that a jury was twelve men, and that it was unconstitutional for the legislature to reduce the number; but the legislature had nevertheless done so in certain cases, and the terms of the substitute having reference to the jurors "heretofore used," would make it uncertain and obscure. The object of the gentleman from Dutchess was to remove all doubt.

Mr. AYRAULT said as this seemed to be a very important section, upon which there was a great difference of opinion among the legal gentlemen who had spoken, he moved that it should be passed over, and the succeeding sections taken up.

Mr. JORDAN wished first to propose an amendment that it might go over with the whole subject; which being assented to, he moved to add to Mr. RUGGLES' amendment, "and a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law."

Mr. O'CONOR thought he had never seen so many legal gentlemen speak with so much unanimity upon any question of this nature. And he believed gentlemen were generally ready to vote, and he hoped the section might be now finished, so that so much of our labor would be got along with so far as the committee of the whole was concerned; and if any radical slip was made, it might be corrected in Convention, after a long pause, as there must necessarily be a pause, for the reports of the judiciary committee would take precedence on or after Monday.

The motion to pass over the section was negatived.

Mr. NICHOLAS said that it was generally conceded here, that trial by jury means a trial by twelve men, and that this has always been its construction. Now, as our constitution has guaranteed to every citizen the right of trial by jury, if the legislature has heretofore authorized trials in the court of the most limited juris-

diction and made it peremptory upon our citizens to submit to a trial by a smaller number of men, such a law would be unconstitutional.—But he did not understand past legislation to be of this character. The right has, in such cases, been conceded to the parties, or either of them, to claim a trial by twelve men. He would leave this provision as it had existed in the constitution. The legislature may permit causes to be tried by a smaller number than twelve men, provided the parties acquiesce in such a trial.—He hoped this ancient and invaluable principle of liberty, the right of trial by jury, which is well considered one of the great bulwarks of freedom, may not be innovated upon, and no question of dollars and cents should induce a departure from this well defined principle. A few shillings may involve principles as important, in the estimation of a party, as the largest sums in controversy, and he would continue to every citizen the privilege of a trial by twelve men when he declines a trial by a smaller number of men. Mr. N. said besides the several objections already urged against this proposition to allow juries of reduced numbers, it would increase litigation, and this we all wish to diminish; it must multiply appeals to a higher court, for if citizens are debarred in one court the ancient right of a trial by a jury, that is, a trial by twelve men, they will not in many cases have the same confidence in the decision of a smaller number, and will be more likely to carry their cause to a jury, where they will at least expect a larger aggregation of intelligence in a greater number of men.

Mr. MANN moved to amend so as to except courts of record from the application of Mr. RUGGLES' amendment. But the Chair ruled that the motion was not now in order.

Mr. LOOMIS said there was no need of sanctioning what had become established beyond all change. The jury trial by six men in justices courts had been in vogue for many years, and no court in this state would ever declare it unconstitutional. Mr. L. thought the committee had secured all that the gentleman from Columbia desired to secure by the phraseology they had adopted. The right of trial by jury being secured, parties were left at liberty to waive the right. But if the rule were otherwise, and parties were not to have a jury trial unless they asked for it, as in justices' courts, we should not have half the jury trials we now had.

Mr. CONELY desired to offer an amendment, but it was declared not to be in order.

There was some conversation here between Messrs. WORDEN and JORDAN, as to the necessity of this amendment—Mr. W. saying that by the law of winter before last, parties could now waive jury trial.

Mr. HARRISON must repeat that he thought it necessary for the laymen to come to the aid of the profession in this matter. All that was wanted was a constitutional provision sanctioning the practice which now obtained in justices' courts, of having six men only on a jury—and then leave legislation to adapt itself to the rule. He would merely extend the provision to the new courts to be formed under this constitution. He had a great reverence for Magna Charta; but

that would not prevent him from adapting it to the existing state of things.

Mr. VAN SCHOONHOVEN could not find the authority by which it could be proved that a jury always meant just exactly twelve men.—There was nothing said about it in any Constitution, nor in any elementary work that had been consulted. But if there was any doubt about it, he would say that a petit jury should consist of twelve men in all courts of record, and that in other courts, the number should be determined by law. If it was left to the legislature to extend the jurisdiction of justices of the peace, it could also be safely left to them to determine the number of jurors.

Mr. SWACKHAMER hoped the amendments offered by Messrs. JORDAN and RUGGLES, and as many as might be offered by other legal gentlemen, would be adopted, and that then they would all be voted down, and we should come back to some simple, practical, common sense provision. He contended that the section, as it had been reported by the committee, was abundantly sufficient. It simply asserted that the right of trial by jury should remain inviolate forever. That was so plain that "he who runs may read" and understand. We had amendments enough offered to make a large book. All this would encourage litigation. He was in favor of abolishing the collection of debts in courts of law. Let that rest upon the honesty and integrity of the man, and not upon such uncertain justice as was now obtained in our courts of law. He was opposed to this eternal dragging in of the common law. To follow out that, we must wade through books enough to fill this hall and then have as many opinions as lawyers and as many decisions as judges. He would have the laws plain and easy to be understood. We had spent the whole morning in the discussion between legal gentlemen as to the meaning of the words "heretofore used" and "trial by jury," and we had had cases carried up from the lowest to the highest court to ascertain the meaning of these words. He would not incorporate any such ambiguity in the fundamental law of the land.

Mr. JORDAN asked if it was order to withdraw his amendment. He did not want his pet lamb brought into the flock, that its throat might be cut with the rest. [Laughter.] He withdrew his proposition for the present.

Mr. HOFFMAN had yet to learn, with his friend from Kings (Mr. SWACKHAMER) the great use in civilized society of laws for the collection of debts. If he had yet to learn, that a very cursory glance over the face of the earth at the nations when no such system existed to satisfy him where we should come to if we were mad enough to abandon a sound system of law for the collection of debts. All Asia—nearly the half of Europe—told him what the consequences would be of abandoning that system—one man a prince or master, the mass slaves.—That was the history of mankind when no sound system existed for the collection of debts. And Mr. H. hoped his friend from Kings, before he finished his education on that subject, would take the pains to look at all the consequences, for Mr. H. knew him well. He knew that in his heart, there was nothing on God's earth that

he would abhor more than the consequences that would inevitably result from his own proposition.

Mr. SWACKHAMER had not decided on the subject. He merely threw it out.

Mr. HOFFMAN believed his friend had not decided, and did only throw it out. To come to the question here:—The labors of the Convention, whether successful or not on this subject, were well worthy of it. He held that the trial by jury was not only the palladium of liberty, as constituting in the strong sense of the English law, the shield of the subject against the fixed magistrates of the Crown; but he held that it was the great school of civil wisdom in any free country—which more than all other schools put together, taught practical lessons of liberty and freedom. Hence he desired that this part of the constitution should be fixed and definite. But he differed from the constitutional lawyers who had expressed an opinion on the subject. He believed it was an entire mistake to suppose that a jury implied twelve.—The highest jury known to the common law—the jury that decided the right to all real estate—was a jury not of twelve but of sixteen freeholders, to use the language of the day.—Sixteen knights was the language of the military age in which it had its origin. Ordinarily, however, in the king's courts of record, a jury meant twelve men. He was not able to recollect whether in any important tribunal in Great Britain, a jury of less than twelve was employed. But in most of the minor causes, there were no jurors called. As to our own constitution of '77, Mr. H. said its framers knew what had been the fixed, practical construction of the word jury—legislation and the courts had given it the construction it had received—and this section as reported, was as definite and certain as you could well make it.—The only other question was the one sought to be settled by the amendment of the gentleman from Columbia. The right of trial by jury, Mr. H. insisted, was not only the right of the person to be tried, but the right of the citizen to be a juror. It was his right to sit in judgment on the controversies of his fellows. It was a right, in his judgment, more important than the right of suffrage itself. And he would as soon expect to hear a rational man complain that he was obliged to breathe in order to live, as that he was obliged to use care and circumspection in order to be free:—that he was not divested of the duty which freedom, under God, imposed on everything human—as to hear him complain of the burthen of being a juror. It was, under God, the highest power that man could exert. Let no man in free America yield without a struggle his right to be a juror. It was his shield and defence against the partiality and oppression of the fixed magistrates of the government. There might be a question whether, under the section as reported, parties would have the right to abandon this mode of trial.—If the Convention thought they would have that right, the amendment ought to be adopted. It was, he confessed, an invasion of the general right of the citizen to be a juror. But, as a choice of difficulties, he should vote with the

gentleman from Columbia, to allow parties, by mutual consent, to dispense with a jury.

Some further explanation followed between Messrs. SWACKHAMER and HOFFMAN.

Mr. JORDAN withdrew his amendment for the time being.

Mr. RUGGLES accepted the amendment of Mr. MANN, but his entire proposition was rejected.

Mr. KINGSLEY moved to amend, so that the legislature might prescribe that in justices' courts a jury might consist of six persons.—Lost.

Mr. JORDAN offered his amendment that trial by jury might be waived on the consent of parties.

Mr. KIRKLAND urged that the amendment was entirely unnecessary. Could there be any right that a party could not waive. Could not a party withdraw his plea and confess judgment? Could not a criminal plead guilty? Mr. K. cited a case in Wendell, which sustained fully his position.

Mr. STETSON. But can the judge waive the trial of a question of fact?

Mr. HARRIS fully concurred in the view of this question taken by Mr. KIRKLAND. This amendment was unnecessary. He thought the constitution as it now stood abundantly sufficient.

Mr. JORDAN said the question involved not merely the right of parties, but of the judge.—Could he under the constitution, be made to go on and try the case without a jury? Or could the legislature require it of him? Mr. J. went on to insist that the term jury meant twelve men, and that the gentleman from Herkimer, in talking about a grand assize of twenty-four knights girt about with swords and glittering in armor; he was talking about as different a thing as if he had descanted on a grand inquest of twenty-four, or a jury of twenty men on some road case. He challenged that gentleman to a single case under the common law where there even was a tribunal for the trial of matters of fact, except a jury of twelve. Cut loose from the trial by jury, and there would be no court bound to proceed to a trial, without some such provision as this.

Mr. TAGGART alluded to the fact that now hundreds of cases had to be submitted to the formality or force of a jury trial, when there was no defence, and when the amount of principal and interest only on a note was to be calculated. And he asked, if the legislature had power to remedy that, why it had not been done.

Mr. KIRKLAND replied that that was not for him to say. That they had power to apply a remedy, there could be no doubt.

Mr. WORDEN called for the reading of the statute to which he alluded, allowing parties by consent, to waive a jury trial—and it was read.

Mr. PERKINS expressed his objections to compelling judges to try all issues of fact that parties might incline to throw upon them.

Mr. J. J. TAYLOR remarked that in the judiciary article there was a provision, requiring the consent of a judge to try a cause. With some such modification, he hoped the amendment would be adopted. In a large proportion of ejectment cases, the jury were mere automa-

tions, sitting there to sanction or allow the decisions of the judge to be recorded.

Mr. O'CONOR believed the legislature had the power to do all that was intended to be provided for here. At the same time, this trial by jury was a sacred thing, and it was not a matter of course that legislators would touch it at all, unless there was some such provision in the constitution. He suggested, however, that it should be without the consent of the judge. He would have them bound by law, without the arbitrary power to consent or not to the trial of a cause. The legislature could give as a general rule on the subject, such as the public interest might demand and fair towards the judiciary.

Mr. KIRKLAND still urged that this amendment was entirely superfluous—the legislature under the original section, would have all power over the subject.

Mr. JORDAN's amendment was agreed to.

Mr. BRUNDAGE had supposed that when the constitution secured to every man the right of trial by jury, that that was the amount of the provision, and that the particular manner of conducting these trials was left to the legislature for their regulation. But suggestions had been thrown out that the trial by jury, according to common law construction, implied twelve men. Still, he understood the rule to be that the statute law, when in conflict with the common law, was paramount, and that of course, this matter of the number of jurors, whatever might be the common law rule, was under the control of the legislature. Again the rule of law by which jurors in justices' courts were limited to six had been so long in practice and so long acquiesced in, that it in itself became a part of the common law. That there were evils growing out of the abuse of the trial by jury, there was no doubt, and there was as little doubt, in his judgment, that they were certainly within the reach of legislation, by regulations as to the causes and number of challenges. He alluded to cases before the higher courts. He was aware of evils existing in jury trials, before magistrates—but he had never been able to devise a remedy for them. Mr. B. concluded by moving to add a provision giving the legislature power to prescribe the qualifications, compensation, and number of jurors, and the causes and number of challenges.

The amendment was lost.

Mr. BROWN offered the following as a 5th section:—

§ 5. The legislature shall have no power to pass any law to defeat or in any wise affect the recovery of the money mentioned in negotiable paper, upon the ground of usury, where such paper is held by a person who has received the same in good faith, for a valuable consideration, and without actual notice of such usury.

After a few remarks from Mr. RICHMOND in opposition, this section was rejected.

The 5th section was then agreed to, as follows:—

§ 5. Excessive bail shall not be required, nor excessive fines imposed; nor cruel nor unusual punishments inflicted.

The 6th section was read as follows:—

§ 6. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all men and kind; but the liberty of conscience hereby secured shall

not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Mr. HARRIS moved to add after the word "mankind," the following:—

"And the legislature shall provide by law for the effectual protection of the rights of conscience, so that in the exercise thereof, no person shall suffer in person or estate."

Mr. H. said he offered this, having reference to a class of Christians in our state, who were very respectable in number and among the best class of our citizens. He referred to the Seventh Day Baptists, so called. They had been subjected to embarrassing harassments by ill-disposed persons, who, by selecting Saturday, their Sabbath, as the day to bring suits against them, in that way very often inflicted serious injury upon them unless they would forego their rights of conscience. The legislature had heretofore refused to take action for their protection and this was only intended to require them to legislate.

The amendment was adopted.

Mr. CORNELL moved to strike out the sixth section, and insert in lieu thereof the following:

"The mind being by nature free, all men have an inherent, unalienable and indefeasible right to the full and free exercise of the faculties thereof; and to form, hold and utter opinions upon all subjects. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall not be infringed; but no man shall be compelled to attend or support any religious worship, place or ministry, of any name, nature or description whatever; except to fulfil a contract to give pecuniary support, voluntarily and freely made; nor enforced, restrained, molested or burthened in mind, body or goods; nor otherwise suffer on account or in consequence of any creed, opinion or belief, touching matters of religion, philosophy or other subjects; nor shall the same in any wise diminish, enlarge or affect his political or civil capacity, competency or duty. But the liberty of conscience hereby secured to all mankind within this state, shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of this state."

This was negatived.

Mr. TAGGART moved to insert after the word "mankind":—

"And no person shall be deprived of any right or provision, or rendered incompetent as a witness, on account of his religious belief or unbelief."

Mr. T. briefly explained that his main object was to abolish the law which declared persons holding certain opinions from being a witness.—He desired to see such objections apply to the credibility, not the competency of the witness. [A voice—"Rather leave that to the legislature."] Mr. T. replied that it had been left to the legislature these two hundred years, and they had not attended to it.

Mr. BAKER remarked that this precise question had been referred to a committee which had not yet reported on it.

Mr. TAGGART appreciated the advice—but in his judgment, this was the time and place for it.

The amendment prevailed.

Mr. DANFORTH here sent up the following—being a transcript, he remarked, of a section in the old constitution:—

"Whereas the ministers of the gospel are, by their profession, dedicated to the service of God, and the cure of souls, and ought not to be diverted from the great duty of their functions; therefore no minister of

the gospel or priest of any denomination whatever, shall at any time hereafter under any pretence or description whatever, be eligible to or capable of holding any civil or military office or place within this state."

Mr. PATTERSON had supposed the time had gone by when any class of citizens was to be proscribed. He thought we should extend equal rights to all. Why should these persons be excluded? Would our liberties be endangered by placing clergymen on a par with other professional men? He would give them equal rights and subject them to the same burdens as other citizens. He would allow them to hold office, if the people willed, and would repeal the law exempting them from taxation.

Mr. SALISBURY followed on the same side. As to the exemption from taxation, Mr. S. pointed out the practical operation of the law. Many Mormons had availed themselves of this exemption by ordination of their own sort. He would repeal that law and also wipe out from the constitution the odious distinction which had hitherto been kept up in that instrument.

Mr. TAGGART also objected that it placed a large class of citizens, of the highest character, on a footing with the felons condemned to state prison. He also objected to the distinction made by law in regard to clergymen, in exempting them from taxation. This perhaps was designed as an equivalent for the constitutional disqualification, and from regard to the profession, if for nothing else, should be abrogated. It did them no benefit, but was applied to a class who assumed the garb of ministers for the mere purpose of being exempt from taxation. He had been informed since he came here, that in one town, there were seventeen persons exempt from taxation, on account of their being believed as ministers of the gospel, not more than six of whom ever exercised the functions of that office.

Mr. CROOKER said that he differed altogether from the gentlemen who had preceded him in this debate. He was in favor of the section proposed by the gentleman from Jefferson. He believed that there was no section of our present constitution which had been more carefully considered or more deliberately adopted than the one which it was now proposed to reinstate. It was inserted for wise and patriotic purposes by the eminent statesmen who composed the Convention of 1821. The wisdom of the prohibition it contained had never been called in question. Both the people and the priesthood have been content with its provisions. Its effect was conservative, and most ardently do I hope that in this particular we shall leave the constitution as we found it. No man had a greater respect for the profession in general than himself. But it must be remembered that priests were but men. That they possessed the ambition and pride incident to humanity. That, like other men, they were divided into two classes—the pure and the impure. He believed that as many knaves were to be found in clerical robes, in proportion to their numbers, as in any other class of citizens. He would frankly confess that he, for one, was jealous of the power and influence of the priesthood. It was perhaps true, that as long as so many and various denominations existed, and while the thousand sectarians continued to battle the frag-

ments of each other's faith, that no great danger of any attempt to unite church and state could be apprehended. Their divisions now constituted our security against such an alternative. But times and circumstances may materially change. The love of office and the lust of power may serve as a chain to draw and bind them together. From his own observation, he did not believe them, as a class, to be safe depositories of power. Their peculiar calling, if it was followed as it should be, most eminently unfitted them for the duties of legislation and administering the laws in secular offices with impartiality. It was well known that now, restricted as they are, they wielded in our local elections a tremendous power. And it was equally certain that their influence was not always well and wisely directed. He desired to confine them to the proper and legitimate duties of the holy calling they have chosen. He believed it was wisdom to keep them free and unspotted from the defilements of political ambition. He did not believe that a single pious and high-minded priest in the state desired the abrogation of this provision. Ministers of this character were willing to be set apart for the service of God and the offices of religion. It tended to keep their eyes fixed on the glories of another world. Upon them it operated not as a restriction but as a shield against the force and power of temptation. The provision of the constitution was necessary for the protection of the clerical profession. He did not wish to do anything that might tend to lessen or destroy the sacredness of the priestly office. If you destroy this restriction you confer no benefit or boon upon the valuable portion of the clergy. They will be content with their dedication to God and the cure of souls. They will never consent to become candidates for office while they are true ministers of a pure gospel. The corrupt and the vicious of the clergy alone would seek to reach official stations. Have we not enough of corruption now in our political scrambles for offices, without throwing the priesthood into the arena. The love of office and power had many and strong temptations for the human mind, and the purest priests had the passions and ambitions of men like ourselves. Was it wise to invite a holy and high-minded ministry to mingle in the corrupting conflicts of our political elections. Would it not hazard the sacredness of their piety and soil their robes of office. He implored gentlemen to pause and reflect. Will not the destruction of this protective provision not only endanger the freedom of elections but also tend to degrade the priestly office and character.—It is said that this restriction puts the priest upon a level with the convict. This cannot be true. The priest is allowed the privilege of the ballot of which the convict is deprived. The prohibition of the right of suffrage to the convict is the result of his crime. It is forced upon him, and there is no way of escape by his own act from the privation. Not so with the clergy. By them, the prohibition is assumed by their own voluntary act. They choose their profession with a full knowledge of its terms and disabilities. There is no force in the case. Neither is there any thing of imputation in the

restriction. We assign them a higher and holier function. We but say to them that so long as they remain dedicated to their holy calling, we intend to keep them free and aloof from the corrupting influence and miserable scrambles for office and power. Have we not always restrained our high judicial officers, and others in the same way, in order to keep the channels of justice pure and above suspicion. And is it not proper as rigidly to guard those who are set apart for the cure of souls, as the judges who watch over the right of property. The certain tendency of the restriction was to keep them pure and unspotted from the world. It kept their profession safe above the storms of political turmoil, and saved them from the strong and alluring temptations to which they would otherwise be exposed. It kept the vile from assuming the robe. It was the safeguard of religion itself against the tide of corruption, that, during political struggles, overspread the land. If he should find a clergyman who desired to enter the field of political warfare, he should consider it strong evidence that he was unfit for the station he held. If any such priests desired to get relieved from the restrictions, it was always in his power to do so. They have nothing to do but cast aside the priestly robe. They could thus by their own act render themselves eligible to all the offices and honors of the state. It was safe to continue the conservative principle of the section; and if he stood alone, his vote would be recorded in favor of continuing the restriction.

Mr. DANFORTH did not design to kindle up this fire, when he transcribed this section from the present constitution. But the debate having taken the turn it had, he felt called upon to make a few remarks, and especially to repel the intimation that he undervalued the ministers of the gospel. He had no idea of classing them with felons, outlaws and outcasts, as the gentleman from Genessee seemed to imagine. This was not the estimation in which he held this distinguished and venerated class of men.—There was no class whom he regarded with more respect and deference. The reasons why he would not have them eligible to civil office, was expressed in the section he had sent to the chair. They were by profession devoted to the service of God and the cure of souls. That was reason sufficient why they should be excluded from a participation in our political strifes. But there were higher considerations. To them were committed the culture of the mass of mind that was soon to occupy our places in society and in official stations. There was a supreme ruler of the universe. These men professed to be his ministers—special teachers of Truth which he had given us to enlighten our path through this wilderness world. We invited them to come here each day at the opening of our sessions, and invoke the blessing of God on us. That was a virtual recognition of their high and honorable station. He trusted no man would impute to him a disposition to lower and degrade it. As far as his knowledge extended of this class of men, he never had known one of them express a desire to be recognised as politicians, or a willingness to come into our political strifes. That they did sometimes exercise the elective fran-

chise, was true; and it was their undoubted right and duty to aid in elevating to high places those whom they regarded as best calculated to administer the government. But all who valued rightly the importance of their ministration, and the salutary influence which their example, not less than their services, were calculated to exert—would not desire to see them in the political arena, mingling in the active duties of a political campaign, and themselves the candidates of different parties, for party favor. Much less ought we to incite by such a course, the slightest approach to that union of church and state, which had been found to be so fruitful of evil in other countries, to both. If he was rightly informed, this very article was drawn by the hand of the distinguished President Nott, of Union College. He considered it essential to the influence of the ministry. This was the testimony of one of this profession, to the importance of this exclusion. So far as he knew, it was desired by the clergy themselves. There might, however, be among them, those who were ambitious of political as well as ecclesiastical honors; and he trusted this Convention would retain a provision, under which we had lived for a quarter of a century.

Mr. A. W. YOUNG was truly rejoiced to find that the committee who reported this article had a sufficient regard for equal rights as to leave out this section which it is now proposed to re-instate. For this they were entitled to his thanks. We had been told that this class did not ask for the repeal of this prohibition. Who, he would ask, were to judge of that? If they were as good men, as had been alleged, certainly there was no necessity to exclude them by a constitutional provision. It was also said their calling was such, that they could not inform themselves on political subjects. Mr. Y. knew of many from whom we might well learn lessons of statesmanship. It was the duty of all to inform

themselves of the policy of government, so that they could vote understandingly. Mr. Y. objected to this for a further reason. It would be holding out a bribe for bad conduct. Put this in the constitution and it would be saying in fact that if a clergyman would only become so bad that he was unfit to act as clergyman, he might then hold office. He did not say that a clergyman could discharge the duties of his office and at the same time hold a seat in the legislature. But there were many offices, like that of inspector of schools the duties of which they could well discharge. As to the exploded doctrine that this would be a union between church and state, that was too stale to rest a word of argument upon. Neither could he see much soundness in the objection that they were too holy to mingle in political scenes.

Mr. BURR moved to amend by inserting "practising physicians." It was very inconvenient to him to have his family doctor taken away by his duties in the legislature. He should like to make a speech on this, but he was too hungry.

Mr. STOW wanted to add "practising lawyers."

Mr. BURR assented.

Mr. CROOKER also, adding that we had enough of them here.

Mr. JORDAN thought it would be well to add "surveyors."

Mr. BURR had no objection.

Mr. SHEPARD thought we were making ourselves ridiculous and moved to rise and report.

Two votes were taken on this, but no quorum voted either time.

The CHAIR then rose and reported that fact to the Convention.

Mr. CROOKER moved to adjourn. Agreed to, ayes 41, noes 24.

Adjourned to 9 o'clock on Monday morning.

MONDAY, AUGUST 10.

Prayer by Rev. Mr. MORROW.

Mr. BOUCK presented a petition relating to the unfinished public works, canals and canal tolls. Referred to the committee of the whole having that subject in charge.

Mr. J. J. TAYLOR presented a remonstrance from the Owego Academy against depriving colleges and academies of a share of United States deposit fund.

Mr. CLARK presented a like remonstrance from the trustees of the Mexico academy, and they were both committed to the committee of the whole having the subject in charge.

The PRESIDENT laid before the Convention a report from the Comptroller in reply to a resolution calling for the sums paid as the expenses of the Commissary General. Also a report from the comptroller relating to loans made in certain cases. Referred to the committee of the whole having in charge Mr. HOFFMAN's report.

FUNDS IN CHANCERY.

Mr. RUGGLES, from the judiciary committee, said on the 3d of August a resolution was

referred to that committee, requiring certain information from the chancellor. The committee thought it proper that the information should be obtained, and had therefore directed him to report a resolution recommending the adoption of Mr. MANN's resolution. [Published when offered.]

The Secretary having read the resolution, Mr. RUGGLES moved to strike out the word "estates."

Mr. MANN assented and the amendment was made accordingly.

Mr. O'CONOR said the Convention was not very full and therefore he moved—especially as this was a very delicate matter—that the report and resolution be laid on the table. Lost.

Mr. BROWN said he was in favor of the resolution, but he was willing that it should lay over a day or two, if gentlemen desired it.

Mr. MANN reiterated his willingness that it should lay over, if desired.

Mr. O'CONOR could not allow such a resolution to pass without a word or two in opposi-

tion .He had heard nothing, as yet, to convince him that the resolution should be passed. Besides, he could see some inconvenience and mischief from the adoption of this resolution, aside from the labor and trouble of the registers. The subjects in dispute in the Court of Chancery were private matters, and he thought it not a legitimate duty of the Convention to inquire how much money belonging to A. B. and C. D. were held by that court. If the information was necessary, and the legislature would be likely to neglect it, we might enjoin upon them to make a publication of the kind every year. He was no champion of the Court of Chancery, and did not wish to keep its matters in secrecy.

Mr. MANN said it was pretty generally conceded that the Court of Chancery was to be abolished; and as this fund under its control, was placed by the clerks in banks and trust companies, he thought the legislature should know where it was. A great portion of it belonged to deceased persons, the heirs knowing nothing about it. He thought it was the duty of this Convention, as it was about to abolish the court, to expose the condition of this fund.

Mr. WORDEN thought it would be better to make some disposition of the funds in the court of chancery than to leave it in the hands of irresponsible clerks. The legislature had chartered a Trust company at New York and authorized the Chancellor to place the funds there to be managed by the company, but he should prefer the adoption of some such plan as was pursued in England, where there was an officer called an Accountant General, who is under the control of law, and he keeps such funds and from him parties interested can obtain all the information in relation to them that may be desired. He hoped the legislature would adopt something like the rule established in England, when they came to revise the courts. But unless the information to be obtained would lead reflecting men to see the importance of establishing a distinct Court of Equity to take care of these funds, he did not perceive what good object the publication of private relations in regard to it could effect.

Mr. PATTERSON said it was true this was a fund no part of which belonged to the state of New York. It was the property of individuals, and held in trust until it could be ascertained to which of the parties litigant it belonged. The legislature, however, had passed a law appropriating the income from the fund to the purchase of a library. He could not understand why the legislature should assume to take this income of private parties, whose suits were in chancery, to purchase a library. The fund had certainly been accumulating for years, but if a publication of the items, as now called for had been made, there would have been demands for a large portion of it. He knew of a case in illustration in reference to the publication by banks. During the last war, a gentleman had deposited in a bank a large sum of money, and being killed upon the lines, heirs knew nothing of the money deposited, until some years afterwards, when the legislature ordered a publication of the items. Other instances like this he did not doubt existed.

Mr. WORDEN said the same state of things

existed in the Supreme Court, the Common Pleas, &c. There were surplus funds on executions and unclaimed moneys which had otherwise accumulated, of all which there should be periodical publication.

Mr. PATTERSON said the only question now was whether this report should be called for here or left to the legislature.

Mr. BROWN rose to correct an error. It had been said that the funds thus accumulating in chancery were property in litigation, and that was true to a certain extent. It was true, property was often deposited in the court of chancery to abide the event of suits, but a great part of the fund in question was the proceeds of the sales of infant's estates, absent owners, and of estates out of which dower and the rights of widows were secured. The legislature had had all the information furnished respecting this fund, the length of time the money had lain there and to whom it belonged. Such a report was made in 1833 and it was proper that another should be made now. If they were going to abolish the court of chancery, it was necessary that they should be in possession of this information. He believed the legislature should have ordered a publication of this kind every year; but they had not done it, and we had no assurance that they would. He did not believe there had been any improper use made of the money, but the disposition of so large a fund should be known. The court of chancery was not a secret institution, but an agent of the people of the state, whose doings should not be covered up. He stated that the clerks and registers give a bond in the penal sum of \$20,000 and \$10,000—the clerk in his district, whose bond was for \$10,000, had under his control a sum amounting to about \$300,000.

Mr. SWACKHAMER recollected that some years ago a gentleman offered a resolution similar to this, and it excited a commotion equal to that produced the other day by the thunder storm which blew down our curtains. Now why this opposition to this mere resolution of inquiry? If everything was right why fear to have this information? He hoped the resolution would be adopted.

Mr. RUGGLES deemed the only question to be whether this information should be called for by this Convention or the legislature. This call would require a very large statement, and it should not be called for here, unless there was a good reason for it.

THE JUDICIAL DEPARTMENT.

The PRESIDENT announced the arrival of the hour when the Convention had fixed to take up the reports from the judiciary committee as the special order.

Mr. O'CONOR desired to offer a resolution.

The PRESIDENT said the special order could now alone be acted upon.

Mr. O'CONOR said his resolution had reference to that order of business. [A voice: Oh it cannot be received now.]

Mr. RUGGLES moved that the Convention again go into committee on the judicial reports.

Mr. BROWN asked unanimous consent to lay on the table an amendment—that it might be printed and referred to the committee of the whole.

Consent was given, and the amendment was read as follows, and referred :—

§ —. As soon as this constitution shall be approved and adopted by the people, it shall be the duty of the Governor to appoint commissioners who shall severally have and possess the same power and authority now had and possessed by the chancellor and justices of the supreme court. Any one of the said commissioners may hold a court for the hearing and determination of suits which shall be pending in the court of chancery; and any two or more of the said commissioners may hold a court for the hearing and determination of suits which shall be pending in the supreme court ready for argument and hearing at the time of their appointment, at such times and places as the Governor may, by his proclamation, appoint. Such suits may be brought to a hearing at the courts to be held by such commissioners, upon such notice as is required by the rules and practice of the courts where such suits may be pending. And judgments and decrees may be entered with the registers and clerks of such courts upon the written order or opinion of the commissioner or commissioners hearing such suits, with the like effect as if the same had been heard and decided at one of the regular terms of the court where the same may be pending. The legislature shall provide by law for the compensation of the said commissioners. And their powers and functions shall cease at the time hereinafter appointed for this constitution to take effect.

Mr. O'CONOR then asked unanimous consent to offer his resolution which was one of instruction to the committee of the whole, to report a judicial system combining into one both courts of law and equity.

The PRESIDENT said it could only be received by unanimous consent.

Mr. HART objected.

Mr. O'CONOR, on the advice of friends, appeared from the decision of the chair.

Mr. PATTERSON called for the reading of the order of Friday.

The PRESIDENT read it. It makes the reports of the committee on the judiciary the special order every morning at ten o'clock.

Mr. PATTERSON contended that the order was complied with—they were taking up those reports, and the resolution did not say that they should go into committee upon them. Having then taken them up, could they not instruct the committee of the whole? His opinion was that they could.

Mr. CROOKER hoped the objection would be withdrawn, as it would enable the Convention to decide the great question whether they were to have a Court of Chancery or not.

Mr. WARD had no doubt that it was the duty of the Convention to observe the order it had made as much as obedience was required to a resolution to stop debate. Under such a resolution the moment the prescribed hour arrived debate must cease, and in this case he had no doubt that the decision of the chair was correct.

Mr. CROOKER entertained a different opinion.

The PRESIDENT read from Jefferson's Manual an extract bearing on the question, as follows:

"The only case where a member has a right to insist on any thing, is where he calls for the execution of a subsisting order of the House. Here, there having been already a resolution, any person has a right to insist that the speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it."

Mr. CROOKER said that was all very well, but the subsisting order did not say whether the

reports should be taken up in Convention or in committee of the whole.

Mr. BAKER remarked that the Convention had heretofore committed all the reports to the committee of the whole, and subsequently had passed an order that when a certain hour arrived, those reports became the special order.—The Convention therefore must go into committee of the whole where the reports were, before they could be acted upon.

Mr. CROOKER contended that the Convention had still the right to instruct the committee.

Mr. CAMBRELENG said the gentleman from Washington (Mr. BAKER) was clearly right. The reports were not in Convention at all.

The PRESIDENT reiterated his decision.

Mr. O'CONOR withdrew his appeal.

The Convention then went into committee of the whole, Mr. CAMBRELENG in the chair, and the first section was read for amendment, as follows:—

Sec. 1. The Assembly shall have the power of impeachment by a vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the Senate, the senators, and the judges of the court of appeals—the major part of whom may hold the court. On the trial of an impeachment against the Governor, the Lieut. Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until his acquittal. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to evidence, and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office; but the party convicted shall be liable to indictment and punishment according to law.

Mr. RUGGLES said, having, on the introduction of his report, on the 1st of August, made some general remarks respecting the plan reported by the committee, it did not appear to be necessary that he should do more than to make such remarks as were necessary to elucidate this first section. It was drawn mainly from the section in the present constitution, changing it, however, as to the persons who were to compose the court. By the old constitution, it was composed of the Chancellor, the Judges of the Supreme Court, and the Senate, and was the same as the Court for the Correction of Errors. In this instance, it was thought proper that the Court of Impeachments should consist of the Lieut. Governor, the Senators, and the Judges of the Court of Appeals. He further briefly explained the section.

Mr. DANA moved to amend so that it would read as follows:—

"The Assembly shall have the power of impeaching all civil officers of this state for mal and corrupt practices in office and high crimes and misdemeanors."

Mr. D. said his object was to designate the officers who should be liable to impeachment.—He had used the language of the present constitution.

The amendment was rejected.

Mr. CONELY offered an amendment to confine the court to the Senate, striking out "the senators and the judges of the court of appeals," and inserting "and the Senate."

Mr. RUGGLES thought this should not be

adopted. He asked if any gentleman who should be so unfortunate as to be impeached by the court of impeachment would like to have the case tried before the same court by whom the impeachment was made?

Mr. CONELY desired to avoid the influence of that fraternal feeling, which existed in all bodies, from disposing them to lean towards the impeached individual, instead of rigidly pressing justice.

Mr. CROOKER said that doctrine was equally applicable to the Senate, for senators might be impeached.

Mr. PERKINS could not see the propriety of making this section in relation to impeachments so stringent as it was, and he compared it with the eleventh section where another mode was provided for the judges. He preferred this last section, which allowed two-thirds of the Assembly and a majority of the Senate to remove from office.

The amendment of Mr. CONELY was rejected.

Mr. STETSON moved to extend the disqualification in case of conviction, to the holding of any office under the state hereafter. (This restores the provisions of the present constitution.)

Mr. RUGGLES said his own opinion was that this amendment should be adopted.

Mr. BASCOM hoped not. He doubted the propriety of clothing the court of impeachment with such powers. He hoped the section would remain as it was. It might be that a young man might be impeached, and should he be debarred from office forever? If a long life of penitence and good conduct should ensue, he would trust the people with the power of forgiveness, and allow them to confer office upon him if they thought proper.

Mr. NICHOLAS hoped the amendment of the gentleman from Clinton would be adopted. The mode of removal from office by the legislature, as recommended in section 11 of this report, is wisely arranged, and provides for all cases of physical and mental disability, not involving moral delinquency. A conviction under an impeachment will only occur in cases of corrupt official misconduct, and in all such cases the judgment should extend as it now does, not only to removal from office, but also to future disqualification to hold any office in the state.

Mr. WORDEN remarked that this amendment was precisely what was in our present constitution, and he believed in almost every constitution in the Union.

The amendment was adopted.

Mr. WORDEN called attention to the reading of the fourth line, which as it stood would authorize the holding of this court without the presence of any of the judges of the Court of Appeals. He moved to amend so as to require a major part of *both* bodies in all cases of impeachment.

Mr. RUGGLES was not certain but what the section was liable to the objection suggested, and he had no objection to its adoption.

It was adopted.

Mr. TAGGART moved to strike out the words "judge of the court of appeals," and insert "justices of the supreme court." Lost.

Mr. TAGGART moved further to amend the

12th line, by striking out the words, "two-thirds of the members present," and insert "majority of all the members elected." This was a question of some importance. He knew no reason why a different rule should prevail in courts of impeachment than in other courts; and he was not aware of any other in which a two-third vote was required.

Mr. HOFFMAN thought the gentleman mistaken in his rule. In an impeachment the senators acted as petit jurors and in all other cases we required entire unanimity. He attended the trial of Judge Peck, and his conviction at that time was that a vote of two-thirds was proper.

Mr. STEPHENS also said there was in addition the consideration of the severity of the penalty, which should not be dependent on a single vote to constitute a majority.

The amendment was rejected.

Mr. O'CONOR moved to amend so that it would read:—

"The Senate, with the judges of appeals, shall possess exclusive power to try impeachments."

Mr. O'CONOR said the amendment might seem to be so slight as to be merely verbal; it was, however, important. He went on to shew that a similar provision was found in the constitution of the U. S. and he defended it on the ground of the necessity for a separate and independent judicial department, which had received the sanction of many constitutional sages in other states. This state, unlike many others, never had a constitutional provision creating a distinct judicial department, and therefore, although we have a Supreme Court, the legislature might erect another Supreme Court, and though they could not abolish the existing Supreme Court, they might pass laws which would divest it of all its business. We have also a Court of Oyer and Terminer and provision is made showing who are the judges of it, yet there was nothing to prevent the appointment of special commissioners to try criminals, taking the business from the standing tribunals. Now all this should be avoided by the erection of an independent department of the government—a judicial power—and a section should be introduced into the constitution to effect that object. He spoke of courts martial and courts for the trial of impeachments as partaking of the same character, but not as being a part of a judicial department, or having any thing to do with the regular administration of justice. They were only means used for the purification of the civil and military departments.

Mr. RUGGLES did not see that the amendment of the gentleman from New York varied at all the effect of the original provision of the section. It merely avoided distinguishing as a court this body who are to try impeachments.

Mr. O'CONOR wished to adopt the language of the United States Constitution, which makes this board a tribunal, but not a court; thus disconnecting it from the judicial department.

After some further conversation between Messrs. BROWN, O'CONOR and HOFFMAN, the amendment was rejected.

Mr. KIRKLAND offered as a substitute, the following section from his minority report:—

§ 2. There shall be a court for the trial of impeachments. It shall be composed of the President of the

Senate, and the senators, or a major part of them.—The members of the court shall, before trying an impeachment, take an oath or affirmation, impartially to try and determine the charge in question. No person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall extend only to removal from office, and disqualification to hold any office of trust, honor or profit, under the state; but the person convicted, shall be liable to indictment and punishment, according to law. Any judge impeached shall be suspended from exercising his office till his acquittal. The Assembly shall have the power of impeaching all civil officers of this state for corrupt practices in office, and high crimes and misdemeanors; but a majority of all the members elected, shall concur in an impeachment.

Mr. KIRKLAND said his substitute met the objection so well stated by the gentleman from Herkimer. It left out the judges and left the senators to try impeachments. It also supplied a deficiency in the majority report, by stating what officers should be impeached. It also defined the cause for which impeachments should be had. This he deemed as important. He would not take up time in arguing this matter, but trusted his amendment would be adopted, as it was more comprehensive than the section as it stood. He differed from the gentleman from New York, and had no doubt but what this belonged to the judicial rather than to the legislative department.

Mr. JORDAN thought the original section better than the substitute. He could not agree with the gentleman from Herkimer, that judges shall not form a part of the court of impeachment. When high judicial officers were under impeachment, it was important that there should be in that court an infusion of the judicial force, that the rules of evidence given in the matter might be preserved inviolate. The senators were chosen with a view to their legislative capacity and would not be so capable in this particular as the judges. For this reason, he preferred the original section.

Mr. LOOMIS moved to amend the amendment by striking out the words "and disqualification to hold any office of trust, honor or profit under the state." It seemed to him that this was too extensive a power to trust to the senate, without the intervention of a jury, without the power of the Executive to pardon, and the sentence of which would be absolutely irrevocable. He apprehended that under high party times this power might be so used as to become oppressive. He would be willing to have this whole section stricken out, and leave these cases to be tried in ordinary judicial tribunals.

Mr. STETSON opposed the amendment of Mr. LOOMIS. On his motion these very words had been placed in the original section. There might be in high judicial and other functionaries a course of conduct which would steer clear of such crimes as would retain this section. He wanted this section more as a warning to officers, than from the probability of conviction.—It was a proud tribute to our state that hitherto there had been no impeachments. He trusted there would be none hereafter. But he would have this here as a check. He would retain these words, else the punishment might have no terrors for one whose term of office was about expiring.

Mr. RUGGLES objected to the section, because, if adopted, we make the Senate the sole tri-

bunal to try impeachments. That body was composed of political party men, and as impeachments might arise from party considerations it would be improper to confer this exclusive power upon them. Our highest judges now constitute a part of this court, and it was proper thus to infuse therein a portion of the judicial force, not only to pass upon questions of law, but also to restrain the party feeling which might otherwise control the court.—Mr. R. advocated the principles of the original section, as being far preferable to the substitute.

The amendment of Mr. LOOMIS was lost.

The substitute of Mr. KIRKLAND was also rejected.

Mr. FLANDERS offered the following substitute for the first section:—

§ 1. The legislature shall define offences in office, and provide for the trial and punishment of persons guilty of such offences in the ordinary courts of the state. The indictment of any officer for any act declared by law to be an official offence, shall operate as a suspension of the powers of such officer; until he shall be convicted on such indictment, such conviction shall operate as a removal from office.

Mr. FLANDERS said his object was to introduce something into our Constitution that would be of some effect. He proposed to place persons liable to impeachment on a par with all other offenders, giving them the same right of defence and prescribing the result of a conviction.

Mr. WORDEN said all this was in the law now. All the legislature could say would be, that any officer omitting to do his duty or acting corruptly, should be liable to indictment. He apprehended that it would be unsafe to define in a law what offences should be punishable.—For it was beyond the power of human ingenuity to think of every thing that would be punishable. And to name some, we should run the hazard of excluding others that should be included. He was fully convinced that the present law was sufficient.

The substitute was rejected.

Mr. BASCOM moved to strike out the words "but the party convicted shall be liable to indictment and punishment according to law," and insert, "and shall not be a bar to an indictment." Lost, 22 to 42.

Mr. BROWN moved to strike out the word "convicted" in the last line, and insert the word "impeached," and the word "notwithstanding" after the word "shall."

Mr. A. W. YOUNG sustained the amendment.

Mr. WORDEN said their certainly was a difficulty, as a party tried on articles of impeachment and acquittal might throw himself on the great principle that a man shall not twice be put in jeopardy for the same offence and he might plead his acquittal as a bar to an indictment in a court of law.

Mr. TAGGART concurred with the gentleman. He proceeded to argue against permitting a man to be acquitted by a single vote on a division which requires two thirds to convict, with the power to try him again. He thought the amendment of the gentleman from Orange would not remedy the evil.

After a few words from Messrs. O'CONOR

and WORDEN the amendment was agreed to.

Mr. BASCOM moved as a substitute the following sections from his minority report:

§ 1. A court for the trial of impeachments shall consist of the President of the Senate, the Senators or a major part of them, and the Judges of the Supreme Court, or a major part of them, whose term of office shall be within two years and not within one year of its expiration; and the Senators and Judges taking their seats in the said court, for the trial of any impeachment, shall continue members thereof until the same shall be determined, notwithstanding the expiration of their term. But no officer against whom an impeachment may have been presented, shall at any time be a member of the said court. The impeachment of an officer shall suspend him from the discharge of his official functions.

§ 2. The Assembly shall have power of impeaching all civil officers of this state, for mal and corrupt conduct in office, and high crimes and misdemeanors, by a majority of all the members elected concurring. Judgment, in cases of impeachment, shall not extend further than the removal from office, and shall not be a bar to an indictment.

The amendment was rejected.

Mr. O'CONNOR offered the following on the 2d section:—

§ 2. The residue of the judicial power of this state shall be vested in the Supreme Court, and the inferior courts mentioned in this article; subject to such appellate jurisdiction as may be vested in the Court of Appeals.

Mr. SWACKHAMER moved to amend by striking out all after the word "article." Lost.

Mr. RUGGLES said this section was rejected by the judiciary committee on account of differences of opinion as to its form and propriety. This was omitted in the constitution of 1777 and 1821, and appeared unnecessary. It might create some embarrassment, especially if adopted now. If agreed to at all, it should be left until we were through with the article, and until we could see what courts we should authorize, and until we had determined whether the legislature should have the power to create other courts.

Mr. SWACKHAMER advocated the section. The people complained of too many courts, and he hoped at the very outset that we should establish how many courts there should be.

Mr. BASCOM thought the question a very important one, and might as well be decided here, as at any other point of the labors of the Convention. The question was whether the establishment of the courts of the state should be here decided, or be left to the legislature to perform that duty. It appeared to him that it was demanded of this Convention to bring its best powers to the decision of this question.—This article did not vest the judicial power anywhere, and he regarded it as giving too much to the legislature to throw upon them the duty of deciding what courts were necessary for the convenient prosecution of justice.

Mr. O'CONNOR advocated the section offered by him. This was the only way in which we could create a judicial department, and unless we do create it, we leave the whole judiciary at the mercy of the legislature.

Mr. KIRKLAND said at some stage of our proceedings on this judiciary article, this section or something like it should be adopted. He read from the Revised Statutes to show that the legislature, by what authority he knew not, had conferred upon the Governor the power to issue

commissions of oyer and terminer, thus enabling him to create criminal courts almost at pleasure. He did not believe that this Convention would be willing to leave such a power to be exercised by the legislature. He thought, however, this was not the proper time to adopt this section.

Mr. BASCOM said the recent court held at Auburn, at which two persons were convicted of murder, was one held on the commission of the Governor, under the statute read by the gentleman from Oneida. This showed that this was a power which had been exercised.

Mr. JORDAN would be satisfied with whatever decision was made of this question, if it was well understood. He related the action taken in the judiciary committee, upon such a proposition. It was thought that by adopting such a clause it would prevent the legislature from establishing such inferior courts as in their wisdom they might deem proper. This was thought inadvisable, and the matter was allowed to remain open. The question was whether the Convention should declare that the whole judicial power of the state shall be vested in the courts here established, or allow it to have some flexibility? When we declared that there should be a supreme court and a court of chancery, as described in the article, we established a supreme court which extended its hands all over the state. The article, in a subsequent section, gave the legislature power to erect courts of inferior jurisdiction. He regarded this matter then as being fully provided for, in a manner preferable to that proposed by the gentleman from New-York, and he should vote against his proposition.

The section offered by Mr. O'CONNOR was rejected.

Mr. SWACKHAMER moved a reconsideration, to lie upon the table.

The second section was then read as follows:

§ 2. There shall be a court of appeals, composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the supreme court having the shortest time to serve. Provision shall be made by law for designating one of the members elected as chief judge, and for selecting such justices of the supreme court from time to time and for so classifying those elected that one shall be elected every second year.

Mr. PATTERSON said there was one clause in this section which was the subject of some discussion in committee—of very little, however, as it was not in the section as originally drawn. Originally it authorized eight of the supreme court judges to hold the court of appeals. He proposed to have it as it originally stood, and moved to amend so that it should read, "there shall be a court of appeals composed of eight judges to be selected," &c. The reason assigned for electing four, was to throw a little popular feeling into this court, and thus assimilate it to the present court of errors. But when we came to the 12th section, he supposed we should make the judges of the supreme court elective. If so, the object of the clause he proposed to strike out would be fully attained.—Again, if we elected these five judges merely to sit in the court of appeals, they would not hold special terms as the other judges of the supreme court when necessary. Again they

would be too far removed from the electors, if elected by general ticket—nor was it likely, as seemed to be supposed, that a layman might be elected to the court of appeals under such a system.

Mr. KIRKLAND urged that it was utterly out of our power to take up these reports section by section, and do any justice to ourselves or to the public. These several reports were all parts of one whole—links in one chain—all connected—and some mode should be adopted by which we could express our views on the general outlines of the general plans. This very section, and the propriety of the mode proposed of forming a court of appeals, depended materially on what was done in regard to the other courts to be established, and taking a view of the whole system proposed, and the relations of the several parts. Besides we had a duty to perform to the public—especially since we could not present written reports, in explanation of the great changes proposed here. For instance, the committee were nearly unanimous in certain changes, which had been denounced by legal gentlemen of eminence as tending to great mischief. What was wanted was explanations of the reasons for these radical changes, not for the benefit of this body merely but the public.

The CHAIR suggested that the whole question was open under this section.

Mr. RICHMOND under this suggestion, hoped we should hear some general explanations of the reasons for the great changes which the article proposed to make.

Mr. RUGGLES remarked that there were two points that would necessarily come up, which it was desirable should be considered separately and apart from each other—because, if decided against the committee, would make it necessary to remodel the article entirely. One was whether the powers of the supreme court and of the court of chancery should be blended in the same court. That point was distinctly presented in the third section. If the convention should determine to keep them apart, then the section would require amendment, in conformity perhaps with the plan of the gentleman from Ontario. Another point was the mode of selecting the supreme court judges—whether by popular election, or by appointment by the Governor and Senate, or in some other mode.—These were important points, on which the whole frame work of the article materially depended—and he suggested that the committee pass over this section and take up the third—and that disposed of, that the 12th section, in regard to the mode of appointment be taken up.

Mr. BROWN in reply to Mr. KIRKLAND, said we had something else to do than satisfy the public in regard to this plan. We had to satisfy ourselves that it was a good one, and the best, and know what we were doing. The difficulty was, proceed as we would here in committee, we determined nothing. Members would not vote, and it was with difficulty that we could keep a quorum here. A question settled here, with a thin house, could not be regarded as settled—for it might be reversed in the house, when there was a fuller attendance. The only way to ascertain clearly the sense of the body, was to go out of committee, and discuss and de-

cide upon some leading principles in Convention, and by ayes and noes, determine what general system we would have. The general outlines of a system must be determined, and in some decisive way, or we could never form a system in detail, or know where we stood. Mr. B. said, if the suggestion met with approval, and the committee would rise, he would propose in Convention, a series of resolutions which he had drawn up, as the basis of a judicial system, and upon which the body, by ayes and noes, could pass their judgment, and so amend as to indicate what kind of system they would have. The details could then be arranged with ease and dispatch. Mr. B. ran over the points embraced in his resolutions, to show that they were susceptible of amendment in such way as the body might desire, and whatever shape they might assume, would determine what system met the views of the Convention.

Mr. FORSYTH said this proposition did not go to the root of the difficulty. We had made the mistake of beginning at the top instead of the bottom—of attempting to build a superstructure before we had laid a foundation. We should begin with the jus ices court—then proceed to the common pleas, and determine whether we would retain or abolish them—then take up the supreme court and then the court of appeals. Another error. We were mingling up the principles on which the system should be based with mere detail. The leading outlines of the system, should be first settled, and then the mode in which the judges should be selected—for they were separate and distinct questions. He trusted, before going further, we should begin at the bottom, and work up as he had indicated.

Mr. WARD concurred entirely with Mr. RUGGLES, as to the best mode of proceeding—if we were to have the discussion here in committee. But he preferred the mode suggested by Mr. BROWN, that the debate should be in Convention, where we could settle questions definitely by the recorded ayes and noes. And the first question settled should be that raised by the third section—whether we would blend law and equity jurisdiction in one supreme court. That settled, the next in importance was the mode of appointment. Various modes had been proposed, and he confessed he had not determined as between the propriety of electing all the judges or of making a portion of them elective, and giving the appointment of another portion to the governor and senate, or to the two houses. But all these questions would come up in the Convention, and then could be definitively settled.

Mr. A. W. YOUNG agreed with the remarks of the gentleman from Ulster. They appeared to be based on common sense. He trusted whatever course was adopted, that we would first determine what inferior courts there should be.

Mr. WORDEN urged the importance of a double consideration of the important subjects connected with the judiciary, and assented to the course suggested by the gentleman from Orange, provided his resolutions were referred to the committee of the whole, and could be discussed there. In reply to a remark of Mr. BROWN, Mr. W. said he was not in favor of re-

taining the Court of Chancery. But if it was retained, he desired to change its form and character—its entire mode of proceeding—radically and thoroughly. It required reform, more perhaps than any other portion of our jurisprudence. It was a system which had been but little improved upon since the reign of Richard II., and the very process of that court was that adopted by a clerical Chancellor in the time of Charles II. As to the court itself, it administered a peculiar system of law—totally distinct in its nature from the common law of the land.—Much of the jurisdiction of the Court of Chancery properly belonged to a court of law. He would lay the foundation for a separation, bringing back the Court of Chancery to where it was originally—embracing matters of fraud, trust, and accident, which could not be administered wisely on the principles on which our common law courts proceeded. But the jurisdiction of that court, we proposed to retain; and he wished to suggest whether this peculiar jurisdiction cannot be better administered by a court whose peculiar duty it was to confine itself to that particular branch of the law, than by mingling it with a court whose functions were diversified, and who had to administer all and every system of jurisprudence.

Mr. BROWN assented that the resolutions he proposed to offer in convention, should be referred to the committee of the whole.

Mr. STETSON could not see what we could gain by rising and reporting and sending resolutions to this committee, over the plan proposed by the chairman of the judiciary committee.—He preferred this last mode, as much the best.

Mr. PATTERSON said he thought the gentleman (Mr. BROWN) could accomplish his object just as well by taking up this report and selecting sections, as by his resolutions. These last merely affirmed the principles inserted in this report and nothing would be gained by adopting the course suggested by him. We can just as well settle here as elsewhere how these judges should be elected, and we could do that on the report as well as on the resolutions.

Mr. STRONG was in favor of fixing the justices courts first and then working up. The lay members had taken very little part in the discussion or voting to-day. There were some things in this majority report to which they were opposed, but they were not now prepared to vote. Let us settle about the minor courts first. As to the election of judges and surrogates, he believed a majority of the Convention were prepared to vote for such election. Settle these questions, and then the lay members would be better prepared to vote upon the minor details of this judiciary system.

Mr. MARVIN proposed that we should settle all the principles of this report by a series of resolutions. He would begin at the minor courts. Settle first whether justices' courts should continue as now—then in relation to surrogates—then to common pleas. Before voting for the plan of the judiciary committee, he desired to know whether the common pleas court was to be abolished. He could not talk about a supreme court until he knew whether the common pleas was to be retained or not. Then having settled these principles, he could deter-

mine as to the higher courts. Mr. M. read a series of resolutions embodying his views.

Mr. FORSYTH was opposed to rising, if we were to come back again in committee. Nothing would ever be settled in committee. It was an invention of the enemy, so far as regarded the dispatch of business. He did not believe this question required a double discussion. If it did, we had not time.

Mr. BROWN further urged the advantage of resolutions in settling principles—because not involving details of language and construction, the attention of the body could be confined strictly to the principle.

Mr. TILDEN insisted that the committee could arrange the order of proceeding on this report precisely as they saw fit, and that nothing would be gained by substituting for the sections of this article. Principles could as well be settled in one way as another. He urged that this matter should not be taken out of committee in any event; and he warned the judiciary committee that they should not undertake to commit gentlemen, by recorded votes, until after full discussion.

Mr. PERKINS also urged that there should be a full discussion of the general features of a judiciary plan, before members should be forced to vote on any distinct section. He moved that the committee rise and report progress.

The committee rose, and the question being on granting leave to sit again,

Mr. BAKER moved to lay that question on the table.

Mr. FORSYTH moved a recess, which was agreed to.

AFTERNOON SESSION.

The committee of the whole had leave to sit again on the judiciary reports.

Mr. CAMBRELENG resumed the chair.

The second section was passed over, as moved by Mr. RUGGLES.

The third section was then read, as follows:

§ 3. There shall be a supreme court having the same jurisdiction in law and equity which the supreme court and court of chancery now have, subject to regulation by law.

Mr. TAGGART moved to strike it out.

Mr. RUGGLES hoped we should hear some reason for this, before the question was taken.

Mr. TAGGART'S object was to draw out some reasons for having such a section here.—The article provided for a court of appeals—and then for some other court or courts. They had called a multitude of courts the supreme court—that court being divided into eight sections and located them in different parts of the state. He was utterly opposed to this. If we were to have a supreme court, let it be a court entitled to the name. If we were to have eight district courts, let them be called district courts. A supreme court, maintaining its unity and still divided into eight parts, would be as difficult to understand as some systems of theology. When and how were we to proceed in it? He was in favor of district courts, located in districts, and vested with equity and law jurisdiction, and transacting business as it was formerly done by the supreme court—when it held courts in bank, and also circuits and courts of oyer and termi-

ner throughout the state. That court, with five judges, transacted all the business without unnecessary delay. That would, perhaps, be inadequate now to the business and population of this great state; but we might establish district courts, with the right of appeal to the court of last resort, and secure all the benefits of that system.

Mr. LOOMIS thought there would be no more difficulty in understanding the kind of court contemplated here—a court holding courts in bank in eight different places, by three judges—than in understanding the present system—three judges, one of them holding a court in bank.—This article contemplated one court for the whole state—three of them holding terms in bank, and any one of them trying issues of fact. It differed from the present system in this, that two or more courts in bank might be held at the same time in different parts of the state. It preserved the unity of the court, and yet contemplated district courts, as distinctly and simply as if there were eight separate and distinct courts. So far as locality was concerned, it adapted itself to the convenience of the public—as much as if the three judges holding a circuit were circuit judges confined to one circuit.

There was conversation here between Messrs. TAGGART and LOOMIS as to the plan and way of bringing causes to trial in these circuits.

Mr. HUNT had an amendment to offer not quite so sweeping as that of the gentleman from Genesee. He would not give this court all the powers exercised by the Chancellor now. He moved to amend so that the section should read:—

“There shall be a supreme court having jurisdiction in law and equity.”

Mr. JORDAN remarked that this would strike out the clause giving the legislature power to regulate the jurisdiction, and would throw that duty upon us. The committee intended to have one great fountain of law and equity, subject to curtailment of jurisdiction and power by the legislature. And this was a matter which we could not go into without great detail. He hoped, unless there were objections to giving the legislature power over this subject, that the section would stand as it did.

Mr. HUNT doubted whether three men could be found in the state who could agree as to the power which the court of chancery now had.

Mr. RICHMOND agreed with the gentleman from New York (Mr. HUNT) in this matter. It was a general remark now that the chancellor had more power than the Autocrat of Russia.—He hoped we were not going to confirm any such power. If the legislature had always had power to regulate this power, as it was said they had, and the legislature had permitted the court of chancery to make such sweeping encroachments on the rights of individuals as it had made, the legislature was very much to blame. It was enough to say that this court should have jurisdiction in law and equity.

Mr. RUGGLES understood the object of the amendment to be to make that plainer which was now said to be obscure. He only rose to ask the gentleman from Genesee, (Mr. RICHMOND), to state what would be the jurisdiction of the supreme court, if these words were struck

out. If he could, Mr. R. would consent to the amendment. He thought the section more certain as it stood.

Mr. CHATFIELD supposed the idea of the mover was to prevent the legislature from organizing any other court of equity. If so, the amendment would defeat its own object—for it would leave the legislature unrestrained, and they might organize as many courts of equity as they pleased. Mr. C. desired to get rid of equity courts, and to give to this supreme court equity and law powers.

Mr. O'CONOR regretted that the gentleman from Otsego (Mr. CHATFIELD) was not in his seat this morning, when he had the honor to propose a new second section, which would have obviated the present difficulty—and the honor to fail in it. It was said on all hands to be a very good proposition, but it was said not to be the right time for introducing it, so it was postponed by a vote of rejection. Mr. O'C. thought it was now apparent that that proposition was made precisely in the right time. He (Mr. O'C.) wished to accomplish the very same thing which the gentleman from Otsego did. He believed that the majority of this Convention desired it. But he was quite sure they would not accomplish it if they adopted this section, even if it were amended, as proposed by his colleague (Mr. HUNT). He (Mr. O'C.) wished to strike out a little more. He would strike out all of the section except the provision that there shall be a supreme court. Even that was not very necessary. There were some here—the gentleman from Otsego, himself (Mr. O'C.) and some others—ready strenuously to advocate a system which would bring the administration of civil justice, in all its departments, into one court.—And he was anxious to have an opportunity this morning to present a resolution instructing this committee of the whole to report a judicial system by which equitable relief might be administered in the same courts as legal relief was dispensed, without a separate court of chancery. But time did not admit and we were precipitated upon the consideration of this section. He was against this third section, because he conceived that its language would perpetuate the distinct form of pleading, called common law and equity jurisdiction, and thus prevent a reform of the civil administration by binding them together. He apprehended that we should never attain this reform as long as we spoke of law and equity as distinct things in our constitution—so long as we treated them in the fundamental law as different things or as separate entities the legislature would not feel at liberty to unite and blend them into one. This section as reported, would, it is true, bring them into one court, but it would recognize them as two separate and distinct forms of practice. It would perpetuate the separate forms and practice, in despite of anything the legislature might hereafter feel inclined to do towards separating them. He desired to adopt this phraseology—“the judicial power of this state shall be vested in the supreme court, and in the inferior courts mentioned in this article”—this would include all courts which the constitution may authorize the legislature to create, as well as those expressly named in the constitution. If we erect one supreme

court, and declare that in it shall be vested the whole judicial power except such as may be parcelled out to courts inferior to it, we shall have law and equity in one court without saying one word about them, as separate departments in the administration of justice. The advantage of omitting to name them as distinct departments, is that we shall leave the legislature free to put an end to those distinctions in point of practice. But if we carry them into the supreme court by their distinct titles of law and equity jurisdiction, it will, at least, present a serious question whether the legislature could annihilate the distinction by blending the two forms of pleading or otherwise. It had been said that the words "subject to regulation by law" in the reported section, would allow the legislature to blend law and equity into one form of pleading. Mr. O'C. had no hesitation in saying that he did not believe they would be so construed by the courts or the legislature. The terms subject to regulation by law implied, in their connection, merely a *regulation* of each of them as distinct and independent heads of jurisdiction. Mr. O'C. was satisfied that it was practicable to blend them, and he stood there to defend the opinion that law and equity ought not to be known or recognized in our system of jurisprudence as distinct and separate methods of administering civil justice.

Mr. WORDEN asked if he understood the gentleman? Whether he did virtually propose to annihilate the procedure we now called equity procedure?

Mr. O'CONOR: No sir.

Mr. WORDEN: Does the gentleman mean that proceedings in Chancery shall be conducted in the manner in which they are now conducted?

Mr. O'CONOR thought the system susceptible of very great improvement.

Mr. WORDEN: That is not an answer to my question.

Mr. O'CONOR should not answer every question which the gentleman might frame to interrupt his argument. That gentleman and himself entertained directly opposite opinions upon this subject. That gentleman was for perpetuating the distinct practices of law and equity pleading, and would not go even so far as the committee had gone. He would have different judges and courts to administer them as well as the distinct modes of pleading in law and equity. That gentleman was for perpetuating the present system, and if that system was not strong enough to await the termination of an argument against it, before presenting its defence by way of interruption, it must be a weak one. The section reported proposed to bring them both into the same court. That was half the work. He was bound to vindicate the propriety of doing so much, and would do so if it were necessary. But his immediate object was to vindicate the propriety of bringing them together in such a manner that they might be blended in one uniform and harmonious system of pleading and practice—so that there might be no longer known in the administration of civil justice, any such distinction as law and equity. [Mr. WORDEN—in his seat—That introduces the civil law.] Mr. O'CONOR proceeded: It might be deemed proof of the

soundness and safety of the gentleman's (Mr. WORDEN's) position, that he could not restrain himself in his argument until it was his time to answer. Those who were impatient of argument do not usually feel the safety of their position most strongly. To understand this question, it was necessary to look at what these things called law and equity are, as contradistinguished from each other. In strictness, there could not be said to be any such distinct systems of jurisdiction, as law and equity. They were more properly called two distinct systems of practice—the one called the practice at law, and the other the practice in equity. By the practice at law a man was only enabled to recover a simple money demand—with the two exceptions of ejectment and replevin. In ejectment the plaintiff may recover land—the thing itself—in replevin, he may recover a chattel—the thing itself; but in all other respects a party can recover in the law practice nothing but a sum of money. And to recover that he must adopt one or other of five or six particular forms of action—very technical and special in form, and in which the pleadings are almost invariably fictitious—filled with false allegations from beginning to end. They bore, to be sure, a certain conventional relation to a truth which they were supposed to represent, and which conventional relation was perfectly well understood by learned lawyers, tolerably well understood by the profession generally—but which no layman would understand. For instance, if one were to rob him of his watch, the forms of pleading at common law would allow him to waive the force, and to bring an action for the value of the watch as upon a purchase. He could charge that on a certain day he sold and delivered to the defendant a certain watch, in consideration whereof the thief promised to pay, when he should be thereto requested, as much as such watch was reasonably worth, and that it was reasonably worth \$250. The defendant would answer, non-assumpsit—that he did not so promise. Every word in the declaration would be false, and the plea would be manifestly true. And yet, there was no judge in the land that would not instruct the jury that though this was a very outrageous act, the party whose watch it was had a right to waive the wrong, and to have twelve men say on their oaths that the defendant did promise to pay what the watch was reasonably worth in manner and form as he had alleged, and that their verdict must be for the plaintiff. This was a very fair specimen of the fictions which existed in the common law modes of pleading. He could consume hours in giving similar instances—but one was sufficient. Indeed, almost throughout, the allegations in the declaration are false to every common and ordinary intent. But they were said to be technically true, because by construction of law, the relation between the fiction in the pleadings and the truth it represented was well understood by lawyers and judges; and between them they could instruct the jury to bring in such a verdict as worked out the ends of justice. It might be asked why such forms were ever adopted? Their origin was of remote antiquity, but there was no doubt of the true reason. Jurors were originally very ignorant,

and it was necessary by special and strict forms to bring down questions in issue to a very nice and simple point. And these pleadings were modified from time to time until they had received the character that was now impressed on them. They received their form at that period when a scholastic pedantry had overrun and perplexed with its arbitrary rules every branch of science. And hence of course, a very special system of pleadings came to be adopted. It was, however, wholly inadequate to the ends of justice; and because it was, the system of equity jurisprudence was adopted to supply its defects. That was equity practice. Under legal practice a man could not get a discovery from his adversary, could not reach documents, nor get specific relief, except in a few cases. To obviate these defects in the law, a clerical chancellor introduced the civil law practice—a practice which however disfigured in some places by unnecessary forms, however disfigured at this day by extreme prolixity, was nevertheless in its own nature flexible, highly convenient, and capable of being made to answer all the ends of justice. There was literally no form about it. The party stated his case, and asked the relief he desired, and the court, if he proved his case, gave him that relief. Under this practice, any suit for any kind of remedy may be brought. It was always quite easy by bill in chancery to sue on a promissory note, yet as the English courts of common law had jurisdiction of the action, and chancery had no jurisdiction where relief could be had at law, chancery was never permitted to take cognizance of such cases. Thus, from the impropriety of the forms of the common law to answer the ends of justice, this equity practice was introduced, but it was not permitted to act except in cases of necessity. Thus the two systems grew up together. And at the period of the Revolution, in England they had courts of common law and courts of chancery as we had them now, each exercising an extensive jurisdiction, and as a legal writer of eminence by a typographical blunder was made to say in regard to the court of chancery an expensive one. We adopted the old English forms; and hence we have at this day, these two distinct forms of practice. He supposed they could be abolished, and one form made to answer every purpose. He thought the keeping of these separate was mischievous. In no country of Europe, except Britain, did these two separate forms exist. The chancery or civil law forms obtained throughout the continent of Europe—over the whole civilized world—wherever justice was administered in regular form. They obtained, in Scotland, for all the purposes of remedial justice. They were used for all these purposes in the state of Louisiana. In some countries of Europe, where the civil law forms of practice obtained and in Louisiana, they had the trial by jury in as full vigor as under the common law forms. That mode of trial was just as applicable, in civil controversies, in one form as in the other. The inconvenience of having these two forms of practice, had been long felt here. In every state in the Union, except New-York, New Jersey, Maryland and South Carolina, law and equity was now administered in the same courts, though un-

der different forms of proceeding. And even in the four states mentioned, and also in England, law and equity, in the last resort, was administered in the same court. In Great Britain, the court of exchequer long had a law side and an equity side—the same judges administering both kinds of practice. Still, generally, they had been kept apart in that country, as to the modes of practice. Efforts had been made in several states to bring these two forms together. An effort had been made in Pennsylvania; but there they took a course precisely opposite to that which good sense would have recommended. They attempted to make the fictions of common law subserve all the ends of civil justice; and as those are utterly incompetent for this purpose, that state presented a very unfavorable specimen of the effects of endeavoring to administer civil justice in one form. His view was that the forms of pleading used in chancery, reduced and cut down to the extent they might be, were the true forms by which civil justice might be administered in all cases, in one court, and by a uniform mode of practice. It was so administered, not only in all the countries of Europe, in Scotland and in Louisiana, but in all cases of admiralty jurisdiction throughout the U. S. Directly under our eyes, in the U. S. district court sitting here at Albany, this mode of pleading and practice, simple, uniform, free from technicalities, which was adequate to the administration of justice in all civil cases, was in full operation. And Mr. O'C. invited the Convention to approach the framing of these provisions, with the view of carefully avoiding the perpetuation of these distinctions, and enabling the legislature to simplify and bring the two forms into one if practicable. This he had shown to be practicable; and he would now attempt to show that the working of these two separate modes of administering justice was mischievous. He held that the practice which existed in courts of common law, of dividing their forms of action into five or six different forms, was ensnaring and utterly useless. It was wholly unnecessary that when a man brought a suit at law, he should be obliged to give it a name on pain of being non-suited if he gave it a wrong one. If a man brought a suit to recover money on a sealed instrument, he must call it debt or covenant, or give it some other of the legal forms, or assumpsit—and if he made a mistake, it was fatal to his action. He had heard learned lawyers say that if a man was so ignorant as not to know how to christen his bantling, he ought to lose his suit and be turned out of court. He could cite instances showing that the most learned did not know half the time, which of these names to give their actions; and our books were full of non-suits, after long litigation, merely because the lawyers, the parties and the judges did not know what was the true form of action. Mr. O'C. cited an instance where an action of debt was brought to recover about \$1000. The defendant insisted that the form of action should have been covenant. A learned judge at circuit decided that the defendant was mistaken and that the action was in right form. The supreme court, three years afterwards, in a learned opinion citing almost all the books of the common law, held the same opinion. And yet that judgment,

two or three years afterwards, was reversed by the unanimous opinion of the court of errors; and the plaintiff in the original suit was left to discontinue and pay costs to a greater amount than the sum in controversy. Mr. O'C. maintained that this cutting up and subdivision of lawsuits, giving them each a particular name, forbidding a man to prosecute except in the precise form to which, according to technical rules, his cause of action belonged, and punishing him if he made a mistake—when the line between them was so difficult to discover that the most learned judges differed—was idle, useless, and most pernicious. But the subdivision between law and equity was still worse. The jurisdiction of the court of chancery, originally narrow and limited, had become by degrees so extended that it was difficult to say of what case it had not jurisdiction. And the courts of law had liberalised their remedies, and, in imitation of the court of chancery, had extended their territory into the region formerly occupied by the latter; until, instead of being divided by distinct and broad lines, these two jurisdictions were actually interlocked in such a way that it was difficult for the most learned to ascertain where law practice ended, and where the chancery practice begun. And yet the consequence of bringing a suit at law, when it should have been in equity, or vice versa, was a nonsuit; and the question to which forum the suit belonged, cost, not unfrequently, years of litigation. He cited the case of *Elmendorf* against *Harris*, in fifth *Wendell's Reports*, which turned upon the question whether the plaintiff's remedy was at law or in chancery. The common pleas judge decided that relief could not be had at law. The supreme court, some years afterwards, affirmed the judgment. Seventeen volumes of *Wendell's reports* elapse between this decision and the judgment of the court of errors, by which it was reversed. It reversed the decision of the supreme court; and thus, after a protracted litigation, which must have cost the defeated party a very large sum, a decision was had upon the merits. The whole difficulty was in ascertaining the boundaries between the jurisdictions of these courts. He stated another case in illustration of the perplexities and delays growing out of these two separate jurisdictions. Mr. O'C. went on to urge that one form of practice was adequate to all the ends of justice, and that the two forms should not be perpetuated. The gentleman from *Genesee*, (Mr. *RICHMOND*,) would probably give him a lift, [Mr. *RICHMOND*: "In due time."] and the gentleman from *Monroe* also, (Mr. *STRONG*,) for, after all, this was a matter of common sense and not of technical learning. Where was the difficulty in prescribing that a suit may be brought on a promissory note in the same form in which parties brought suits in chancery? He admitted that the practices of the two courts were very different, but he denied that there was any necessity that they should be so. He admitted that you must have a court of chancery, but under its form of practice, he insisted we would get all the remedies we now had under these antiquated forms of the English common law. The difference between law and equity, and the only difference, was in the form of pleading and the

remedies. The principles of law, applicable to both, were the same. The rules and principles of justice delivered from the bench by the chancellor were identically the same as those delivered in the supreme court. There was no difference except in the form of getting into court and getting out of it. True, in the origin of chancery jurisdiction, chancellors maintained the doctrine that the rights remedied in a court of chancery were those which the law did not exactly define—but which it belonged to the arbitrement or will of a good and conscientious man to define and enforce. But that doctrine was obsolete. There was not at present any such thing recognized in jurisprudence, as the will or arbitrement of a good and conscientious man finding some measure of justice between neighbors, which the law did not define and declare. It was the law of the land, and not the conscience of the chancellor, by which the right of the citizen must be determined. The court of chancery was as much bound by the rules of law, by precedent and former adjudication, as courts of law, and the principles of justice were the same in both courts. The maxim that our rights were to be measured by the length of the chancellor's foot was exploded long ago. The only difference between the two courts consisted in this:—In chancery the testimony is ordinarily taken by deposition, and the chancellor proceeded without the aid of a jury. The chancellor could also grant what was called specific relief. True it was that the common law courts could not grant all the relief that the court of chancery could, but it was not true that the court of chancery could not grant all the relief attainable in courts of law. The common law forms were constantly being departed from by legislation; but it was in such an inch-by-inch, irregular and disorderly manner, that whilst it confounded the distinction between the two courts, and made it every day more and more difficult to determine where a man's remedy was to be sought, it did not tend to that complete consolidation and union of the practice of the two courts that was desirable. By statute, the courts of law now granted equitable relief in a great variety of cases—showing that there was no difficulty in bringing these two forms into the same court. But as the hour of adjournment was near, he would not pursue this subject further at present. He maintained, on the grounds stated, that it was expedient to avoid the use of the terms law and equity in this section—and that in its place we should use some term descriptive of the judicial power generally,—to the end that this supreme fountain of jurisprudence may have power to administer justice in all its various forms—leaving it in the power of legislation to unite and bring together in one simple, uniform and harmonious mode of practice the prosecution of all civil suits.

Mr. *WORDEN* did not intend to follow the gentleman at this time but to correct some of his remarks in relation to his own views. The gentleman had altogether mistaken his views of administering law and equity. At the outset of his argument Mr. *W.* had taken the liberty to ask him to be a little more specific, in order that he might know what he was aiming at, and not

left with what poor intellect he had, to gather his meaning from the whole scope of his argument. As Mr. W. could understand him, he was not for abolishing the complex and tedious proceedings in equity, but the simple, concise, well understood common law forms of procedure. He would annihilate the common law and substitute for it the civil law. Mr. W. admitted that parties were frequently turned out of court because they had not comprehended the nature of the action, which they should bring. But on looking at the Louisiana reports, where the forms were in force, such as the gentleman advocates for adoption here, he found for every one case turned out of court in New York, numerous cases in that state. In civil law proceedings, the party bringing his action, must be technically accurate, not merely to a common intent, but to every intent. It was so in chancery proceedings. The party must state the facts precisely as his proof will substantiate or he will fail. It is so under the civil law. The proceedings are such as only the most specious and artful special pleader can draw up.—And yet we are to abolish the common law to substitute this in its place. And the gentleman from Genesee (Mr. RICHMOND) is ready to lend a helping hand in this business! He has given us a tirade against equity proceedings, and yet Mr. W. doubted whether he had ever read a single treatise on proceedings in law and equity, and yet the gentleman would force upon us his notions in regard to the great principles involved in the administration of justice, which it took a life to understand. Mr. W. did desire to see reform in equity proceedings, whether we kept separate or amalgamated the two jurisdictions. In the case stated by the gentleman, the principle was

clear that a party might waive the wrong, and sue for the value of the watch, provided the party sold it, (not otherwise, as Mr. W. apprehended,) and recover as for money had and received to the plaintiff's use; and the proceeding was infinitely more simple and intelligible than the complex, tedious, prolix procedure in chancery, and was without the risk of having the whole proceeding dismissed for a slight variance between the facts stated, and the proof. So in the admiralty cases alluded to, the forms and adjudications were more technical than those of the common law. At the same time, Mr. W. admitted that there was much that was absurd and nonsensical in common law proceedings, and which should be abolished, as they had been in England. Mr. W. illustrated the difficulty of introducing equity forms in legal proceedings, by a case where the interests of third persons were brought in. But he only rose to draw attention to the fact that his friend from New-York, instead of abolishing the court of chancery, would abolish the common law procedure, and make every case the basis for a bill in chancery.

Mr. STETSON here offered an addition to the section—saying that if we were not to have two distinct courts of law and equity, he desired to have it added. It was this:—

“And to the end that ultimately the jurisdictions of law and equity may not be separately administered, and that the two may be blended into one harmonious system, the legislature shall provide by law, as far as may be, common form of procedure for remedies arising under both jurisdictions.”

The committee then rose, and the Convention

Adj. to 9 o'clock to-morrow morning.

TUESDAY, AUGUST 11.

Prayer by the Rev. Mr. MORROW.

Mr. MURPHY presented a memorial of inhabitants of Kings county of both political parties, against the election of judges by the people. Referred to the committee of the whole having in charge the reports of the judiciary committee. A motion to print was negatived, but it was read on the call of Mr. RUGGLES.

The PRESIDENT presented the memorial of Robt. Townsend, jr., on the subject of judicial reform. Referred to the committee of the whole.

Mr. SWACKHAMER offered the following:—

Resolved, that the committee of the whole, having in charge the several reports from the committee on the judiciary, be instructed to report a section to provide that the judicial power of this state shall be vested in one supreme court and in such inferior courts as may be authorized by this constitution.

After a brief conversation in which Messrs. SWACKHAMER, LOOMIS, WORDEN and others took part, the resolution was referred to the committee of the whole having the reports of the judiciary committee in charge.

Mr. WHITE offered the following which was referred to the committee of the whole having the judicial reports in charge:—

Resolved, That a judicial system should be provided embracing the following principles:—

1. That equitable relief be administered in the same courts in which legal remedies are enforced, without a separate court of chancery.

2. That provision be made for the enactment within a specified time, of a code of procedure by which the distinction between common law and equity jurisdiction shall be abolished, and justice administered in all civil cases in an uniform mode of pleading and practice.

3. That the judges of the supreme or superior court of original jurisdiction, be elected by the people in districts for a term of — years.

4. That the county courts, or courts of common pleas be retained and re-organized in such manner as to give them more efficiency and usefulness.

5. That the surrogate's jurisdiction be retained and united to the county courts.

Mr. TAGGART moved the transmission to the Assistant Register and to the clerks of the second, third and fifth circuits, of the resolution calling for a statement of sales of real estate belonging to infants, with a request that they furnish answers to the same. Agreed to.

FUNDS IN CHANCERY.

Mr. LOOMIS called for the unfinished business of yesterday—the report of the judiciary committee in relation to Mr. MANN's resolution on the subject of funds in chancery—and it was taken up.

Mr. PERKINS moved to amend so as to pro-

vide that in case the names of the owners cannot be ascertained then the titles of the suits in which the sums were deposited, shall be reported. Agreed to.

Mr. LOOMIS offered an amendment to be added at the end of the resolution in the words "and showing how such funds are invested, at what rate of interest, and how the income therefrom is appropriated." Agreed to.

Mr. TAGGART moved to amend by striking out "this Convention" and insert "the legislature within ten days after the commencement of its next session." He believed the returns could not be obtained in time to be put to any practical purpose here, but they might be useful to the legislature.

Mr. RUGGLES said he should vote for the resolution if it were so amended.

Mr. NICOLAS said he would call on the chancellor for the items which form the large fund now in the custody of his court for the information of the Convention, but he should vote against the amendment requiring the details to be reported to the legislature at its next session. Should this requirement be made, we would transcend our duty and power. We may call for any information necessary for our guidance, but it is not incumbent upon the Convention to instruct or enlighten the legislature in its action on any question. The legislature is fully competent to obtain for itself all necessary information on every subject. The report already received on this subject contains all the information we need in regard to the powers and duties of the chancellor. We learn from his report that the court has in charge three millions of dollars belonging to various citizens and institutions of the country. This fact alone, as set forth by this report, will of itself convince every person that our chancery system as heretofore organized, imposes upon the chancellor greater responsibilities and invests him with more power than should ever belong to any one man under a government like ours. We do not therefore need more specific information in regard to the general question of the remodelling our chancery system. But the details called for by this resolution may induce the Convention to adopt a provision requiring the legislature to make it the duty of all officers, both civil and judicial, to make periodically a public report of all funds or balances which they by virtue of their office have held beyond a specific period of time. Such a report was required by law from the banks five years since, and has, as was stated yesterday, been very beneficial to surviving relatives, who never before knew that their deceased parent, or friend, or guardian, had made a deposit for their benefit. Hoping that a full detailed report from the chancellor may lead hereafter to a similar periodical expose from every officer of the state to whom is confided moneys belonging to his fellow-citizens, he (Mr. N.) should vote against the amendment, but in favor of the resolution.

Mr. NICOLL said if the information was necessary he should not object to the resolution; but he thought it might be obtained and used without publishing unnecessarily to the world all the private affairs of persons who are parties

to suits in chancery. He hoped the resolution would be laid on the table that its phraseology might be changed. He moved its reference to a select committee.

Mr. MANN said there appeared to be great objection on the part of some gentlemen of the legal profession to the adoption of this resolution. He now began to suspect that there was something wrong in this business.

Mr. WATERBURY said he had been the instrument in depositing money in the court of chancery for an orphan child, and he would like to know whether that child's funds were safe, and she was receiving justice. He thought they had better throw off a little of their delicacy, and act according to the principles of truth and justice.

Mr. LOOMIS was willing this subject should go to a select committee.

Mr. SIMMONS was proceeding to oppose the resolution, when

The PRESIDENT announced the arrival of the hour fixed for resuming the special order.

THE JUDICIARY DEPARTMENT.

Messrs. BROWN and SHEPARD moved the reference of resolutions heretofore offered by them to the committee of the whole. Agreed to.

The Convention then went into committee of the whole, Mr. CAMBRELENG in the chair, on the reports of the judiciary committee.

The pending question was on the amendment to the third section offered yesterday by Mr. STETSON:—

Add after "law," in the third line of section 3, as follows:—"And to the end that ultimately the jurisdictions of law and equity may not be separately administered, and that the two may be blended into one harmonious system, the legislature shall provide by law, as far as may be, common forms of procedure for remedies arising under both jurisdictions."

Mr. STETSON said it was perhaps expected that he would explain the object of his amendment. The section to which it applied vested the jurisdiction of law and equity in a supreme court, subject to regulation by law. His amendment required the legislature to provide a common form of proceeding for remedies under both jurisdictions, so that law and equity should not be separately administered. It might be said that the words "subject to regulation by law," reported by the committee, gave the legislature the same power. If so, no objection could be taken by them to his amendment, except to its phraseology, which was framed so as to avow a distinct proposition; and that if adopted, it would afterwards be changed. But it was because the words "subject to regulation by law," might not be construed to mean the same, with his amendment, that he was induced to offer it. The jurisdiction of law and equity had been administered by courts of distinct organization; and now these jurisdictions were conferred jointly upon the supreme court, and power given to the legislature to regulate. He foresaw that two parties would arise in the legislature—the one insisting that these jurisdictions were to be separately administered, as heretofore; and the other that they should be blended. It would be a perpetual struggle, and we would not have either the one system or the other. It would be a middle ground position; and a judge of the

supreme court, whilst holding a law term, feeling conscious of his equity powers, would begin to administer it, without regard to forms. And so of the law, when holding equity terms. It would cease to be a regulated system of law or equity, for the reason that when the powers are vested in the same judges, a separate administration would be only partially observed. Now he was opposed to this middle ground position; and he desired to remain at the extreme we had occupied, separate courts of law and equity, or go at once to the other extreme—that of having but one set of forms for both jurisdictions. He would confess that he had not been accustomed to regard a fusion of the two courts as desirable; and he would still prefer separate courts and separate jurisdiction. But that had been surrendered by the committee, and the Convention generally regarded it with displeasure.—Under these circumstances, unless we could have the influence of the committee in leading the way to a distinct, separate organization, he hoped we would proceed at once to the other extreme of blending the exercise of the two jurisdictions into one practice.

Mr. TAGGART stated the details of a plan of a judiciary which he had matured and pointed out some objections to the plan of the majority of the committee. He proposed the following as a substitute for the third section, and withdrew his motion to strike out:—

§ 3. The Supreme Court (which shall be a court of appellate jurisdiction only) shall consist of eight justices, one of whom shall be denominated chief justice.

Mr. JORDAN had listened with interest to the explanations of the chairman and other gentlemen of the committee on printing the report, some days since. He had also given his attention to the several minority reports, and the remarks of the gentlemen who had brought them forward. They had now been favored with another distinct plan of organization by the gentleman from Genesee (Mr. TAGGART); and from present appearances, he should judge there were others yet behind. He must take occasion to say, that in the multitude of propositions, they were likely to get into inextricable difficulties, if every member of the Convention should determine to resist all plans which did not precisely and in all particulars accord with his views. Should such unfortunately be the case, they could arrive at no results. He had great doubts and fears, unless gentlemen could yield minor points for the general good. The committee of thirteen of which he had had the honor to be a member, had proceeded to their duties with an earnest desire to devise a system on which the Convention could agree. There had been much difference of opinion among them, but they had yielded individual preferences and made concessions in order to harmonise. A majority of the committee had agreed, but there were other members who could not feel it their duty to give up their first impressions. In this state of things, it was quite apparent that the report must be wrecked, unless it should receive the candid and liberal consideration of the Convention, and the community would be left to groan under their past intolerable grievances.—He was not wedded to any plan, nor had he the vanity to believe for a moment that his own

opinions were preferable to those of others.—But he made it the rule of his conduct to state frankly his own views, and to hear those of other gentlemen, and when disagreements existed to reconcile them if he could. He was now about to say that if many new projects should start up, if any amendment could be offered that would improve it, or if any entire plan could be produced preferable to that of the majority of the committee, he would most willingly adopt it. But experience had led him to believe that if any number of projects should start up, and he thought there were likely to be many, no two of them would be alike. There were five of the committee who differed with the majority, and their conscientious determination to discharge their duty with unyielding firmness, was evinced by the fact that no two of them had been able to agree with each other; and so earnest was one of that number to complete a system of his own, perfect in his judgment in all its parts, that he had appeared to be unable to agree with himself. [Much laughter.] Mr. J. judged so from the fact that the gentleman referred to had on this floor asked time to draw his report, or at least to complete it, several days after the chairman had presented the majority report. [Cries of "name him."] No, he would not name the gentleman without his consent, but this he could and would say, that he was one for whose talents and integrity he entertained the highest possible respect.

Mr. WORDEN said that if he was alluded to, his report word for word was presented in committee before it was presented here.

Mr. JORDAN said he would then correct his error. He had not before heard or seen the report, but if the honorable delegate from Ontario affirmed it to be so, he must believe it as much as if he had himself seen it. It is much easier (said Mr. J.) to find fault with a plan and pull it to pieces than to originate a better. He did not intend to apply this remark to the minority, nor did he apply it to the gentleman from Genesee (Mr. TAGGART) who had read an article which he proposed as a substitute. He (Mr. J.) hoped it would be printed, and all others of the kind if there were forty of them, that we might see what they were. He presumed that no two would be alike; and it would serve to convince the delegates of the necessity of cultivating that spirit of concession to which he had referred—a spirit to which we were indebted for the federal constitution, and which he deemed it a public duty to cherish. It was impossible at a casual reading by the gentleman (Mr. T.) in his place to grasp the outline of his plan, much less the details. He could retain in his mind only the prominent features, and with the understanding he had of it, would endeavor to show to the honorable gentleman himself that the report of the committee attained the same objects and in a better way. The gentleman from Genesee makes his district judges local, while the supreme judges of the committee doing similar duties, are ambulatory, the former are to hold courts of *nisi prius* and sit in banc only in their own districts—the latter throughout the state. By his plan the judges of the several district courts would be strangers to each other, their jurisdiction was confined to

their own districts, they had no more power in or connection with the other parts of the state than with Massachusetts or New Jersey. A suitor in one district prosecuting a resident of another would be obliged to go into the latter to commence his suit, the same as into a foreign state. By the plan of the committee, the judges would feel and know that they were judges for the whole state, and their process would run into every county. A judge in Suffolk could hold a circuit or sit in banc in Erie; or a judge in Clinton could do the same in Richmond. Each would go every where, exchange duties with everybody. They would commix and commingle, and be kept bright and burnished, so to speak, by rubbing themselves against each other. In this court, separate, but not divided; local, yet every where; one in eight, and eight in one, he (Mr. J.) conceived there would be great advantage over that of the antagonist plan. He would undoubtedly prefer if it were possible, to have but one bench; but that was deemed, and by the gentleman from Genesee conceded, to be impossible. No number of judges sitting together could do the business of the state. There must be a multiplication of working tribunals. His (Mr. J.'s) plan proposed a supreme court of eight judges, with appellate jurisdiction only. This the committee had provided for in a court of appeals, of the same number of judges. His plan proposed to draw all the judges of the court of last resort from his four local supreme courts, or as he has denominated them, district courts; these judges having local and restricted territorial jurisdiction as already stated. The committee propose to draw eight judges from the supreme court, one from each of their eight districts, all having equal power, jurisdiction and authority throughout the state as also stated.—Four of whom should sit from time to time and in rotation in the court of appeals, and to elect four more by general ticket. The superiority of the latter over the former he conceived to be, first, that the four justices of the supreme court would in every instance have held courts and become familiar with the course of business throughout the state. They would have thus become familiarized with the intricacies of commercial law in the metropolis, as well as with the less diversified and intricate portions of the law applicable to the agricultural and manufacturing districts. They would have mingled more and have been brought in more direct contact and collision with those great minds which he trusted to see adorn the bench. They would be less provincial in their notions, less circumscribed in the sphere of their usefulness and means of knowledge, and more fitted to the discharge of their high duties. Second, that the four judges elected would come more directly from the people, and feel more directly their responsibility to them. They would imbibe and retain more of the great general principles of moral justice; of what might be called the impulses of natural equity; such as it had often been remarked would “knock off the rough corners of the common law and loosen the fetters of artificial and technical equity.” Inflexible rules would be brought, by a species of undefinable necessity, to blend and harmonize with

the discretion of enlightened conscience. It would in that partake somewhat of the character of the former court, which, though considered an anomaly by all, had, somehow or other, most generally contrived to do justice without violating law, and had, until mischiefs had latterly crept in, given general satisfaction to the community. By the plan of the gentleman from Genesee, (Mr. TAGGART) there would be but four districts, instead of eight. If there was any thing in bringing the courts nearer to the people, in that respect it was less desirable. The convenience of suitors and the bar would be less promoted; and although the profession of the law had become apparently odious to a certain class, and even to some who were nominally members of the bar, (lawyers upon parchment, but demagogues among the people,) he would say that their convenience must be consulted, despite the grovelling prejudices alluded to, or the community must suffer. It could not be expected that counsel would travel one hundred and fifty miles to argue a client's cause, without drawing from that client's pocket the additional expense. By the report of the committee, if adopted, the legislature shall provide that so many courts in banc shall be established in each district as will be sufficient to do all the business with promptitude. This cures the great mischief of the present organization, it saves as well the delays as the vexatious and ruinous expense of travelling from Suffolk, and all the distant counties, to Rochester, Utica, and other places, three or four times a year, and after waiting for weeks to watch the tardy advance upon a calendar loaded down with 700 to 1,000 causes, travelling back again, with no sentiment of respect for the judiciary establishment. No results except those of a bootless expense of time and money. In this regard, he (Mr. J.) would submit the fact that superior advantages were now to be found on the side of the honorable gentleman's proposition. That gentleman, by way of illustrating the inconvenience of the majority report, had supposed himself in the course of his extensive and useful practice, to have in his hands three causes all ready for argument, and noticed for the same time—one in his own district, one in Albany, and one in New-York. How could he attend to all? This certainly would present a cause of difficulty to himself and disadvantage to his client. But he (Mr. J.) would suppose the same gentleman had one cause at a circuit in Buffalo, one in Batavia, and one in Rochester, all ready for trial, and noticed for the same day, (a case equally supposable upon his own plan and in his own district,) what should he do? Why, but one remedy could be applied, and that would extend to both hypotheses. He must put two of his briefs into other hands. It was, said Mr. J., impossible to adopt any system that would be at all times entirely convenient to all persons, and any one who was so sanguine as to expect it was doomed to disappointment. Could all the courts of law and equity, for the trial of issues and trials in banc, be consolidated into one, so that one cause, and only one, in the whole state could be on trial at once, then and only then could the gentleman secure himself against conflicting engagements. That is impossible! [Mr

Brown here reminded Mr. JORDAN that he proposed in committee, and that it was practicable for the legislature so to arrange it, as that no two courts in the state should be sitting in banc at the same time.] True, said Mr. J., if there were four terms in banc in each district in a year, there would be but thirty two in the whole, and a week for each, or 32 weeks, would probably upon an average dispose of all the business. Now, to conclude upon this topic he would again bespeak for the judiciary committee the favorable consideration of the delegates. He would (if he could do it, without speaking of himself) say, of his colleagues they had the confidence of the people, they had been selected by the officer who so ably presides over our deliberations for their experience and candor. Without individual ends to promote, or selfish feelings to gratify, they had devoted themselves to the subject, and the report before you is the best they could produce. It is true four of the number could not yield their preferences for other plans, but with the ample discussion it had received in the committee and from the concurrence of a majority there could not be imminent danger of committing any fatal or serious error by adopting it. It certainly had a decided advantage over those plans and suggestions which sprung up around him, the crude offspring of individual minds, who could not (however able) have had much opportunity for reflection. The gentleman from New York (Mr. O'CONOR) had started doctrines which he received with apprehension and alarm. He (Mr. O'C.) had, if he was rightly understood, advocated the introduction of what must be considered not only a great fundamental innovation, (under the name of reform), but which stopped at nothing short of the entire overthrow of the common law—a system which, since our first existence as a people, had constituted the law of the land—a system derived from our mother country, venerable for its antiquity, and admirable for its wisdom, and its adaptation to the condition of a free people—not without its faults, (particularly in its systems of pleading and practice, and which Mr. J. would cordially unite in reforming, but more faultless, he would venture to say, than any other single system on the globe. He would like to know whether he had understood the gentleman from New York aright; he would not descend to quibble or designedly understand anything from language uttered in debate which it was not intended to convey. Did he intend to be understood as desiring to blend and amalgamate our entire systems of law and equity, so that no distinct trace of either should be left? Did he intend, as he (Mr. J.) understood him to intimate, that he desired to see the principles and modes of procedure of the civil law adopted among us—that if the constitution was not so framed in its terms, it should at least be so constructed as, with a little aid from the legislature and a board of codification, (a project now on foot) to necessarily lead to it? The reasons assigned were the great delay and expense and the follies and fictions of the proceedings in the courts of common law. Nothing was said against the proceedings in the court of chancery; on the contrary, it was inferable from his remarks that he

considered that court as one which had given entire satisfaction; as a very harmless, cheap, efficacious and simple machine; and it certainly fell from his lips that the course of proceedings of that court was the most agreeable to his mind, and one which he would incline to adopt for the new-born court which his imagination had conceived. Was there, he would ask, any other gentleman, who had witnessed the operation of our chancery system, prepared to say that he would prefer the mode of procedure to the plain, settled, direct (though sometimes fictitious, and often unnecessarily cumbrous) remedies of the common law, in ordinary cases? With that individual he should entirely disagree. Although the senior of the honorable gentleman from New York (Mr. O'CONOR) in years, he would not pretend to the same amount of practical experience and accuracy of observation; yet he had seen enough to convince him that if the one or the other must fall, he would cling to the common law; it was a science of great exactness, its remedies were bounded by right lines; it did not and could not follow the zig zag, crooked and searching tracks of the court of chancery, but so far as its remedies extended, they were direct and perfect; he who sued for justice there could march straight forward to her altar and receive from the hands of her priest that measure to which he was entitled. The systems of equity were adopted from necessity; and nothing but necessity would drive any sensible man into that forum. A suit at law was no mystery—everybody could understand it sufficiently, and calculate with proximate certainty its expenses and its delays; but the purviews of the court of chancery were shrouded in darkness and mystery, and his clients generally, when informed that no adequate remedy existed elsewhere, would shrug their shoulders, and shrink back as from the horrors of annihilation. Much of this, it was true, arose from the manner in which justice had been administered in that forum. Much simplification, much reform, in that department might doubtless be attained, and he trusted would be, in whatever court its powers might be vested—though in its best estate, if the one system or the other must go by the board, he would take leave of it forever, and take the hazard of moulding the remedies of the courts of law so as to attain the ends of justice. He had hoped however to see both systems preserved; for with the reforms they were susceptible of, he believed, together, side by side, they formed the most perfect shield against fraud, oppression and injustice, that human ingenuity could devise. In this, he was sorry to differ so radically with his friend from New-York, and he could account for it upon no other principle but his yearning after the beauties and simplicity of the civil law. The honorable delegate from Kings (Mr. SWACKHAMER), had talked much of codification, and of writing out the whole body of the law, in so plain, brief, and simple a manner, that every man could turn to it, and know precisely what were his rights and duties in any case that might arise. He (Mr. J.) would certainly be very much gratified to see this work performed; and he, for the sake of the experiment, would respectfully suggest to some future legislature to appoint

that gentleman a sole board of revision. He was sure it could not be entrusted to abler hands—to any who would with more merited contempt cast aside the jargon and technicalities of all existing systems; and by the lights of his own vigorous intellect, compile the “whole duties of man” in one intelligible little book, which he supposed the gentleman might think of accomplishing in a volume the size of the American Almanac. He was sure that any gentleman who should contrive so labor-saving a machine, would exhibit greater ingenuity than the Yankee who invented “wooden nutmegs,” or any other article of modern commerce, for which a certain class of the enterprising population of New England are so celebrated at home and abroad; he would deserve much of his country. But to be serious, he (Mr. J.) would desire to suggest to gentlemen who thought it so easy a matter to simplify the laws of a free and commercial people, that they would find it a much more difficult task than they anticipated. The civil law had been referred to as a model; the civil law which sprung up on the banks of the Tiber, had more than two thousand years ago become an unwieldy fabric. After struggling through the vicissitudes of ages, it was finally in the beginning of the sixth century, under the order of the Emperor Justinian embodied by Trebonian into code; not with the ease and facility however, and in the compact and portable form which seem to invite an experiment here. We are informed by historians that the civil law was at that time found in two thousand books and three millions of verse; and the digest when completed occupied forty volumes,—[Mr. SIMMONS: fifty!!] My friend, (said Mr. J.) who is a much better antiquarian than myself, informs me it was fifty volumes. Yes, sir, and one hundred and seventy years labor were allowed for the accomplishment—ten years each to the principal compiler and his sixteen colleagues. It was accomplished in less time, it is true, but it was done in so careless a manner that although the Emperor had by an imperial edict forbidden any commentary upon it, it was but comparatively a few years before something like a body of statute laws called novels was enacted to remedy its defects, and commentary upon commentary was written for its interpretation, until books enough were produced to load several camels. The civil law was carried with the Roman arms into Britain about the commencement of the Christian era. On the continent it was afterwards trodden down by the barbarians of the North, when the western empire fell, and was heard of no more until in the receding darkness of the middle ages, it was recovered from its oblivion and adopted by the nations of modern Europe which rose on the ruins of Empire. I profess but a very limited knowledge of the civil law, but it is easy to imagine that an imperial code (somewhat developed it is true in the more free ages of Rome) but moulded at last by an imperial hand, should be better adapted to despotic countries, than to the bold spirit of independence, the rough and hardy freedom of our Anglo-Saxon ancestors. When they invaded and subjugated Britain, they brought with them their own institutions—the germs of the common law as more congenial

with liberty. The two systems maintained an arduous struggle for the ascendancy in the hands of the common lawyers on the one side and the civilians on the other. Many principles of the civil law were ultimately incorporated with and now form a part of the body of the common law; it is from that code we have borrowed our systems of equity and admiralty jurisdiction. The trial by jury is unknown to the civil law, and are we prepared to give up that boasted and truly valuable institution—the bulwark of civil liberty? We are informed by the gentleman from New York (Mr. O’Conor) that in Scotland and Louisiana where the civil law prevails, the trial by jury exists in all its vigor. Be that so, it is an improvement of the system, but no part of the system itself. I hope, said (Mr. J.) we are not prepared to lay violent hands upon the common law or hold out an invitation to the legislature to do so—we have had detailed to us by way of anecdote, or illustration so called, glowing instances of its oppression and ruinous operation. But the frauds of knaves, and the ignorance of fools, which generally lie at the bottom of such cases, are not chargeable to the common law. He protested against it as an unmerited abuse, an unfounded aspersion upon the wisdom of our chivalrous and (in later times) enlightened progenitors. The wisest systems on earth are liable to abuse, and are constantly abused. He would say to his brethren of the legal profession, let us unite in an honest effort, to remove all excrescences, and reform all abuses.—To the laymen (adopting a figure borrowed from the church) he would say, it was not now a time to have their prejudices inflamed by the exaggerated history of extreme cases; and he hoped no further effort would be made in that direction—or if made, that it would prove abortive. The pleading both in suits at law and equity, might be divested of much of their redundant verbiage. We had fallen into that error by adopting English forms, originally the offspring of more barbarous ages. Their ancient statutes and systems of conveyancing, as well as the forms of their pleadings, had run into absurd extravagancies, by piling together in confused masses all the nearly synonymous words and phrases with which our language abounds, serving only to confound the most simple idea, which could often have been expressed in a monosyllable. Neither the English nor the American lawyer had endeavored to correct the error, nor would they be likely to, so long as writing by the month, and receiving pay by the folio, were countenanced by the courts and permitted by the legislature. A common declaration at law or bill in chancery could be penned in half the words commonly used, and he hoped soon to see a board of able men sit down to the task of reducing them to the standard of plain English and common sense. Under such a process, he would venture to say that our whole system of law and equity pleading and procedure would come out as perfect a system as man could invent.

Mr. KIRKLAND said the subject now under consideration, Mr. CHAIRMAN, is, in my judgment, that which more than any other led to the assembling of this Convention and which cannot rank in importance below any, on which we have been or shall be called to deliberate. It

has for many weeks received the patient and careful and anxious attention of the committee to which it was entrusted, and as one of that committee I have devoted to it whatever of energy and industry I possessed, sensibly feeling as I did and now do that the great and diversified interests involved, demanded for it the fullest investigation and the most mature and serious deliberation. The result of these labors and reflections is that great and essential changes in the judiciary system of this State are imperiously required by the public good. Such changes have therefore been proposed both in the majority and minority reports presented to the convention. In the necessity and propriety of most of these reforms, the different members of the committee have unanimously concurred, and as to the remainder their views were nearly unanimous.

It cannot be amiss, sir, to take a cursory view of some of the evils of the existing organization. Such a view may lead to a proper conclusion as to the remedy to be applied.

In the first place, it is a notorious fact that the delays of business in the court of chancery and the supreme court are now so great as to amount to a *denial of justice* and to lead to all the ruinous consequences, which such a state of things is always sure to bring in its train; excessive and burdensome expenses; the total loss of just claims; and the actual ruin and insolvency of suitors in moderate circumstances, whose whole estates are not unfrequently dependent on the result of a litigation now thus protracted and, in one of those courts at least, almost interminable.

For some years past the number of causes on the calendar of the supreme court at each term has varied from seven hundred to nine hundred; and generally not over eighty or ninety have been regularly reached and argued. In the court of chancery the condition of business is vastly worse; I have attended the terms of that court for years in succession for the purpose of arguing causes, the issues in which were joined six and eight years previously; and up to the very last term of that court, I have thus attended in vain. Indeed, I heard the Chancellor within a year past state to counsel, who desired to place a cause on the chancery calendar, that the success of his application would be of no avail to him, for were it granted, he would not reach his cause in *ten years*. He might well have added that in the present state of business in that tribunal, it *never* would be reached. In thus alluding to the ruinous delays in these courts, I make not the slightest imputation on the learned and able men, who now occupy the benches of those courts; on the contrary I can bear personal testimony to the immense amount of labor performed by each of them; the fault is not in them but in the *system*.

Again, sir, great and just complaints have been made and great evils and hardships endured from the *centralization* of the business of those courts. It is known that the general terms of the court of chancery are held at only two places in the State, and those of the supreme court at four, while the special terms of both courts are held exclusively (with the exception of the Chancellor's summer terms) at the Capi-

tol. The most trifling motion in either of these courts in a cause, the parties and counsel in which, reside in the remotest parts of the State, in Chautauque, St. Lawrence or Suffolk, must be made in the city of Albany; the inevitable effect of these arrangements is to cause great and needless expense to suitors, gross injustice to counsel and attorneys, not residing at the favored places where the terms are held, and to create monopolies of business, detrimental alike to the people and to the pecuniary interest and the professional character of the great mass of the members of the bar throughout the State: In truth, sir, these courts have thus become almost sealed tribunals to all, who are so unfortunate as to reside at any considerable distance from the Capitol and the other two or three places where the terms are held.

Again, sir, experience has fully demonstrated the impolicy and injury of separating the duty of hearing and deciding from that of trying causes; in other words, of devolving the *term* duties on one and the *circuit* duties on another class of judges. The effect of such a system is to diminish respect for and confidence in the decisions of the judge presiding at trials, and to increase greatly the number of appeals from those decisions—to separate the *term* judges from the people, and to prevent them from having that full knowledge of causes, which is derived chiefly in many instances from seeing and scrutinizing the witnesses on the stand; and the tendency of a long continuance in a judicial office, the duties of which are performed merely in the study or on the bench at term, is to deprive the judicial judgment of that sound, practical common sense, obtained from mingling with men and the knowledge of human nature thus acquired, which is so useful an ingredient to intermingle with the technical learning derived from books. The abandonment of the *nisi prius* system existing prior to 1823 has often been lamented, and that substituted in its place has received nearly universal condemnation.

Another evil of great magnitude is the present mode of ascertaining facts in the court of chancery by means of taking testimony before examiners. A more ruinously expensive, a more dilatory and a more inefficient and imperfect mode of taking testimony could scarcely be devised. I will not dwell on the evils of this system. It is sufficient now to state by way of illustration three cases within my own knowledge as counsel. I have at this time in my charge a cause, the testimony in which extends over nearly seven thousand folio; sixty or eighty days were consumed in the examination of a *single witness*, and the examiner's fees, as is known to an honorable gentleman now before me, (Mr. CAMPBELL of Steuben,) who performed in part the duties of examiner in the cause, were little less than *three thousand dollars*. In another cause, the folio were three thousand, and the examiner's fees upwards of twelve hundred dollars; and within the last eighteen months in a cause where I filed a bill in behalf of a poor and unfortunate wife against her husband for a divorce for ill treatment, the defence was so conducted by means of the existing system, as to swell the examiner's fees to the amount of *twelve hundred dollars*, and the testi-

mony to *three thousand folio*! I hazard nothing in saying that either of the above causes could have been tried and disposed of by an intelligent judge and jury in from two to five days and at a trifling expense. I am aware that attempts have been made to remedy this evil by legislation, but they have proved abortive. Any system, under the shelter and cover of which such enormities can be perpetrated, ought to be abolished by the *Constitution*.

The attention of the committee, Mr. Chairman, has also been bestowed on some other evils. The mode of remunerating judicial officers by fees and perquisites of office is fraught with mischief—its tendency is corrupting, demoralizing and degrading—it has always the appearance and sometimes it is feared the effect of converting the judicial functionary into a *vender* of justice; it has caused very numerous and very just complaints.

Again, sir, judicial patronage, the power of appointment to office by the incumbents of high judicial stations is, it is believed, universally reprobated. It presents temptation to those officers, to which they should not be subjected—it exposes them to imputations and suspicions, from which they should be wholly free—it tends to derogate from the high, unspotted character they should always bear. The temple of justice is the last place from which should be distributed the spoils of office. It is the unanimous opinion of the committee, as I trust it will be of the convention, that all judicial officers of the higher grades should be prohibited from the power of appointment to office, and from receiving any fees and perquisites of office.

One other subject, sir. All I trust concur in the propriety and the necessity of the independence of the judiciary—but between judicial independence and judicial irresponsibility, there is a wide and palpable difference. While I am a strenuous advocate for the former, I am convinced that the term of office of no judge in this state should be such as to relieve him from that sense of responsibility to the “sovereign power,” which every incumbent of office should feel. I do not regard a term, which is practically a term for life, as essential to judicial independence, whereas I do regard a limited term of suitable duration as highly conducive to a due respect for just and legitimate public sentiment, and as well calculated occasionally to remind a judge that his power is not absolute, and that elevated as his position is, there is in this land a still higher power. Judges it is to be remembered are after all but men and subject to the like passions and infirmities with others. The term for life of judges in England was introduced to protect the *subject* against the crown and not for the sake of the *judge*. The committee almost unanimously arrived at the conclusion that the present term of judicial office should be changed. I will hereafter speak of what in my opinion should be the duration of this term.

The foregoing among other considerations have induced me to unite with the committee in recommending the following material and important reforms and changes:—

1. The union of the duties of *term* and *circuit* judges in the same individuals.

2. The trial of cases in law and equity substantially

in the same manner; and the consequent abolition of the offices of master and examiner.

4. The bringing of the courts comparatively within the vicinity of the suitors, their attorneys and counsel.

4. The changing of the term of office from a term practically for life to a term for years.

5. The abolition of judicial patronage and of judicial fees and perquisites of office.

6. The union of the court of chancery and the supreme court in one tribunal.

These changes are all material and some of them doubtless of a very grave and vital character. Among the latter is that of the union of the two courts. This union, it is to be observed, neither implies nor involves any abolition of jurisdiction nor any destruction of equity, powers and remedies—while it will be attended, I am persuaded, with many conveniences and advantages. One tribunal can be organized with more ease, simplicity and economy than two. It will be the means of dispensing with a number of clerks and other officers, who will by this arrangement become unnecessary; it will not require as many judges, in consequence of the less number of courts which the judges will be obliged to travel to and to hold. If the tribunals are separately organized, it will follow as a matter of course that double sets of courts (both *banc* and *circuit*) must be held; one for the trial and hearing of cases in equity and another for the trial and hearing of cases at law; these must necessarily be held at different times and thus the number of courts to be held in the several counties and districts will be much increased, the jury burdens greatly aggravated, and county as well as state expenses materially augmented. Again, the proposed union would promote facility, convenience and economy in the dispatch of the business of suitors; their attorneys and counsel having cases in law and equity could attend to both at the same court at the same time, instead of being compelled to attend a different court at a different time; very often the convenience of witnesses would be greatly promoted; and frequently the same party would have a case in law and in equity to be tried or heard at the same court, and thus great additional expense be avoided.

Again, sir, if in the march of improvement the time should ever arrive, when the pleadings and practice—the modes of procedure—in law and in equity, should be assimilated or made uniform, the existence of but one tribunal would greatly facilitate that operation; at least it would furnish a fair opportunity and means for the trial of the experiment. Such a result, if attainable at all, must I apprehend be the work of time and be effected by slow and gradual steps. It cannot, surely it ought not to be attempted suddenly and at “one leap”—for the present modes are incorporated and interwoven with all our habits of business, and, I may say, almost with all our legal notions and ideas; but I am far from supposing such a change either impossible or, as some have seen fit to characterize it, utopian and absurd. I am not at present the advocate of such a measure, and yet, sir, it would not to my mind be evidential of fanaticism or insanity, or of the influence of the “pestilential breath of the demagogue,” (as a worthy friend says in a letter to me,) if any gentleman should advocate its slow and gradual

and ultimate introduction. I would refer all, who entertain the sentiments of the friend to whom I allude, to a most able paper in the 17th volume of the American Jurist (p. 253;) and after a candid and careful perusal of that argument, they will be loth, I apprehend, to bring the charges of fanaticism and folly against those who differ from them in opinion. The Legislature now has and will, without doubt, hereafter retain the power over these "modes of procedure;" and to their wisdom it must be left to adopt such measures in relation to them as the public interests demand.

It has been argued against the plan of the union of these courts, that there is a natural, radical, unalterable difference and distinction between law and equity, an irreconcilable contrariety and inconsistency. To such a doctrine I can by no means assent. It has no foundation in truth, and is the erroneous conclusion of minds warped and contracted by long continued habits and prejudices, and by the "set forms of speech" to which they have invariably been accustomed. It is said in Twiss' life of Lord Eldon, that that most distinguished of English chancellors, repudiated in emphatic terms such a sentiment. I venture to assert, sir, that there is not as great, or radical or essential a difference between any given title of "equity" law and of "legal" law as exists between many of the different titles or branches of the law itself—as, for instance, between commercial law and the law of contingent remainders—and between the law of libel and the law of descents and devises. The difference between "law" and "equity" is a difference in the *remedies* and *substantially* in nothing more. The judge who administers "equity" is bound by authority alike with him who administers "law:" the one can no more exercise his own unregulated "discretion" than the other. Chancellor Kent (honored alike in Europe and America) declared in one of the learned judgments pronounced by him as chancellor, that he had no right or power to devise or to make or unmake the law; that his more humble duty was to seek out and to find, and when found, to follow in the path of his predecessors.

It is alleged that the same judge cannot be qualified to administer both law and equity.—This, sir, I consider a libel on the human intellect, and I know that it is contradicted by every day's observation and experience. The numerous able and prominent lawyers of the state practice constantly in both courts and with capacity and success in each; and any judge, who is competent to his post, should be and can and will be qualified to administer the law in the one branch of his tribunal as well as in the other. Is any evidence wanted on this subject? I refer to the court of Errors to furnish it. What more learned, able and satisfactory judgments in "equity" cases have ever been pronounced than by the judges of the *supreme court*, when sitting as judges in that court (of Errors;) and on the other hand where can we find more lucid, conclusive or learned opinions in "law" cases than have been delivered in that tribunal by our *chancellors*? And again, sir, the fact is notorious that members of that court, who were neither judges nor chancellors, have on one day delivered opinions of unquestioned ability in

cases arising at "law," and on the next, opinions of equal ability in cases coming from "equity."

We have great and numerous examples in favor of the proposed union. We find it in the *United States system*, and in the systems of more than twenty of the individual states. It has never, to my knowledge, been a cause of complaint in any of the states, that law and equity were administered by the *same tribunal*; but the complaint has been that *that tribunal* had not sufficient *equity* powers. In proof of this assertion, I refer to the 8th volume of the Law Reporter, (p. 556,) where will be found a statement of the struggle recently made in the Legislature of Massachusetts to obtain *additional* chancery powers for the *supreme court* of that state. But, sir, we have our own example for the last quarter of a century, in the union of law and equity powers in the circuit judges: it is in those courts that a vast proportion of all the original chancery business has been done during that period, and I never yet heard that any great danger or difficulty or absurdity had been produced by the union. On the contrary I can, from my own experience, testify as to several of those "union" courts, that the judges have discharged with signal and with equal ability, and with entire satisfaction to the public, their duties both as *common law* and as *chancery judges*.

On this subject, Mr. Chairman, I could easily enlarge, but I trust that the views I have already presented will furnish at least an "apology" for the recommendation of the union of these tribunals. And on this point, I will only add, that it is a quite prevalent opinion among many persons, that the court of chancery has become so formal and technical, so embarrassed with the details of practice, and so encumbered with numberless rules and the construction thereof, that it is quite desirable that it should be united to a court of *law* in order to *liberalize and untrammel*, and disenthral it from its load of forms, and thus enable it to administer equitable relief with less regard to "strict rules" and modes of mere practice and procedure.

The above changes being resolved on and recommended, the next question is as to the proper organization of the tribunal, which is to represent and take the place of the present supreme court and court of chancery, with the immensely increased amount of business devolved upon it by means of the alteration in the mode of trial in equity cases.

The first object, beyond all doubt, to be considered and attained is, such a system and mode of organization as will enable the legal business of the state to be done *without delay*, while it shall be done with economy and with judicial ability. To this main and great object every other must yield; and if consistently with this, it is impossible to adopt such an organization as will preserve the high and distinguished position heretofore occupied by the supreme court and court of chancery as expounders of the law and as repositories and promulgators of legal learning, this glory and renown must be sacrificed to the necessity of the case; and a substitute for those courts, in the respect to which I have just alluded, must be provided in the

court of appeals. I have regarded it too as exceedingly desirable that the representative of and substitute for those courts should, if possible, be a *single court*, so that there should be uniformity of decision, greater dignity in the court, a higher respect for the tribunal, and more confidence in its judgments. But on the most mature deliberation, I am fully satisfied that a *single court*, with such advantages, or with any of the advantages of a single court, *cannot be established*. It is to be remembered that this single court is to do all the business now done by the supreme court, the court of chancery, and the circuit judges, and much of that performed by masters and examiners. I have come to this conclusion with pain and regret, for, accustomed as I have been for years to a constant attendance on those two courts, highly esteeming as I do the individual members composing them, and remembering the legal lustre and glory, which have been shed on this land, for nearly half a century, by the ability and learning of both the tribunals, I bid farewell to them with feelings of the deepest regret. I am equally pained by the reflection that no *single tribunal* of the same grade can be introduced to take their united place. But there is a consolation in knowing that a court of appeals can be so organized as to take their place as a repository of legal learning, from which may issue as learned, able and satisfactory judgments and opinions as those which have heretofore proceeded from the two courts in question.

I come now to a consideration of the plan reported by a majority of the committee, as contained substantially in the three following sections of the article presented by them :

§ 3. There shall be a supreme court having the same jurisdiction in law and equity, which the supreme court and the court of chancery now have, subject to regulation by law.

§ 4. The state shall be divided into eight judicial districts, of which the city of New-York shall be one. The others to be bounded by county lines; and to be compact and equal in population as nearly as may be. There shall be four Justices of the supreme court for each district, and as many more in the district composed of the city of New-York, as may from time to time be authorized by law, but not to exceed the number of justices in the other districts in proportion to their population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

§ 5. Any three of them may hold general terms of said court in any district; and any one of them may hold special terms, and circuit courts, and preside at the courts of oyer and terminer, in any county.

This plan, it will be seen, provides for a single court of *thirty-two* judges, which is to take the place not only of the supreme court and court of chancery but also of the *county courts*.

This proposed court of thirty-two judges presents in not the smallest degree the advantages of a *single court*.

1. Its very numbers destroy it; composed of thirty-two persons, it could never have the respect, dignity, or confidence, which are among the advantages of a *single tribunal*.

2. It is impossible, and it is not contemplated, that all or any considerable share of its members should *ever* assemble together as a court.

An anomaly like this I apprehend is without a precedent.

3. A great, perhaps almost the only *peculiar* benefit of a *single court* is *uniformity of decision*. But this is totally unattainable here, for the terms of the court are to be held by any *three* of the judges: they may and will be held by *different persons at different places at the same time*; indeed many terms may be held at the *same time* in places remote from each other. It is thus impossible that there can be *uniformity of decision or any practical unity* in the court. There would be just as many *appeals* from a court thus organized as from eight distinct and separately organized courts.

What advantages then does such a plan present? Not a solitary one that I can discover.

But there are many positive disadvantages, difficulties and absurdities in such an organization.

1. It would be an arduous task to keep the *muster-roll* of such a company and to designate who should be on duty here and who there, at given periods. The distribution of the terms, circuits and special terms among this multitude would be found, if practicable at all, very difficult.

2. At the close of a term in banc, the three judges who held it would by the very construction of the system, immediately separate and depart severally to other and different places to hold courts. It would thus be very difficult if not impossible for them again to assemble and have a consultation as to the causes argued before them, and without such consultation, no cause could be properly or satisfactorily decided.

3. After the trial of a cause before one of these ambulatory and ever moving judges, where would be found he to settle a case, bill of exceptions, &c. in the causes just tried?

4. Practically, this court professing to be *one* would be *several*; it would be composed of many fragments united by no common tie, but jostling, contradictory and conflicting.

These seem to me just and unanswerable objections to the plan of the majority, and I state them in no spirit of criticism or fault-finding, but solely from an imperative sense of duty. I am fully convinced that these considerations present serious and fatal difficulties in the practical operation of that plan; and if I am correct, it would be calamitous to adopt it.

Having thus as I think, shown the impossibility of forming a *single court* with any reasonable hope or promise of success, I am led to the conclusion that the most safe, simple and certain mode is to establish independent courts of general jurisdiction in prescribed territorial districts. The following section of the article I had the honor to report, presents the outline of such a plan :

Superior Court.

§ 4. The state shall be divided into six judicial districts, to be denominated the first, second, third, fourth, fifth and sixth judicial districts, of which the city and county of New-York shall form the first. There shall be a superior court in each of said districts, which shall have jurisdiction in all matters of law and equity within the state, and such supervisory and other power over inferior tribunals and officers within its district as now exists in the supreme court, subject to the ap-

pellate jurisdiction of the supreme court of appeals. It shall in the first district be composed of six judges, and in each of the other districts of four judges. Two of the judges in each of said districts shall be elected by the qualified electors of such district, and the remainder of said judges shall be appointed by the joint ballot of the members of the Senate and Assembly. The Governor shall designate one of the judges thus elected as chief justice of the court in the district for which he was elected. Each of said judges shall, during his continuance in office, reside in the district for which he was elected or appointed.

The courts under this plan can be arranged with entire simplicity, harmony and symmetry; the system admits of reduction or extension of the judicial force with perfect facility—and it thus can be adapted to the wants of any particular district without in any way interfering with the harmony of any part of the plan. The number of districts and of judges which I have proposed, may be too great or too small, but this of course can easily be increased or diminished. I have denominated these courts “superior courts” as being in harmony with the name of “supreme court of appeals,” given to the court of the highest grade. They should be of general jurisdiction, for many reasons, not deemed necessary to be now stated; but if the convention should be of opinion that their jurisdiction should be local, this alteration could be made without, in any degree, affecting the remainder of the plan. To prevent any possible injustice or inconvenience that might arise from these courts having general jurisdiction, adequate provision is made in the fifth section of the article, for transfers of causes from one district to another, and for changes of venue, as the rights of suitors may require. Thus, all causes will be tried, argued, decided, in such districts as the ends of justice may demand, irrespective of the district in which the suit may have been originally commenced.

In the fifth section provision is also made for the judges of the superior courts (and also of the court of appeals) holding terms, circuits, &c., in any district. The effect of this will be to equalize the labors of the judges and to keep them all constantly employed; and likewise to furnish aid to a district which may be overburdened with business, by means of the judicial force in another district, in which there might happen at the time to be a paucity of judicial work. This will also lead to the farther beneficial results of the occasional intermingling together of the judges of the different districts, and of the judges appearing in different and various parts of the state.

In the eleventh section of the article, provision is made for the increase of the judicial force according to the exigencies of business; and it is believed that the authority thus given to the legislature is sufficiently guarded and restricted by requiring the vote of two-thirds of the members elected. This is a provision, the want of which in the constitution of 1821, has caused great inconvenience and injury.

It is to be observed that in the plan I propose, there is no more liability to *appeals* than in that presented by the committee.

It may be objected to the courts thus organized in districts, that they are *provincial*. To a certain extent this is true, but so far as it is an evil, I deem it an unavoidable one; and in re-

ference to which it may well be said that the lesser evil must be endured for the greater good.

The inconveniences of any possible conflict of decisions in these “superior courts,” will be obviated by the court of appeals, which under any system that can possibly be devised, must have a similar duty to perform. And here I beg leave to say a word as to the organization I propose of the latter tribunal. This organization will be found in the third section. It is manifest that *this* must be a court of the greatest interest and importance, and I have endeavored to secure to it that degree of permanence and independence, which the vast interests committed to its decision would justly seem to require.

I will add another word, sir, in reply to the question which may perhaps be asked, “who will have the supervisory power over these six superior courts”? Such a question I should answer by asking, who now has *that power* over the supreme court and the court of chancery? It rests nowhere except in the integrity and amenability to public opinion of the judges of those courts; and as to the judges of the proposed “superior courts,” the *same power* will exist. They are liable also to *removal* and *impeachment*.

I present my plan, Mr. Chairman, for the organization of these “superior courts” (in connection with my proposed court of appeals) with the more confidence, because I find it, on examination, to be *substantially*, the system of a large number of our sister states. Louisiana, Missouri, Iowa, (proposed constitution), Delaware, Virginia, Mississippi, Florida, Connecticut, Texas, Alabama, as I read their constitutions, have judicial organizations similar in all essential particulars to that which I propose: I may add that the judiciary system of the Union is not materially different.

It is to be observed that the selection of the judges of the “superior courts” is not limited to the district in which their duties are to be performed; though while they hold their offices they are required to reside in that district.

The provision made in the seventh section for the term of office of a judge, elected or appointed to fill a vacancy, will practically answer the purposes of classification, while it avoids its inconveniences, and also obviates the probable difficulty of finding qualified persons willing to take the office for the *short remainders of terms*.

Having thus glanced at the objections to the supreme court as proposed by the committee, and having briefly stated some of my reasons in support of the courts I propose in its stead, I will now, Mr. Chairman, consider for a moment, the objections to another part of the report of the committee, or rather to the omissions in that report. It omits entirely the *county courts* in any form; or practically it proposes to *have no such courts*. This I regard, sir, as a most objectionable feature in the report, for I am persuaded that the immense and diversified legal business of the state cannot be done without the aid of that tribunal. I do not mean that tribunal *as it now exists*; for I believe there is great if not entire unanimity in the opinion that those courts, *as now organized*, should be abolished; but, sir, that a county court, properly

organized, should be created, I entertain no doubt whatever. An immense amount of business, civil and criminal, is now done in those courts,—they are integral parts of the county organizations and are in a manner identified with the county as a municipal body. They are as it were the *domestic* courts of the people, and by means of these courts, imperfectly as they may now be arranged and conducted, much knowledge of matters of business, of law and of general affairs, has been diffused through the community. I do not believe that the people desire or are prepared to witness their total annihilation; nor do I deem such a measure in anywise expedient. In addition, sir, to all the business done in those courts, strictly pertaining to the trial and disposition of civil and criminal causes, there is a vast amount of special power and duty performed by those courts and their judges. I have been at the pains to ascertain the extent of this miscellaneous business, and I read the following statement as the result of my investigation.

Miscellaneous duties now performed by county courts, and the judges thereof, or some of them, in addition to the trial of causes and other business ordinarily done *at court*:

1. As to committees of lunatics.
2. As to disorderly persons.
3. As to relatives of paupers.
4. As to estates of persons absconding and leaving their families chargeable, &c.
5. As to cases of bastardy.
6. As to apprentices and servants.
7. As to admeasurement of dower.
8. As to restitution of lands.
9. As to licensing of ferries.
10. As to regulation of fisheries.
11. As to removal of justices of the peace.
12. As to trial of physicians for mal-practice, &c.
13. As to appeals from commissioners of highways.
14. As to removing occupants of state lands.
15. As to absconding and non-resident debtors.
16. As to insolvent and imprisoned debtors.
17. As to forcible entries and detainers.
18. As to under landlord and tenant's act.
19. As to keeping the peace; requiring sureties to keep the peace, arresting offenders and fugitives and taking examination of prisoners; taking bail in criminal cases.
20. As to compelling delivery of books, &c., by an officer to his successor.
21. As to designating coroner to act as sheriff in certain cases.
22. As to wrecks.
23. As to habitual drunkards.
24. As to staying waste, &c.
25. As to inspecting county prisons, &c.

and this by no means embraces the whole.

Now, sir, when all this local and miscellaneous business is taken into the account, and when you add to it the great mass of civil and criminal business done at the terms of the county courts, even as at present organized, and when, besides all this, you consider what an amount of additional business is to be devolved on the circuit courts, by the trials of chancery causes, it is, it seems to me, an *unquestionable proposition* that county courts, on an efficient and improved plan, *must be established*. They are indispensable as auxiliary to the higher court—they are indispensable to the transaction of the vast variety of business now done by them as above stated. I will not now speak at length of the plan I propose for the organization of the county court: it is, I believe, as good a one as can probably be suggested; and it has been used

successfully in other states. There are, in my view, very good reasons for uniting the offices of first judge and surrogate, as I propose; it will save expense to the counties and to individuals; it will tend to elevate the character of both offices by making the position one of more importance and responsibility, and will lead to the selection of more competent persons to fill the station.

It will be perceived, sir, that my judicial article provides for the payment of salaries to the judicial officers, except to the associate judge of the county court.

It is not just that the *whole* expense of any judicial system should fall on the state or county treasuries: it should in part be defrayed by those who use the tribunals for the purpose of their own business. This matter can easily be arranged by law; and proper provision be made, by which suitors, and those doing business at the surrogates office, will pay (for the use of the state or county treasuries, as the case may be) such sums as may be reasonable.

I will say a word as to the terms of office of these judges. I propose ten years for the judges of the two higher courts, and eight years for the district judges of the county courts. These terms I cannot deem too long—they should be of sufficient length to induce men of capacity to take the office and to secure a reasonable independence in it,—and also, to prevent frequent changes of the judges. Judicial *experience* is as valuable as any other.

In looking into the constitutions of the several states, I find that in twelve states (as well as in the United States) the term is equivalent to a term for life,—in one state it is for fifteen years; in two for twelve years, and in two for eight years,—thus in the large majority of the states the term being for life or for a period of not less than eight years. I trust the convention will adopt terms at least as long as those I have had the honor to propose.

I come next to the question of the mode of selecting these officers—that is whether they shall be elected or appointed. On this subject, though of great importance, I do not at present intend to dwell at length, and will suggest only a few considerations pertaining to it.

I implicitly believe in and ardently admire the great principle on which our glorious institutions are founded, “that the people are the only legitimate source of power,”—it is a sacred principle never to be violated or disregarded. But in my judgment it argues no disregard of or departure from this principle, for the people to commit to intermediate hands the appointment of such and so many of their agents or officers as they may deem can be more fitly thus appointed, or who, if thus appointed, would be more likely to discharge well and faithfully the duties of their station. The office of judge is of a peculiar character; its duties are highly delicate and important—this officer is often called on to decide between the people themselves, on one side, and the individual citizen on the other; he is to defend the weak against the strong—and may at times be required to interpose himself between an excited and pervading popular sentiment and an individual who may happen to be its subject.

It has been argued, and with justice, that a judge elected by popular vote would be exceedingly liable to entertain prejudices and hostility towards those who may warmly have opposed his election—and also that tempted by a desire for re-election, he might be induced to court the powerful and influential, and to yield to the popular caprices, or prejudices, or passions, of a particular period. It is said too, and it is not to be denied, that nominations, as now conducted, do not leave to the people that free and unbiased choice they should have; and it is notorious that party conventions and the nominations there made are not unfrequently the fruits of intrigue and selfish manœuvre. But there are loud complaints against the central power at the capital, and strong desires to diminish it; and though I am not aware of any general call made by the people for the election of the judges, still I am entirely willing to have this mode tested to a reasonable extent, so that, if it prove successful, and judicial incumbents thus selected are not found obnoxious to the charges which it is supposed under such circumstances might exist against them, it may be introduced more fully into use. My deliberate reflections have led me to the result of proposing to distribute this power into three parts, and to recommend that the judges be in part elected by the people, in part appointed by the Governor and Senate, and in part by the joint ballot of the Senate and Assembly. This division would be calculated to produce a salutary rivalry between the several powers to select the worthiest incumbents—and between the incumbents themselves, a similar, just and honorable rivalry would also be produced. I may here remark, that the mode of appointment by the joint ballot of Senate and Assembly prevails in *two-thirds of the states*, a fact calculated to show that this mode is a generally approved one.

I ought further to add, that in *no one State of the Union are the judges of the higher tribunals elected by the people*, except in Mississippi, and the example of that State, in other respects at least, would hardly be proposed for imitation in this.

I may at a future time go more at large into this subject, and will content myself now with reminding the Convention that the other changes proposed to be made as to the judiciary establishment, are great, thorough, and, in some degree, necessarily experimental. The voice of wisdom, of duty, and of patriotism, calls on us to pause, and calmly to deliberate before we at one and the same time introduce into full and exclusive use another change still greater and more important, hitherto untried among us, and among all our sister States, with the solitary exception just mentioned. At the hazard of being branded on the one side with the epithet of "radical" and "demagogue," and on the other of "aristocrat" and "an enemy of popular rights," I have put forth the above sentiments deliberately, and by them I am willing to abide.

It remains for me now, Mr. Chairman, only to present very briefly some of the benefits, in addition to those already mentioned, of the new organization proposed.

1. While it will be little, if any more burdensome to the state or county treasuries than

the present entirely inefficient system, it will be a vast saving of expense to the people.

By the official documents presented to the convention it appears that the expenses of the present system are as follows:—

Salaries and expenses paid out of the state treasury, (1 year,)	\$104,660
Do. out of county treasuries, (including New-York, 1 year,)	42,564
	<hr/> \$147,224
Perquisites and fees, (1 year,)	
Vice chancellors,	\$5,076
Circuit judges,	3,289
First judges,	22,305
Masters,	69,942
Examiners,	31,652
	<hr/> 122,264
Total annual expense,	<hr/> \$269,488

Now, sir, the expenses of the proposed system, if the judges of the court of appeals and of the superior courts should receive the same salaries now paid to the judges of the supreme court, and if the district judges of the county courts should receive \$2,000 per year, and the clerks be compensated in the most liberal manner by receiving on an average as much as is now paid to the chancery clerks and registers, even on this liberal estimate of compensation, the amount of annual salaries and charges would be but \$135,000, thus falling considerably short of the sums now paid out of the state and county treasuries, to say nothing of the enormous saving in fees and perquisites.

2. An immense number of officers are dispensed with, as will be seen by the following statements. Without intending in any manner to disparage any person in office, the evils of numerous officers is acknowledged by all, and, at all events, it must be conceded that the large amount of fees and perquisites received by them comes directly from the pockets of the people.

Judges proposed.

Court of appeals,	7
Superior courts,	26
District judges,	9
County judges,	118
	<hr/> 160

Judges dispensed with.

Chancellor,	1
Vice chancellors,	2
Assistant vice chancellor,	1
Judges of supreme court,	3
Circuit judges,	8
Judges county courts (58 co's, 5 each,)	290
Common pleas, N. Y.,	3
Superior court, N. Y.,	3
Recorders, 8 cities,	8
Surrogates,	69
Judges court errors, (lt. gov. & 32 senators)	33
	<hr/> 411

Other Officers proposed.

Clerks superior courts,	6
Clerk court of appeals,	1
	<hr/> 7

Other Officers dispensed with.

Clerk of court of errors,	1
Chancellor's clerk,	1
Clerks supreme court,	4
Register and assistant register,	2
Clerks in chancery,	6
Reporters in chancery and sup. court,	2
Masters in chancery,	188
Examiners in chancery,	168
	<hr/> 373

And also the clerks of the superior court in New-York and the recorder's courts.

RECAPITULATION.

Officers proposed.

Judges,	160
Clerks,	7
	<hr/> 167

Officers dispensed with.

Judges, (including surrogates,)	411
Other officers,	372
	<hr/> 783

Making a *diminution* of 616 officers.

3. If I mistake not greatly, the plan I have proposed will produce a *uniformity* in the courts throughout the State; it can be made to operate as well in New-York as elsewhere; and by this means we should have all our courts (except those of the very lower grades) under the *same system*, organized in the *same manner*, governed by the *same rules*. This result, if attainable, would be of great public benefit and convenience; it would relieve the community from those numerous anomalous courts which are a sort of patch-work tacked on to the judicial system to meet particular exigencies.

I will now, Mr. chairman, close my remarks by saying that I have no pride of opinion as to the plan I have presented. After mature reflection, I believe it one in whose practical workings entire confidence may be placed. Whether rejected or adopted by the convention, my duty is discharged by presenting it.

I beg to express my thanks to the committee for the patience with which they have listened to the remarks I have addressed to them. I find my apology for the length of time I have occupied in the vast importance of the subject under discussion.

Mr. ANGEL said he regarded it as a misfortune that whilst the delegates were so unanimous in opinion that judicial reform was necessary, they so widely differed as to the mode of the reform required. Nearly every gentleman had his own peculiar plan, to which he seemed to cling with uncommon tenacity. In order to enter understandingly into the business of reformation it is proper, said Mr. A., to treat the question as the legislature would the amendment or repeal of an existing statute; we should consider the old law, the mischief it tolerates and the remedy it demands. I will take a short review of the history of our judiciary. Prior to 1821 we had a supreme court, consisting of five judges, organized upon the *nisi prius* system, and a court of chancery, consisting of a single equity judge. The judges of the supreme court alternately held circuits in every county; they travelled over the state and became acquainted with the people; they learned their habits, their modes of thinking, their wants and necessities, and by such means they became qualified to administer the law in a manner acceptable to them. That court was the brightest judicial ornament to be found in the world. Its decisions commanded the highest respect, not only in America but in England. The reports of that court were good authority in all courts where the common law prevailed. As population and business increased, the labors of the court increased, until it was found to be physi-

cally impossible for it to perform the business required. The Convention of 1821 was called to provide a constitutional remedy for the evil. Complaints against the judiciary existed then, as now; some imputed the then existing evils to the judges, and others to the judicial system. The question embarrassed the Convention of 1821 as much perhaps as it now embarrasses us. That Convention abolished the court as then organized, and established our present judiciary system. At the time it was adopted the people were pleased with it; a large majority esteemed it as a most salutary reform. We had our home judges, and justice seemed to be brought to every door through the law and equity judges dispersed throughout the state. The system went into operation; for a season it appeared to work well, but after a lapse of twenty-five years we find ourselves here in Convention listening to longer & louder denunciations against it than were uttered against the system which preceded it. It is our business now to look into the causes of these complaints, and to devise a system that will remove the evils complained of and prevent their recurrence. I desire that we should organize a supreme court as nearly as possible upon the plan of our old supreme court. I desire that the judges who decide the causes at bar should try them at the circuits; I desire that they should travel over the state and mingle with the people, and learn some common sense, and incorporate it into their decisions. The time was when counsel could advise their clients with tolerable certainty—when it was safe advising men that so and so their rights would be decided, but that time has passed away. It seems that we have been running into judicial darkness, and have made such progress in the race as to throw the law into utter obscurity. No honest counsel will at this day advise his clients with any degree of assurance, that their interests will be promoted by prosecuting or defending any matter in which there is the least chance for getting up a litigation. The most he can do is to advise them of his opinion of the law, and apprise them of the dangerous uncertainty that attends its administration, and tell them if they prosecute or defend it must be upon their own responsibility. Different causes have led to this result. I believe that a principal one arises from the fact that the judges who decide in bank, are not allowed to try the causes at the circuits; none of them have ever seen the parties or heard the witnesses, and all they know of the matter comes to them upon paper. The increasing population and business of the state has greatly increased the demand for judicial labor. The legislation of the state has added to that increase. Some of our very measures of reform have tended, in my opinion, to cast burthens upon the judiciary. The abolishing imprisonment for debt, and the extension of the former exemption laws, have given rise to much litigation. Litigation has increased and accumulated until our courts find themselves with a burthen upon their shoulders which they have no longer the strength to carry. They are literally borne down with a mass of business that they have not the capacity, mental or physical, to dispose of. We must devise and adopt measures that will enable our judiciary promptly to

meet this increased and increasing business or, what will operate as a check upon litigation. I think I can mention one thing that would ultimately go far to check it, but the legislature is the proper organ to apply that check. I refer to the fees allowed by law to counsellors and attorneys. Should they be entirely abolished, I believe that more than one half of the litigation in the state would fall off. It would reduce the number of lawyers, and with the reduction of their number, you would reduce the chances of litigation. Should the fees be abolished, it would improve those who remained in the profession. They would become better and more reliable lawyers; and it is due to the profession that the odious position they now occupy should not be forced and continued upon them. The fee bills should be abolished, and lawyers restored to their natural rights. Lawyers are the only class whose business is bound down by statutory restriction. The clergyman is allowed to agree upon the price of his services with the flock he teaches. The physician is permitted to bargain with his patients, the merchant to fix the price of his merchandize, the farmer of his produce, and the laborer the amount of his wages. Every class of citizens in the state, except lawyers, have the right to make the best bargain for themselves. Complaints against the profession are very common. They are accused of extortion, and of being allowed exorbitant fees. These fees are established by law, and if an attorney should exact and receive more than the prescribed amount, he would be liable to punishment by indictment and fine. I repeat, it is due to the profession that this odious and partial distinction be done away, and that lawyers, in regard to their business, be placed on the same footing with the other classes of the community. As it regards the question before the committee, that of blending the law and chancery jurisdiction, I deem the thing impracticable. Those jurisdictions should be kept separate. I would not vest them in the same tribunal; but inasmuch as the demolition of the court of chancery has become so great a favorite with this Convention, and inasmuch as they assert that they are only reflecting the will of the people in this respect, I would consent to vote for the adoption of a constitution that provided for vesting the law and equity powers in the same court. I regard it as highly dangerous that the distinction between proceedings at law and in equity be abolished. It would be a greater innovation than had ever been introduced into our system. It would lead to more and more confusion than we have ever witnessed. I think it would peril the safety and freedom of the people, and put to hazard the existence of our free institutions. It was with surprise that I heard the gentleman from New-York, (Mr. O'Connor,) put forth the proposition yesterday.—I had not supposed that any man, the least acquainted with the history of civil jurisprudence, could by possibility, entertain such a heresy. I am not tenacious as to the form in which our judiciary be established, so that we come the nearest possible to our old *msi prius* system. Perhaps the report of the majority of the judiciary committee approximates as nearly to it as the condition of the state will admit; and I think if

we incorporate the report into the constitution, and the legislature will do its duty in passing laws of reform, we shall be relieved from the judicial evils that now afflict us.

Mr. BASCOM then took the floor and moved to rise and report progress. Agreed to.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. CAMBRELENG presented, and moved the printing of, the plan for a judiciary system which was read and commented upon by Mr. TAGGART this morning in his remarks. He moved also its reference to the committee of the whole, having in charge the report of the judiciary committee. Both motions were agreed to.

THE JUDICIARY.

On motion of Mr. RUGGLES, the Convention again took up in committee of the whole, Mr. CAMBRELENG in the chair, the reports of the judiciary committee.

The question recurred on Mr. STETSON's proposed addition to the third section.

Mr. BASCOM, having the floor, addressed the committee, giving his views at length of the proper plan for a judiciary system. After remarking that the preliminary step in reforming the judiciary was to trace out the origin and causes of existing evils—he went on to present his views of the defects of the present system. A large portion of the evils complained of, he thought might be traced to grades in the judiciary established by the Convention of 1821—a principle applicable rather to the army than judicial incumbents. He insisted that in effect they provided for nine chancellors, one of them a sort of chief—and substantially for eleven judges of the supreme court—three of them chiefs, and the rest subordinates. And by giving higher salaries and stations to the one grade, this distinction was kept constantly before the people—and the judges or subordinates who were sent abroad to do circuit duty, however well they might discharge their duty, had come to be regarded as inferior to the order retained in the supreme court, and their decisions therefore were not acquiesced in, when but for this artificial distinction between them and the chiefs, they might have been to a greater extent. He insisted that having made these grades in the judiciary, the best talent should have been sent to do the circuit work, where all litigation began, and where it was important that it should be as well done as possible, rather than the second rate men, or those marked as such, should be sent abroad on the circuits. The circuit judges, he admitted, had ably done their duty—more ably and efficiently than any other class of the judiciary. But they had been like horse-rakes, used as it were to rake up litigation in winrows, that it might be stored up in your higher courts. The delays complained of had not been, as a general rule, in your circuit courts, or in your county courts; but in your highest grade of courts, which were literally blocked up with business. This was not the fault of the judges of those courts, but of the system, the great fault of which was that it had too many run of stone for its bolting power. Mr. B. then passed to the consideration of the report of the majority of the judiciary committee—so called.

He objected to that feature of the second section which proposed to elect a part of the court of appeals by general ticket, and expressed his apprehensions of the danger of throwing these important offices into the power of a political state convention, having various other offices to fill, and liable to be swayed in their selections rather by a spirit of compromise towards this or that section, or controlled by selfish and sinister influences, than by a regard solely to qualifications. Mr. B. was understood to object also to the third section as indefinite and vague—or as vesting a certain jurisdiction rather than judicial power in the supreme court. He spoke of the court of chancery as having acquired jurisdiction by prescription and by legislation, which the constitution never intended it should have. And he apprehended however desirable it might be to curtail or annihilate its power, that could never be done under this grant of power to regulate—for to regulate did not mean to destroy. If we were to have chancery powers, we wanted to have them enumerated. And so of the supreme court, whose powers were as undefined as those of the chancellor. He preferred that the section should be struck out, or modified, as suggested by the gentleman from New-York—in whose opinions in regard to the practicability and expediency of assimilating the common law system with chancery proceedings, and simplifying them, he entirely concurred. The complicated case put by the gentleman from Ontario (Mr. WORDEN) Mr. B. examined in detail to show that it might be disposed of in a single trial, and by one court, and under one action—and that the objection that it would be bringing two parties into court as wrong-doers, when one only was in fault, was the every day practice in suits on commercial paper. As to the alternative section—that providing for the appointment or election of judges—Mr. B. disliked both. The one he could not go for under any circumstances.—The other, with reluctance. He went for an elective judiciary, on the principle adopted in the single district system for senators and members of assembly. That was a sound, and the only safe system. In making this untried experiment of electing a judiciary—which was the general wish here and throughout the state.—The time had gone by when it was deemed necessary that the judiciary should be independent of the people, whose interests they had so extensively in charge. What we wanted was an honest discharge of official duty. We had tried the appointment of judges, and we had seen the results of that system. Let the controlling power over the judiciary be placed where it legitimately belonged. Having adopted the single district system for the legislative department extend it also to candidates for judicial stations, and bring them as nearly home to the people as practicable. Mr. B. objected to the tenure of the judicial officers proposed by the majority of the judiciary committee, as being too long to enable the people speedily enough to correct an error in their selection of judges. But the system recommended here, was a great improvement on the present state of things. The holding of this higher court by three judges in the districts, would go far towards breaking up the

centralization of judicial business at the capital, but there would be the same effect resulting at the eight central points as now at Albany. There could be no harm certainly in requiring sessions of the court to be held in all your large counties. His plan proposed thirty-two judges—one for each senate district—to be elected by the people of each district. That force he regarded as sufficient.

Mr. RUGGLES said the gentleman had objected to this section on the ground that the jurisdiction of the supreme court and of the court of chancery was not defined. He asked how the gentleman proposed that this should be done?

Mr. BASCOM replied that his objection was that this section did not vest the judicial power. It conferred the same power as that which now existed in chancery and in the supreme court—subject, it was true, to regulation, not to abolition.

Mr. PERKINS asked if the gentleman intended that the courts should have no power except by statute?

Mr. BASCOM replied that they had no other now. And he proposed to leave the matter with the legislature still.

Mr. RUGGLES called attention to the phraseology of this third section, and submitted whether the legislature would not have under it entire and perfect control over the jurisdiction of the supreme court. If they had then no amendment was necessary. The legislature could regulate and restrain that jurisdiction—or if there was a doubt about the power of the legislature to take away the jurisdiction of the supreme court, there could be none as to the power of the legislature to regulate the practice of the court both on the equity and law side; and so as to unite the practice, to assimilate it and alter it, and make it what it pleased. The powers of the court of chancery were transferred by this section to the supreme court. The powers of the former were within the control of the legislature now. The legislature conferred them. The chancellor's authority and the exercise of his power, depended, as it had for a long time, on the law. These powers being transferred to the supreme court, the legislature would retain the same authority over the powers of the court of chancery when in the hands of the supreme court, as now. The proposition of the gentleman from New York (Mr. O'CONNOR) was that a code should be enacted, by which the form of proceeding in the cases heretofore carried into the court of chancery and in those heretofore carried into a court of law, shall be assimilated and brought together. Could there be a doubt about the power of the legislature to direct the practice in the two courts, to blend them or separate them.—Mr. R. had never yet been able to see that the least doubt could be raised on the subject, or that it could be made a subject of controversy under this section. Not having the slightest doubt on the subject, the amendment of the gentleman from Clinton was entirely unnecessary and he should vote against it. In regard to a reform in the practice of both courts, Mr. R. said no person would enter into that with a greater desire to see a change, in some respects,

than himself. As to the practicability of the particular change proposed, he certainly entertained some doubt; but he had not the slightest possible objection to see the effort made to bring the practice of the two courts together. The section would lay the foundation for it. It was the intention of the committee, in reporting the article, to put all this into the power of the legislature, as it always had been. It should be so. It was necessary that that power should rest where the jurisdiction could occasionally be regulated, altered, restricted or enlarged, according to the want and exigencies of the state. With that view this third section was drawn in the shape in which it was.

Mr. STETSON said some gentlemen were not satisfied with the phraseology of his amendment. He put it in the form it was that it might be seen at once what its object was, and not with the intention of having it in the constitution in this precise form. He now offered it in a shape more suited to a constitution, as follows:—

“The legislature shall provide by a law for a uniform system of procedure in the administration of justice, without regard to the distinctions heretofore had between different forms of action and different jurisdictions in law and equity.”

Mr. O'CONOR: Put in—“in civil cases.”

Mr. STETSON said it substantially embodied the argument of the gentleman from New York. He confessed the amendment was not a great favorite with him. He preferred courts of separate organization, though he had not such a horror of the plan of the gentleman from New York as many others felt. He was not certain but what there was great wisdom in these extensive changes. The reason why he offered his amendment grew out of the form in which their report was made. He did not know exactly what it meant. The chairman of the committee had,

however, shown a willingness that the legislature should make the attempt to enact a code of procedure. That being so, the only difference between the section and his amendment was that the one made that mandatory on the legislature which the other made permissive.—The idea of separate organizations of these courts of law and equity, he supposed from the reports, was not to be entertained. The enquiry arose, what advantage was gained by abolishing the distinct organization, and conferring the joint jurisdiction in law and equity on the same judges? If they were to continue to exercise them separately, they would be chancellors still, and law judges still; and you got rid of none of the evils of a separate organization. Another practical evil that would grow up, would be this: The judge, when attending to perform his duty at law, conscious of his equity powers, would not forbear to exercise equity jurisdiction, without form. You would ultimately come practically to what his amendment proposed. The difference would be here. The judge in the one case would seize the duty, without form; whereas, under his amendment, it would be previously designated. Better go to it at once, and direct the legislature to enact the course of procedure.

Mr. KIRKLAND, in allusion to what was said about judges seizing equity powers, asked the gentleman whether he knew of any such seizure in New-York, for the last twenty-five years, where the system alluded to had been in full force?

Mr. STETSON spoke of the temptation to do it, that would exist in the case stated.

Mr. LOOMIS here moved that the committee rise—which was agreed to.

Adjourned to nine o'clock to-morrow morning.

WEDNESDAY, AUGUST 12.

Prayer by the Rev. Mr. MORROW.

Mr. RIKER presented a remonstrance from the trustees of Union Academy, Queens county, on the subject of the distribution of the Literature fund. Referred.

The PRESIDENT laid before the Convention a report from the Comptroller, in answer to a resolution calling for a statement of the salt duties. Referred, and ordered to be printed.

CODIFICATION OF THE LAWS.

Mr. WHITE, from the special committee on the codification of the laws, made the following report:—

ARTICLE.—

§ 1. The Governor of this state, at the first session of the legislature after the adoption of this constitution, shall, by and with the consent of the Senate, appoint five commissioners, whose duty it shall be to reduce into a written and systematic code the civil and criminal procedure, and the whole body of the law of this state, or so much and such part thereof as to the said commissioners shall seem practicable and expedient. And the said commissioners shall specify such alterations and amendments therein as they shall deem proper; and they shall at all times make reports of their proceedings to the legislature when called upon to do so.

§ 2. The legislature, at its first session after the adoption of this constitution, and from time to time

thereafter, as may be necessary, shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of the said commissioners.

The legislature shall also provide for the publication of the said code prior to its being presented to the legislature for adoption.

By order of the committee.

CAMPBELL P. WHITE, Chairman.

Mr. W. said that, although a majority of the committee had agreed to this report, they reserved to themselves the right to take such action in Convention as they may deem fit.

The report was referred to the committee of the whole having in charge the judiciary reports, and ordered to be printed.

TRIBUNALS OF CONCILIATION.

Mr. KIRKLAND presented the following section, as an amendment to the report of the judiciary committee.

§.—Tribunals of conciliation shall be established by law. Such law shall be general, and of uniform operation throughout the state.

Mr. K. moved its reference to the committee of the whole having in charge the reports of the judiciary committee. But in doing so, he begged leave to say a word or two in explanation. The object of the tribunal mentioned in this section,

was to prevent litigation; and that was an object which he was sure every member of the Convention had sincerely at heart, and would unite in the means to attain. These tribunals had been established in various countries of Europe—in Denmark, Prussia, France, and Spain—and in all the countries where they had been in operation, they were sources of the greatest blessings to the people. In Denmark they were established in 1795; and it appeared that for the three years before that time, there had been 25,000 lawsuits, while for the three years immediately subsequent to that period, they had dwindled down to 10,000—a diminution of more than 15,000 in three years. If such tribunals could be established in the state of New-York, and if they would operate thus beneficially, every good man, every lover of good order, would rejoice. He offered this section, to call the attention of the Convention and of the public to this subject, that we might be furnished in a short time with authentic information in relation to the organization and mode of proceeding in these courts, so that if that information should be satisfactory, we may, by a section in our constitution, establish a tribunal designed for the great and benevolent object of preventing litigation.

Mr. SHEPARD inquired of the gentleman how he proposed to adapt these courts to the circumstances of our state. By the examination of the French courts, he thought its machinery altogether too cumbrous to be adopted here.—He hoped the gentleman would give us an outline of his proposed plan.

Mr. KIRKLAND would give him all the information he possessed. He remarked when he presented this plan, that he did so to call the attention of the public to it. He would read an extract of a report made two years since to the New Jersey Convention:—

"In each town or precinct, two persons are chosen by the people, who sit one day in each week, for the receiving of complaints, issuing summonses for the appearance of parties at the next regular day of meeting, and for hearing the parties already summoned. The courts sit with closed doors, and none but the parties themselves, or their special attorneys, are permitted to be present. The duty of the court is to hear the complaints and reply to the parties, and to endeavor to induce them to adjust their difficulties amicably. As an absolute rule, nothing that passes in the court is divulged by the members of it, and is forbidden as evidence in the courts of law. Should the attempt for reconciliation fail, the court grants to each of the parties a certificate stating that they had appeared, but did not reconcile their differences. These certificates are required by the courts of law in order to oblige parties to seek reconciliation. The fee of this proceeding is very trifling, and is paid by one or both of the parties, as may be decided by the reconciling judges. Your committee suppose that it is unnecessary for them to say any thing in recommendation of a tribunal so simple in its formation, and so evidently useful; but they cannot refrain from calling the attention of the Convention to the fact of the numberless cases which are subjects of lengthy, expensive and vexatious lawsuits, which have their origin in trifling differences between neighbors and friends, and which the amicable agency of a third party could reconcile and put forever at rest."

Mr. K. said that was all the information he now had it in his power to give, but he hoped to be able in a few days to give more.

Mr. BASCOM doubted the propriety of this reference. At an early period of the session, a

proposition, similar to this, had been brought by him to the notice of the Convention. Subsequently a gentleman from New-York and a gentleman from Kings brought forward like projects. But he was so unfortunate as to be unable to bring the judiciary committee favorably to consider it. He regretted that the gentleman from Oneida had not incorporated this section in his minority report, so that the whole question might thus come up directly. He (Mr. B.) had incorporated this principle in his own report, where he had proposed to make justices' courts, courts of conciliation. He had provided that the legislature should have full power over the jurisdiction and proceedings of these courts so as, if they saw fit, to make them courts of conciliation.

Mr. SWACKHAMER was not willing that gentlemen should thus take the wind out of his sails. He claimed all the merit of having first introduced this proposition to the Convention.

Mr. KIRKLAND disclaimed all desire or intent to take the wind out of the gentleman's sails. He (Mr. K.) held in his hand a paper, which he brought to this Convention from his home, containing this proposition. The gentleman (Mr. S.) might have been a little beforehand with him in bringing this before the Convention, but not in drawing it up.

Mr. SHEPARD had no objection to the reference, though his own opinion was that the plan was wholly impracticable as applicable to our condition as a free people.

Mr. MILLER moved a reference to a select committee. There seemed to be some difference as to the paternity of this proposition, and he would therefore send it to a select committee, on which should be all these gentlemen. He was in favor of the plan, and hoped it might receive such consideration as that it might come fairly before the Convention.

Mr. SIMMONS said it was believed this particular branch of business belonged to the women. A participation in the business of conciliation was more consistent with the more refined moral perceptions of woman than of man. Until woman can get her share in the government we shall never arrive at that state of perfectibility which is the object of some orators in the world at the present time. Woman was peculiarly fitted to produce a state of conciliation as contradistinguished from litigation.—Man was warlike and pugnacious. He wanted Texas, and California, and Mexico, and every where else [Laughter.] But the ladies were peace-makers, and were therefore "blessed."—They were the true conciliators, and if the Convention would come right up to the mark and propose a reference of this matter to a committee that was competent to appreciate it, he would go it. It had been discovered for several centuries that the sentiments of man were too coarse for such business. They might as well employ a blacksmith to repair the delicate machinery of a watch. The female character alone was adapted to it; and he rejoiced that the state of New-York—the empire state—should be the one wherever the idea should be first announced to the world and sent forward with a prospect of realizing what advantages might be expected from it. According to the "good book," great

and strange things were to take place before "the consummation of all things," and this conciliation might be one, if they could have the aid of woman, with her known practical character for conciliation, to enter upon the business, and then to work some of her finer sensibilities into man. [A voice—Excellent satire!]

Mr. BROWN interposed, and enquired if he might ask the gentleman from Essex a question?

Mr. SIMMONS: Certainly.

Mr. BROWN said some of his friends around him were desirous to know whether the gentleman from Essex was married. [Laughter.]

Mr. SIMMONS replied by referring the gentleman from Orange to the "Red Book." [Laughter.] He, however, took occasion to say that there was a mistake in that book. It was written "unmarried," but the printer had made a mistake. [Laughter.]

Mr. KIRKLAND deemed the capacity of the gentleman from Essex to judge of the qualifications of these conciliations, he having lived 60 years [Mr. SIMMONS: Oh no; not so long as that]—without taking such a conciliator to himself. [Laughter.]

Mr. SIMMONS said it must be admitted that he stood disinterested between the parties. If however, gentlemen supposed it was necessary before he could realize the advantages of such a system, to contract certain special relations, there were enough in this Convention that must be admitted to be fully competent to judge though he might not be. [Laughter.]

Mr. WORDEN said the subject of conciliation courts was worthy of more consideration than some gentlemen seemed willing to bestow upon them. They had received recently great consideration in England, and were in force in some of the countries in Europe. He recently met a gentleman of great intelligence, and extensively engaged in mercantile affairs, residing in a country where these courts were in existence, and who had given him a very minute and accurate statement, he had no doubt, of the operations and organization of these courts, from which it appears they go very far to repress litigation, and speedily to arrange those controversies that sometimes spring up between honest and well meaning men, without the costs and delays attending upon a litigation in our courts. Mr. W. said he only doubted whether they could be made applicable to the state of things existing in our state, and the nature of all the various dealings between individuals, or to all questions that arise out of our extensive mercantile transactions; but there were a class of cases which he said he believed could with great propriety and advantage be referred to these courts. And with leave of the Convention, Mr. W. said he would state the mode of procedure in courts of conciliation, and the cases that, in his opinion, might be brought to an end and wisely disposed of in these courts. A court of conciliation where they are in existence, is organized in this way—there are two intelligent and honest men appointed to hear the complaints and allegations of the parties, who appear before the court without the aid of lawyers, and each states his case and the points and questions of controversy existing between them, and the facts on which they base their claims. The judges of

the court hear their statements, and take into consideration the rights of the parties, and advise them in regard thereto and make efforts to bring them to a conciliation. No witnesses appear in court, nor are counsel or attorneys employed; and nothing that takes place is ever admitted in evidence between the parties elsewhere. If the parties agree, a statement of the agreement is reduced to writing, signed by the parties and the court, and time fixed for the payment of the amount agreed on, for which if not paid as agreed, the court issues execution very similar to that from our justices court. Mr. W. said he thought courts of this description could be organized in the towns, wherein parties residing in such towns should be compelled, before going to law, to make efforts to settle their difficulties; and, as in the countries where those courts exist, the parties should not be permitted to recover costs unless they had made an effort to conciliate their differences in the court of conciliation of the town. It is true these courts do not act compulsorily, but by prohibiting the party from recovering costs unless he makes an effort to conciliate his differences, it operates to enforce the parties into that court; and it is found that the moral sense of the community in favor of a peaceful adjustment of difficulties, induces parties to seek that mode of doing so. In this way neighborhood difficulties—personal controversies—that now disturb communities, and call in aid courts and juries, are settled and put an end to. If this system could be adopted and applied in towns, two of the eldest justices might constitute the court, or two distinct men might be elected for that purpose. The same system might be applied to counties, but he saw greater difficulties in making it applicable to the entire state, and to controversies arising between citizens residing in different portions of it. At all events it might be made to operate on these controversies arising in towns and counties, and he would not say it could not be made applicable to the state at large. The subject was worthy of consideration, and if it could be so arranged as to reach to the suppression of litigation and to the adjustment of controversies, it would do much towards repressing the spirit of litigation and the costs and vexation attendant upon long and protracted legal controversies, which often had no other result than the ruin of those engaged in them.

Mr. BASCOM was rejoiced to see this light breaking in on the judiciary committee, and he moved a reference of this proposition to them, in the expectation that they would report a provision for such a court.

Mr. JORDAN, as one of that committee, begged to be excused from the charge of this bantling. Under the report of the majority of the committee, the legislature had full power to institute as many other courts as they pleased. They could provide that old women might talk over these matters at a tea table, or that some very wise heads might advise their neighbors not to be cross or litigious. This proposition was unworthy of the consideration of this Convention, and he hoped it would be laid on the table or thrown under it. Such courts belonged only to a despotic government, where the people

were ignorant, and had a superior class over them.

Mr. BROWN desired to say one word. This plan was brought before the judiciary committee and met with no favor except from the two gentlemen who had spoken this morning, and the gentleman from New York (Mr. STEPHENS.) If he mistook not the gentleman from Ontario did not favor it, and yet he appeared here this morning as the special champion of such courts. It could clearly be demonstrated that such courts had no affinity with our institutions.

The hour of 10 here arrived, and the debate was arrested by the special order.

THE JUDICIARY.

The Convention then went into committee of the whole on the reports of the judiciary committee, Mr. CAMBRELENG in the chair.

Mr. LOOMIS, in remarking upon the propositions before the committee of the whole, and the action of the judiciary committee upon the same propositions, said that it was the intention of the latter committee, in reporting the third section of the majority report, to provide that the legislature might bring into one tribunal the jurisdictions of law and equity; and he did not hesitate to say that he believed this would produce a perfect blending of the two in the course of practice. But there existed different opinions in regard to the effect of the language of the section, and he was willing to obviate the objections which were founded upon its ambiguity, as gentlemen regarded it, by adopting a phraseology which could not be mistaken. He went on to allude to the opinions entertained by gentlemen in regard to the union of practice, and the origin of the chancery practice. He believed it was proper to have them united, because all practitioners were educated in both forms. They were equally acquainted with the forms of equity, common law, and chancery. They brought their cases in either court, as became necessary. From this class of practitioners the judges of our courts were selected, and he did not perceive the necessity for having a distinction in forms of procedure.—Those who differed in regard to this subject, placed their objections more upon terms than anything else. He would have the forms of pleading so distinct that the defendant should not be taken by surprise. Gentlemen had said that by having the two forms in the same court, the judges would first have a trial in equity and then go down to a trial by law. He did not regard this as necessary. The causes might all go on the same calendar and be tried in the same court, both law and equity cases, which would finally produce a blending of the two. Our courts of law already exercise jurisdiction in equity, in many cases, which shows that there is no real necessity for a separation of them.—Many actions in law are analogous to the chancery practice, such as actions of replevin, which returns to the party from the custody of the court, a document, and suits of partition have the same analogy to equity proceedings. The supreme court had exercised equity jurisdiction so far as to grant a decree in a case. That the distinctions in the forms of practice were not necessary was very clear to his mind, and he had an incident in mind which would show it.

He alluded to a statute passed by the legislature, doing away the distinctions between actions of trespass, or actions for wrong committed which resulted in damages, and actions on the case, by which statute the courts were relieved from much of the business which lumbered up their calendars. His desire was first, to have the question whether the two forms of practice should be brought into the same court decided, so that the system of appointing judges might be framed in accordance with it. The subject of blending the two practices might afterwards be settled. He therefore suggested that the gentleman from Clinton (Mr. STETSON) should withdraw his proposition, when he would submit another to effect what he desired.

Mr. STETSON said he did not favor the amendment which he had proposed, and did not believe that the reform which it seemed to promise could be realized in the extent anticipated by it. The forms of practice he believed were not the result of arbitrary rules, but existed in reasons behind the causes themselves. An uniformity of practice might be effected, but he did not believe that the distinction in the various actions at law and equity could be abolished.—He was quite willing to withdraw his proposition.

Mr. LOOMIS said he was confirmed in the belief before expressed, that the difference was more in words than in reality. He did not contemplate that the form should be the same in all cases, but he wished to abolish the fictitious forms under which actions were brought, which allowed of a certain printed form for all actions. There might as well be any other hieroglyphical symbol by which to proceed as to retain those under which the practice was now conducted. He expressed his obligations to Mr. STETSON for withdrawing his proposition, and submitted the following in its place:—

§ 8. The judicial power of this state shall be vested in one Supreme Court, subject to the appellate jurisdiction of the Court of Appeals, and in such subordinate courts as shall be authorized by this constitution.

Mr. SWACKHAMER'S amendment having a preference, he (Mr. S.) withdrew it, assenting to the proposition of Mr. Loomis as a modification of his own.

This being the question before the committee, Mr. MARVIN addressed the committee at great length on the plans proposed, and on one which he preferred. He said the human mind could never be employed in a more exalted pursuit than in the administration of justice among men; and it afforded him pleasure to see the calm and temperate manner in which this subject was here being discussed. There were, however, those who would reduce every thing to a mere justices' court. He thought our judicial system was one of which we have cause to be proud. We have made great reforms on the judicial system of England, and as defects are discovered let us go on and make further reforms, and not destroy. Every human system admits of improvement; but in comparison with other human institutions we are proudly preëminent. He was alarmed at the indications of opposition to trial by jury. He went on to show that this mode of trial was derived from the

Great Alfred, who established courts in every manor and township of his kingdom wherein matters of difference were regulated by the suffrages of neighbors and friends; and he was of opinion that it was an institution which we should carefully preserve. He said that one great object of law reform was to bring justice, not to every man's door, but within a reasonable distance. The laws, too, should be plain, simple and easy of administration. They would, however, under any system be in some cases obscure, and hence there must be constructions; somebody then must decide, and that could only be done by courts. Even the holy scriptures, which were written by inspiration, were the subject of varied construction, as was shown by the existence of different sects; how then could human legislators hope to avoid obscurity. He then went on to show that the complicated system here proposed, by the majority of the committee, would not answer the purpose designed, and that it would break down by its own weight in three years. Thirty-two judges were proposed, four of whom were to be set apart for the court of appeals, and these judges were to do all the duty of law and equity courts. He said the number would soon run up to sixty, and he feared such a court would be tyrannical. He was in favor of a supreme court and such inferior courts as the legislature may establish; and he spoke at great length in enforcing his views. Instead of destroying the present edifice he would improve it, and lop off excrescences. To unite law and equity would be to retrograde for three centuries. He proceeded to show how he would organize the courts, presenting, in the course of his remarks, a plan of a judiciary system.

Mr. NICOLL followed at some length, discussing chiefly the question of mingling law and equity in one tribunal. The great object of litigation was to redress a wrong or enforce a right. A party going into court for either of these objects, should not be embarrassed by mere secondary questions of the form of procedure. That could not be too simple. The road to justice should be as plain and easy as possible—unobstructed by these technical embarrassments that now obstructed the suitor's way to the court and jury. As the common law originally was, there were none of these embarrassments. All that was required was that such a party should enter into court, state his case in a direct way, and the defendant answered, and the court and jury gave judgment. Since that period, the present form of action had been introduced from the civil law. They did not belong to it and were at war with the flexibility which was the glory of the common law. Technicalities had been introduced to supply this defect, and the consequence had been that the practice of the law had become a perfect mystery. It was not until a comparatively recent period that some of the more glaring absurdities of common law practice had been abolished. This remark applied to what is known as the "wager of law"—and this was rather evaded than abolished by the invention of the action of assumpsit. The action of trover also rested on a pure fiction, invented to avoid this "wager of law." As to pleading at common law, it was a matter of technical nicety, where a party was obliged to

walk carefully, where he was surrounded by pit-falls and traps, and where a false step was fatal. The simplicity of chancery practice over the common law practice, the directness with which they reached results, would no doubt, were we to start anew now, commend it to general approval and adoption. No man would think of adopting two systems of law. The court of chancery was not as it was originally. It was a court of precedent, bound by positive rule as much as a court of law. The question here was whether we should have two separate courts, each administering a system of jurisprudence according to positive law, or whether we should amalgamate them into one court. The profession, naturally enough, started back from such an innovation, and were disposed to cling to present ills rather than fly to those we know not of. But the spirit of innovation and reform, which was working changes in everything around us, seemed to demand that the system that governed all our relations should not remain a mystery. He would not rush headlong into this change. But he apprehended no danger from a gradual amalgamation of these two systems. He believed that we had now arrived at a point when to stand still was innovation, and to go forward was the opposite. Already, by legislation, a great share of the jurisdiction of the court of chancery had been transferred to the courts of law, and the experiment had proved that there was no difficulty in completely amalgamating the two systems. Indeed, having gone thus far, the necessity was the greater for going further, as the boundaries between the two jurisdictions had become more undefined. He alluded to the statutory jurisdiction given to courts of law in cases of fraud on sealed instruments, and in suits in partition—and to cases where courts of law had assumed chancery jurisdiction. Other chancery jurisdiction would have been conferred on courts of law but for the fact that you could not accommodate your common law process to the subject matter. He believed the amalgamation of the processes of the two courts could be effectively done, and that the result would be a blessing to the community—altering no rule of law or equity—but simplifying the forms of bringing causes into court, and carrying them through to final judgment.

Mr. STRONG here obtained the floor, and moved that the committee rise—which was done.

Mr. WORDEN presented a plan for a judiciary system—the plan proposed by Mr. MARVIN and explained by him—and moved that it be printed and referred to the committee of the whole. Agreed to.

Mr. KENNEDY had leave of absence for six days—Mr. H. BACKUS for eight.

The Convention then took a recess.

AFTERNOON SESSION.

The judiciary reports were again taken up in committee, Mr. CAMBRELENG in the chair.

Mr. STRONG having the floor, spoke at length in reference to the plan of the majority of the judiciary committee. He should have liked it better had it retained in some form the county court, raising as far as practicable their character, but preserving the court itself. But,

as the report of the majority was to be the basis of the plan to be adopted, he should make an effort to point out some of its defects and to amend it in some mode that would make it more acceptable to the people. Mr. S. objected to the clause in the 7th section in regard to licensing attorneys &c. He had no objection to the courts having their own rules and regulations in this respect; but he did object to having it in the constitution, and beyond alteration. He objected also to so much of the tenth section as provided that the salaries of surrogates should be fixed by the legislature. He would leave that with the boards of supervisors. He disliked the alternative section—that in relation to the mode of appointing judges. He was decidedly in favor of electing all the judges, and that, the people demanded. He liked the section in regard to justices of the peace as far as it went—especially as it left their number and classification to be prescribed by the legislature. In many towns, one, or at most two justices were all that was required—and if there were four, the business was so divided as to be worth nothing, and suitable men could not be procured to fill them. The office of justice, on this account, often went a begging in western New York. He would leave this matter entirely to the legislature, so to regulate the matter that the people in town meeting every four years might determine how many justices they would have. But the section needed amendment. He would like to see an amendment, giving justices original jurisdiction to the amount of \$250, and exclusive jurisdiction for \$100, abolishing appeals and certioraris, and provision made for further trial and final decision in such cases, in the same town where the first trial was had, or in the adjoining town. The large amount of business now done in justices' courts, showed that they were popular, and that an increase of jurisdiction would be acceptable to the people. If there were not good juries in justices' courts, it was a very easy matter for the legislature to make them better. The present system of appeals he urged should be abolished. Mr. S. went into the details of the present practice in this respect, urging the necessity of reform, and expatiating upon the details of his substitute for the present system. He urged also that an extension of the jurisdiction of justices' courts, would tend greatly to relieve the higher courts and cheapen justice to the great mass of the people who did not use the higher courts. It was a reform which would do honor to the Convention, and the people would owe them a debt of gratitude for it.

Mr. SWACKHAMER followed—regretting that he should be the first layman in the Convention to break ground on this question; for the gentleman from Monroe, who had preceded him, if not now, had been a lawyer, and could scarcely be said to belong to the laymen of the body. And in what he had to say, he trusted it would not be supposed that he intended disre-

spect to a profession, for the members of which no man could entertain a higher regard than himself. He thought every member of the judiciary committee were entitled to the thanks of this body for the labor and effort they had given to this great subject; and for one, was free to say that no plan had been submitted by the majority, or any of the minority of that committee, that was not a great improvement upon the present system—which he regarded as a miserable failure, from beginning to end. Mr. S. went on to give his views at length, of the plan of the judiciary committee, which he said had many good provisions in it; but it fell short, nevertheless, of the objects desired by the people. He would abolish utterly the court of chancery—a proposition which he started some years ago in the Assembly. He would abolish also the present court of errors—and all the hangers-on of these two courts, who, he said, were as thick as hairs on a dog. He would prohibit the legislature from establishing inferior courts, except those which should be especially prescribed in the constitution. He would have one court, having supreme judicial power, having plain, simple forms of proceeding, intelligible to all.—He would have fixed salaries for the judges, and abolish fees. He would limit the time within which decisions should be had, in courts of law, and he would allow but one appeal. He would extend the jurisdiction of justices of the peace; and he would establish courts of conciliation; and he would have judges elected throughout by the people. And to this point he was distinctly committed to his constituents. Mr. S. urged his views on these points at great length, and with warmth and energy.

Messrs. BROWN, SHEPARD, and others, rose simultaneously when Mr. S. took his seat—the latter saying that this was a speech which we ought to sleep upon. He disliked to have a vote taken under the effects of this glowing eloquence and impassioned reasoning—and the former adding that he too was going to make a similar remark, and to move that the committee rise.

Mr. BASCOM hoped the motion would be voted down, on account of the reasons given for it. He hoped the motion would be renewed by others who could give better reasons for it.

Mr. MURPHY said his colleague had made some local allusions to which he might reply at some future time. But he desired to ask his colleague, whether in his plan of elected judges he proposed to elect for a long or a short term—and if for a short term, what period he had fixed for the duration of office?

Mr. SWACKHAMER had not determined in his own mind, except that he would be liberal, and would give them a pretty long term.

Mr. MURPHY replied that that disposed of many points of difference between himself and colleague.

Mr. ST. JOHN moved that the committee rise and report progress—which was done.

Adjourned to 9 o'clock to-morrow morning.

THURSDAY, AUGUST 13.

prayer by the Rev. Mr. PREBLE.

Mr. ANGEL presented a plan of a judiciary, drawn up by Judge Monell. Referred to the committee of the whole on that subject.

Mr. ST. JOHN also presented a plan which he had prepared. Referred to the committee of the whole, and ordered printed.

FUNDS IN CHANCERY.

Mr. MANN called for the consideration of the report of the judiciary committee on his resolution respecting funds in chancery, which had been left undisposed of for several days past, when the hour arrived for taking up the special order.

Mr. WHITE said this subject had occupied a good deal of time, and though he was desirous to express his views, he felt compelled to move the previous question.

Mr. TAGGART desired the gentleman to withdraw that motion, to enable him to make a statement, and withdraw his pending amendment, to direct this information to be presented to the next legislature.

Mr. WHITE assented.

Mr. TAGGART then exhibited a voluminous return from one circuit only, occupying one hundred and thirty pages, and containing amounts exceeding \$39,000. He went on to say that the returns from all the circuits would occupy from nine hundred to one thousand pages, and could be of no use to the Convention. They had already got all they wanted for their own action. He then withdrew his amendment, and said he should content himself with voting against the resolution.

Mr. WHITE renewed his demand for the previous question.

Mr. MURPHY called for the ayes and nays on seconding the call—and there were ayes 62, nays 22.

The main question having been ordered, and the ayes and nays called on the passage of the resolution, there were ayes 63, nays 22.

JUDICIAL DEPARTMENT.

The Convention then went into committee of the whole, Mr. CAMBRELENG in the chair, on the report of the judiciary committee.

Mr. BROWN entered into an elaborate discussion of the whole question. He advocated a union of the jurisdiction of the courts of law and equity. It was a most remarkable fact that not one of the advocates of a separate organization, had, in any portion of his argument, professed to make this separation entire. At present the vice chancellors united in their persons law and equity powers. So in the court of errors, writs from the one court were passed upon by the judges of the other. If there was so great a distinction between these two jurisdictions, that they could not be safely united, why not begin at the very foundation and make this distinction entire. He commented upon the plan submitted yesterday by Mr. MARVIN, contending that it proposed a still more intimate blending than under the present system. He reiterated the argument of gentlemen before him, that the

line of demarcation between the two courts was so obscure as to be almost beyond the power of counsel or others to distinguish it. The original province of the court of chancery was to take cognizance of frauds, trusts and mistakes. And yet our statutes had thrown business upon that court properly belonging to courts of law, while courts of law were drawing into their province equity powers, and there was now a blending in very many particulars. He cited a great variety of cases which belonged to both courts, and where each had concurrent jurisdiction. He proceeded to cite authorities in proof of his position. It was a fact that the most eminent chancellors, in England and in this country, had been those who had been most distinguished for their knowledge of the rules of common law.—It was the opinion of that eminent chancellor, Lord Campbell, that no judge was qualified to sit as chancellor unless he possessed a thorough knowledge of the common law. Such too was the decided opinion of Lord Coke. The chancellors in England had almost uniformly been those who had been attorneys-general and the masters of the rolls—men eminently distinguished for their common law attainments. In our country, the union of the two courts had already been alluded to. In our own state, chancellor KENT and Mr. SANDFORD were taken from the supreme court and made chancellors. Chancellor WALWORTH's education had not been sedulously devoted to chancery practice; and he was taken in the first place from a county court, and according to his information with but little knowledge of chancery law, as he himself declared in a letter written at the time he was placed upon the woosack. A knowledge of the common law was deemed very essential to a proper exercise of the duties of a judge in a chancery court. He maintained that if it was necessary or important to have common law and chancery practice in separate jurisdictions, then we should establish them separately, but otherwise, as he believed to be the fact, he could not assent to it. He then proceeded to answer the argument made yesterday by Mr. MARVIN, and described the difference between the wants of this state, in the formation of a system of law, and those of England, where property is held in large masses, and chancery suits may hang over an estate for centuries. Here, where property is held by different tenure, and is constantly changing hands, a simpler and cheaper method is required. The gentleman from Chautauque predicted that the system proposed by the committee would break down for want of force. His (Mr. M.'s) plan provided for twenty-four judges only, while that of the committee provides for thirty-two. Then if this force of thirty-two is not sufficient to sustain the system, how can he expect to support one by only 24?

Mr. MARVIN said he had not fixed the number of the judges, by his plan, but had left it to the legislature. His objection to the plan of the committee was not so much on account of the number of the judges, but as to the mode of applying that force. The plan of the committee

would not develope the whole strength which was employed. He could, he thought, make a system by which the same number would have greater force. His plan admitted of an increase of the number.

Mr. BROWN went on to object to the plan of Mr. M. that it would build up local, provincial courts, and thus lead to endless confusion in the decisions. The plan of the committee on the other hand, provided that there should be but one court in the whole state, so that from Suffolk to Chautauque and from Tompkins to Clinton there would be the same judges and uniform decisions. He then proceeded to give his views as to the question of appeals. They must be allowed in all cases. It often happened, that although the matter in controversy was only 12 1-2 cents, yet the suit involved franchises to the amount of hundreds of thousands of dollars. Besides, one hundred dollars was worth as much to a poor man as a hundred thousand to a rich man. The only way to stop appeals, was to have but one court, as proposed by the committee, where there was but one appeal in effect. Mr. B. commented upon the modus operandi under the two systems, and went on at great length in review of the several plans before the committee.

Mr. MARVIN desired to make a few remarks upon the practical operation of the systems reported by the committee. He believed the force which they suggested, would be insufficient, as they had organized it. He maintained that equity could be better administered by a separate organization than to commingle the two. Under his plan the mode of doing equity business was precisely as the gentleman had indicated. But there must be some review. The gentleman says the judge would send up the evidence to the court in bank. Mr. M. appealed to the committee if the judge having the evidence was not the man to make the decree. But under the report of the judiciary committee this cannot be done, unless the judge decide instanter.

Mr. KIRKLAND corrected the gentleman.—The committee proposed to dispose of these equity cases precisely as of cases in courts of law and Mr. K. showed what the mode of proceeding would be.

Mr. MARVIN asked who made the decree?

Mr. KIRKLAND said instead of being made by one judge as now, it was made by the court in bank, where the party had the opinion of three judges instead of one. And from that court there lay only one appeal to the courts of appeal.—This showed the symmetry of the whole system.

Mr. JORDAN also explained what he understood would be the practical operation under the plan proposed by the standing committee.

Mr. MARVIN continued pointing out what he deemed the defects in that plan. He insisted that it was of the first importance that the judge hearing the cause, should make the decree. All were agreed that we must dispense with the present system of taking testimony by examiners. He was confident that under the system proposed by him, all would work well and harmoniously.

Mr. RUGGLES, in answer to the remarks of Mr. MARVIN and Mr. PERKINS, said the only

objection which could apply to the system adopted by the committee, was from the mode of practice, and not from the number or force of the judges. He thought he could, in a few words, show that this objection was not well founded, and that there could be no good reason why a case might not be as well determined by the judges of the supreme court; and he proceeded to state the method in which causes would be disposed of. The gentleman from Chautauque, in assuming that there was a difference in regard to the convenient location of the supreme court judges in the one place and his president judges in another, had assumed what was without a foundation. His president judges had several counties in his district, and would not be at hand at all times where a cause was tried. Mr. R. then went into a calculation of the time which would be occupied by the several judges in attending their several courts. By the present system, the several courts occupied in their sessions 1800 days in each year. He supposed there could be no doubt that the force provided in the report of the committee, could perform all the duties which were performed by the supreme court, circuit courts, the common pleas and general sessions in the same time which these courts now occupied,—(he was willing to be liberal in his statements, but he did not doubt in the least that they would require not more than half the time) and he made a calculation of the time which would be occupied by each of the judges of the several courts, in which he supposed that 144 weeks would be the whole time, which, divided among 28 judges, gave five weeks to each judge who practiced in law and equity. He supposed that it would take one-third the same length of time in chancery practice. In all the courts, he had given 27 weeks to each judge, which allowed him the remainder of the year for deliberation. One difference between the system of the gentleman from Chautauque and that of the committee, was that in the latter the judges of one court might be called to assist in another, when there was a pressure of business. In that of the gentleman from Oneida he could see no substantial difference.

Mr. MANN had but a word or two to say. He considered the report of the majority of the committee as worthy of much consideration. It proposed a material change in our judiciary system and for the better. And he could say the same of the minority reports. For one he felt much indebted to all these gentlemen for their labors and the result arrived at by them. He was for abolishing the courts of errors and of chancery. But we must have equity powers somewhere and he would confer them upon courts of record. We must have a supreme court, and he would give it equity powers. If it was thought proper to retain the common pleas court, he thought the plan suggested by Mr. MARVIN the best that had been proposed. But he rose to suggest that the same privileges should be extended to the city of New York that were enjoyed in the country. He would have justices of the peace elected in every ward, to hold courts therein. He would extend their jurisdiction to the amount of \$150 exclusively, and concurrent jurisdiction somewhat farther. He believed such courts would be of great ad-

vantage in the disposal of minor causes in that city. He would not allow of more than one appeal from these justices courts.

Mr. SHEPARD followed at length in a general explanation of his views upon the proper judicial system required for this state.

Mr. J. J. TAYLOR, said he did not rise to discuss fully the great and important subject that was then before the committee. After the very able and elaborate manner in which it had been treated by several of the eminent legal gentlemen upon this floor, it would ill become him to do so. But the subject is one of vital interest to the people of this great state, one to which we should each and all of us, with honest hearts, bring our best efforts. He purposed therefore, in offering a slight amendment to the section of the majority report, more immediately under consideration, to make a few general remarks.

It has been well remarked (continued Mr. TAYLOR) in the course of this debate, that if we would cure existing evils, we must first enquire what those evils are, and whence they originate. The present judiciary system was admitted on all hands, to be extremely defective. In its practical workings, it does not answer the purposes for which it was designed. We must then enquire what its defects are, if we would remedy them. One great evil to be remedied is the accumulation of business in the higher courts, and consequent upon this, the delay and expense attending the decision of causes. The supreme court and the court of chancery, have had thrown upon them a mass of business for many years past, which no learning, no capacity, no industry on the part of the judges of those courts, could dispose of. This evil has at length become so great that the delays of justice, in these courts, amount not only to a denial of it, but in many instances to something worse. The plain, obvious remedy for this delay, is to increase the judicial force, and to make it enough to discharge all this immense mass of business. This most obvious remedy, the committee have attempted to apply—and as it seems to me, successfully. But another remedy is, to improve and elevate the character of the inferior tribunals, and this remedy, in my poor judgment, has not been sufficiently adverted to, either in the discussions which have been carried on in the community generally, or which have been had on this floor. Having been more familiar with these tribunals, the courts within the counties, and with their practical workings, than most gentlemen who have addressed the committee, and whose business has been more in the higher courts, I may be permitted to point out some of their defects, which have fallen under my observation, and to suggest such remedies as may occur to me.—Our justices courts are far from being what courts of justice, of even the lowest grade, should be. In saying this, sir, I must not be understood as complaining of the magistrates who hold these courts. They are all that we can expect them to be, under the system. With four justices to be elected in each town, however small, and with the little inducement which exists for men to take the office, or when they have it, to qualify themselves for the discharge of its duties, what more can we expect of them?

With a view to remedy this evil as far as we may, I incline strongly to the adoption of the suggestion of the gentleman from Monroe, (Mr. STRONG) to reduce somewhat the number of justices. One should probably be elected in each town, whatever may be its size. All beyond that might be made to depend upon the population of the town, fixing such a ratio as considerably to reduce the present number, and limiting the number in the other direction, so that no town should elect more than a given number—say four. This would make the office more desirable, both upon pecuniary considerations, and as a post of honor and distinction—and would probably, therefore, draw to it better qualifications. May we not hope it would tend also to lessen the large amount of petty litigation with which our state is afflicted? That litigation, permit me to say, Mr. Chairman, is no trifling evil; and let me say, too, that the expenses of litigation in justices courts are by no means small, especially in comparison to the amounts in controversy. Why, sir, since the practice has been introduced here, I may be allowed to mention an instance which occurred in my own county, within the last two years. I do so not because I think it establishes any general rule or principle, but it amounts to as much as the cases which have been cited as occurring in higher courts; it is this: Two neighbors differed, honestly, I believe, about the ownership of a pair of yearling calves, worth together, perhaps, ten dollars. They went to law about it, before a justice of the peace—a jury disagreeing, they kept at law about it, all the time before a justice of the peace, till they had expended in the litigation about three hundred dollars each, and then, not having been able to get a verdict, they settled the matter amicably between themselves, and that too, without the aid of a "court of conciliation." This statement I have from a magistrate before whom the cause was tried. But there is another evil existing in the justices' courts, greater, perhaps, than all the rest, and for which I am not prepared to suggest a remedy. I mention it mainly in the hope that some gentleman of more ingenuity than myself, may suggest one. It is the bias that is likely to affect the mind of the justice from the fact, that while he is the judge, he is also to some extent the ministerial officer of the court, issuing its process and receiving fees and perquisites for his services. This Convention will, with entire unanimity, I do not doubt, take from all higher judicial officers, the right to receive any fees or perquisites of office, and have them paid entirely by fixed salaries. We shall no longer suffer the judicial ermine to be soiled and tarnished by these unseemly pickings. I most heartily approve of this reform. It will do much good. Had it been introduced only so far as to require taxing officers to tax costs without fee or reward, as was proposed by an honorable senator in another hall of this building, six years ago, it would have prevented to a very great extent, cases of over taxation, and would have saved us, particularly, of the legal profession, much of the reproach we have had to encounter. But the time has come to go farther, and extend this principle to all fees and perquisites. Would that it could be extended to

justices of the peace. I have no distrust of justices over other men and other officers. I know of no reason for speaking disparagingly of them. But they are men, subject to be influenced like other men. Let us look a moment at the influences which are brought to bear upon them.—The plaintiff goes to the justice with his complaint against his neighbor. If the justice will listen to him, he will surely tell him his side of the proposed litigation. Add to that, that he is bringing to the justice a job for which he is to receive fees, out of which he is to make money. Perhaps he is in the habit of bringing him business to the amount of hundreds of dollars in a year. He is, to that extent, his patron. Is the justice fit, under such circumstances, to sit in judgment between such a man and his opponent, in the enjoyment of no such advantages? I speak in disparagement of no justice, when I say that it is not in human nature that he should be—and I hope, as I said, that some remedy may be suggested for these evils. I may be thought to be spending too much time upon these, in some sense, inferior tribunals. I say, “in some sense,” for in one important sense, they can by no means be considered inferior.—To the great mass of the people, they are tribunals of at least equal consequence to any other. Small as is their jurisdiction, collectively, they adjudicate upon a greater amount, perhaps, in a year, than any other grade of courts in the state. Before leaving the subject I have one word to say to the proposition of the gentleman from Monroe, (Mr. STRONG) to enlarge the jurisdiction of these courts. He would extend it to two hundred and fifty dollars. Now I am not prepared to do this, at least not here. The extension, if it is to be made, can as well be done by the legislature, and better, for to do it safely will require enactments in detail, which no one would think of putting into a constitution. But I have another reason. The poor man who is compelled to litigate about a hundred dollars, is entitled to just as good a court to litigate in, as the rich man who goes to law about his tens of thousands. Justices’ courts, from their very organization, from their inevitable defects, to some of which I have alluded, are not, and I fear cannot be, as good courts, and as safe courts, especially to the poor man who has no patronage to bestow, as the higher courts ought to be, and I hope hereafter will be. Then it seems to me these higher courts, and their practice and proceedings, can be so reformed and cheapened, that litigation and collections in them, for small amounts, will cost little if any more than in justices’ courts. If this can be done, will it not be better than to enlarge still farther the jurisdiction of justices? If it cannot, then let the legislature extend their jurisdiction. Indeed, constituted as our courts of common pleas have been and are, it is not at all wonderful that the jurisdiction of justices has been sought to be extended. Nobody can give any good reason why the jurisdiction of the common pleas, as at present constituted, should be greater than that of justices of the peace.—The courts of common pleas, generally, I believe, are no way superior to justices’ courts, except that the law gives them a superior jurisdiction. In point of capacity, of ability to per-

form well judicial labors, in general they are not superior. Perhaps we have no other tribunals so utterly incompetent to discharge the duties thrown upon them, as most of our courts of common pleas. From this result many evils. One is, that it encourages the carrying up of causes from courts of justices of the peace, when they ought not to be carried up. I have always found it more difficult to sustain a judgment of a justice, which ought to be sustained, than to reverse one which ought to be reversed. Judges not properly qualified for their stations, from a natural love of exercise of power, or from some other cause, are always prone to reverse justices’ judgments, and thereby to encourage this oppressive species of litigation.—Another evil is, that nobody is satisfied with the decision of a court of common pleas. It may be right, but it is just about as likely to be wrong; and the advice of the counsel, if he thinks it wrong, is of course to carry it up. If the purse of the client holds out, a burthen is thus thrown upon our overburthened supreme court. If these courts of common pleas are to be continued, they must be reformed. Many gentlemen think they cannot be dispensed with, and perhaps with reason. There seems to be a necessity for something like the common pleas court, as a court; but I would abolish altogether the county judgeships. Let the supreme court judges, provided by the majority report, hold the courts of common pleas, and preside in the oyer and terminer and general sessions of the peace. In the criminal business, let them call to their aid two justices of the peace, or other county officers. This would make a saving of expense over keeping county judges in attendance through the whole court, and would answer every purpose. But if it should be found that the judges of the supreme court cannot hold these courts, and discharge properly their other duties, let there be power given to the legislature, in that case, to provide for the election of president judges, in districts, composed of several counties, to hold the courts of common pleas, and preside in the general sessions. Of the two methods, however, the former is unquestionably best; and in my judgment it would be better to enlarge the number of supreme court judges, than to provide a different and inferior grade of judges. Unquestionably it is best, so far as it is possible, to have but one grade of judges. The best are none too good for the poorest and humblest, as well as for the richest and most elevated citizen. Different grades of judges encourage that great evil, under our present system, successive appeals. Of course, there is less confidence in the lower than the higher tribunals; and of course there is a temptation to appeal from one to the other: hence delays and costs. By having as few grades of courts and judges, as we consistently can, appeals and litigation are discouraged in the only way consistent with the rights of individuals.—If possible, then, let the supreme court judges hold and preside in the county courts. But as some gentlemen suppose this cannot be done, I have prepared an amendment to the fifth section of the report of the majority of the judiciary committee, authorizing the legislature to provide for the election of district judges. One of the

unfortunate changes in the judiciary made by the Convention of 1821, all agree, was the adoption of the circuit judge system. The judge at the circuit should unquestionably be a judge also upon the bench—and the judge on the bench should as surely be judge at the circuit. Else the judge on the bench becomes a closet lawyer, to some extent ignorant of the common affairs of life and of business transactions, and the judge at the circuit, a bad lawyer, not sufficiently learned in the rules of law. Again, there is much undoubtedly in the idea of the gentleman from Seneca, (Mr. BASCOM) that the judge who tries the cause should be at least as good a judge as the judge upon the bench. His reason for this opinion, that the judge at the circuit tries more causes than the judge on the bench, is a good one. But there are other reasons. The judge who tries the causes has much the harder task to perform. In the first place, he has certainly all the questions of law to decide that the judge in bench has, and probably many more. He can know nothing of them beforehand, and he has to decide them off hand, without any opportunity for examination, or consultation of books, and that generally upon very imperfect argument by counsel.— Besides all this, he has the facts of the cause to take care of as he goes along. He has too, his minutes of evidence to keep, of itself almost work enough for one man. So great is this last labor, that Lord Brougham, (then Mr. Brougham,) nearly twenty years ago, in the British House of Commons, in his great speech upon legal reform, proposed that clerks should be provided to keep minutes in short hand for the judges. But how is it with the judges upon the bench? The points raised before them are all on paper. They have no facts of the cause to watch as they come out, no minutes of evidence to take, the points of law are fully and elaborately discussed before them, and they have ample time to consult their libraries and weigh and deliberate upon their decisions.— Tell me whether if there is to be any difference, the judge at the circuit ought not to be the greater man, than the judge on the bench?— But all we can do, is to make him the same man, and this the report of the majority of the committee does do, and in that it has my hearty concurrence. I wish, Mr. Chairman, this principle of having the judge on the bench at the same time a judge at *Nisi Prius*, might be extended to the court of appeals, provided in the majority report—especially to those of the judges of it, who are to be elected in the state at large. Perhaps it may be, but he feared that it would, in practice, be found impossible. For this reason, it would perhaps, be better to take the whole number of the judges of the court of appeals from the districts, one from each district. They would then have had previous experience at the circuit, as well as on the bench of the supreme court. And there is another reason in favor of this. We are about to introduce the system of electing judges, and he was glad that we were. The change was not only demanded by public sentiment, but is right in itself, and the only system consonant with our theory of government. Upon this system, there is something in the idea of equal representation upon the

bench, as well as in the halls of legislation—and if we elect four judges from the state at large, and take four from four districts, and none from the other four, the representation is not equal. Nor would alternation among the districts altogether remedy the evil, for all should be represented alike, at all times. Again, the election of judges in the state at large, is not, in my judgment, the best mode. The candidate will not in that way be sufficiently known to most of the electors. This is an important consideration; and yet, in securing this object, we must take care that we do not run into difficulties. If we make our districts too small, we shall be liable to have judges elected upon local excitements. If for instance we should adopt the single senate districts, as judicial districts, as recommended by the gentleman from Seneca (Mr. BASCOM), would there not be this danger? Rensselaer is a single district, Albany another. Have there not been times, within the last few years, when it would not have been safe to elect judges in them? It cannot be said that it is equally safe as it is to elect senators. The judge is, in some sense, a one man power—he holds his courts, in part at least, alone, with nobody to restrain him, or temper his action. The senator is but a constituent member of a body, and of himself can effect nothing. In my judgment the majority report is about right in this particular, so far as it respects the election of the judges of the supreme court. The districts are not so small as to create danger from local excitement, not yet so large that the candidate may not be sufficiently known to the voter. As to the proposition to unite the law and equity jurisdictions in our tribunal, he had not much to say. No reasons have yet been assigned for doing so, satisfactory to his mind—and he could see nothing to be gained by it. He feared it might introduce confusion and difficulty, that might be the means of causing an utter failure of the system. Yet, if the majority of this Convention shall think otherwise, I shall cheerfully acquiesce in this determination, and use my feeble powers to aid in perfecting the system, and giving it a fair trial. But that the practice of the two courts can be so blended as to make one practice—that they can, to use the language of the gentleman from New York, (Mr. O'Conor,) “be blended in one uniform, harmonious practice,” I have no belief. The ends to be attained by the two modes of proceeding are different,—what objection can there be to making use of different and appropriate means to attain those ends? Why compel a man to take one road to all places? It has been often asserted, on this floor, that the only distinction between law and equity, was in the mode of proceedings. This is not strictly true. The rules of law by which the two courts are governed, are different, to some extent. In the main, they are the same, but not altogether. Take for example the common case of land held under contract to purchase, as it is termed. The vendee in possession, though he may have paid part or all the consideration money, is, by the doctrines of the court of law, but a tenant at will, liable to be turned out at any moment, and lose all his improvements, and is subject at all times to have his land sold to pay the debts of his vendor.

He has no interest whatever in the soil. But in chancery his rights are perfect. If he has paid all, or any part of the consideration money, he is, to that extent, the owner of the soil. And it is only in a court of chancery, that the rights of a very numerous class of comparatively poor men in this state, holding these land contracts, have any protection. [Mr. TAYLOR further illustrated this subject by further examples and said.] Let us not then abolish this jurisdiction, whatever court we may give it to, while our rules of law remain as they are. We cannot change them, here, in this Convention. If it can be done at all, it must be done by legislation. And, if it can be done consistently with the public good, let it be done. But let us preserve an equity jurisdiction, until it is done.

Here Mr. T. (the hour of two having arrived) gave way to a motion to rise and report progress.

The committee rose, and the Convention took a recess.

AFTERNOON SESSION.

Mr. J. J. TAYLOR resumed his remarks. He said he was satisfied with the 3rd section of the majority report, with the slight amendment which he should propose, if the jurisdictions of law and equity were to be united in one court. But he must not be understood as advocating a chancery court or jurisdiction, such as that which we now have. That jurisdiction had doubtless been too much extended. He would bring it back to something like what it was in the days of Lord Hardwicke. At the same time he must not be understood as censuring the present chancellor. If he had assumed any jurisdiction, by construction or otherwise, the legislature had thrown upon him much more. That court had been found a convenient receptacle for everything that had no appropriate place anywhere else. It was capable of being adapted to almost any business—and he submitted whether this very capacity of adaptation was not an argument in favor of rather than against the jurisdiction—and whether a great, growing and highly commercial community like ours did not need some such jurisdiction. The proceedings in chancery, too, might be much simplified, shortened or improved. He desired it might be done, and that in every possible way the expense of litigation and business in that court, and in all others, might be lessened. He would abolish examiners in chancery and perhaps masters to. But it was an error to suppose there was any great technicality in these proceedings—anything that could not be easily comprehended by a little study. They were, in fact, much less technical than proceedings in courts of law. He would not, however, on that account abolish the latter, and make everything a chancery procedure, as had been substantially proposed by the gentleman from New York (Mr. O'Connor.) If the desired end could be obtained by the direct, simple process of the common law, by all means let it be done. Let us, in every case, make use of those means which are best adapted to the end to be accomplished. This is done in every other business—why not in proceedings at law? He was satisfied that the two jurisdictions could not be blended so as to form one single mode of

proceeding—and he feared very much that the attempt to unite them in one court would not only prove a failure, but bring into disrepute a judiciary system otherwise well constructed. Chancellor Kent, universally acknowledged to be one of our most eminent jurists, had confessed that when he was appointed chancellor he was obliged again to become a student to qualify himself for the discharge of his new duties, though he had been chief justice of the state. Is it safe then to give both jurisdictions to one set of judges? Mr. T. found himself fortified in his views on this subject by those of many of the great men who framed our present constitution, and he read from the debates of the Convention of 1821 the remarks of Mr. Van Buren, in which he pronounced the court of chancery the chief corner stone of our judiciary; and also the remarks of Mr. Van Vechten. He called attention of members to these debates. The United States courts had been cited as an example of the union of the two jurisdictions, but it was admitted, he believed, by the ablest judges of those courts, that had they the general law and equity powers which exist in the states, they could not well get along. From the very nature of the U. S. government, their powers were limited. But after all, it was the will of the majority to unite the two jurisdictions in one court, let the experiment be tried. Nobody would be more ready to hail its success, than he would. It had been objected to the preserving the two jurisdictions, even in the same tribunal, that they ran into each other, and it was difficult, sometimes, to define accurately the line between them.—This difficulty had been greatly overrated, though he admitted there was something in it. Is there anything in this world without its imperfections? The same objection might be made to the colors of the rainbow. Who can define the line which separates them? But is that any objection to the colors themselves?

Mr. T. had a few remarks to make on the report of the majority of the committee, and he should be done. He had said he would abolish county judges—certainly he would not have more than one, and make him elective by the people. But he preferred to have none. Some of their local duties might be discharged by the surrogate, who should also be made elective, as the report provides. Others might go to other officers. One reason for abolishing county judges was, that their judgeships will not support them, and, if lawyers, they must be allowed to practice law. He was not willing to have any judge at the same time that he was judge, a practicing lawyer in any court. No man can be trusted with suitors before him, as judge, who are his clients in other causes. No man should trust himself in such a position. Human nature was too weak for it—and if it were not, the judge should be, like Cæsar's wife, not only pure, but above suspicion. He would prohibit all judges from practicing as lawyers or counsel in any court. Justices of the peace should at least be prohibited from practicing as counsel in justices courts. He would go with the gentleman from Monroe, (Mr. Strong,) to strike out of the report the clause authorising the judges to license practitioners in

their courts. He had for a long time believed these licenses useless, if not worse. They may serve to deceive the public, and give credit and employment to men who do not deserve it. He would let any body practice law, as he would let him pursue any other calling. If he is worthy of employment, he will get it, if not, he must content himself without it. He would not have the lawyers "a privileged class," as they had been called, even though the privilege were only to work hard all their days, and die poor. He concluded by urging mutual yielding of preconceived opinions and views, in order to the perfecting of some one of the plans submitted, or a combination of them. He regarded either of them as a great improvement upon the present system, and he felt that we were greatly indebted, and that the people of this great state would consider themselves indebted, to the judiciary committee for the great labor they had bestowed so successfully upon this important subject. He preferred the plan of the majority of the committee, with some slight alterations, not at all interfering with the general plan. But he was willing to yield his individual views, so far as he consistently could, for the sake of harmonizing on some plan which should suit a majority. He rejoiced to see this spirit of conciliation pervading this debate and the Convention generally.

Mr. FLANDERS congratulated the Convention on the spirit that had thus far been manifested in coming to the consideration of this momentous question, and on the auspicious result which it indicated. He conceded the defects in the present system, and all seemed to be animated by a desire to establish in place of it, a wise, efficient, economical administration of justice. He concurred substantially in the plan of the majority of the judiciary committee. As to the union of law and equity jurisdictions, it met with his warm approval. He desired to see the form of proceeding the same, whether the suitor were in pursuit of legal or equitable redress. He supposed a spirit of conservatism was the true secret of hostility to this change. A legal mind, thoroughly imbued with the prejudices of education and habit, naturally revolted at the idea of an assimilation of the forms and modes of procedure in the two courts. But to persons not bred to the law, and unaccustomed to its fictions and technicalities, the only wonder was that we should so long have rested quietly under the absurd and ridiculous forms of the common law practice. He preferred the

plan of electing judges proposed by Mr. BASCOM, and expressed his high gratification at the remarks of Mr. J. J. TAYLOR as to the importance of elevating the character of the inferior courts—and especially in regard to the abuses attending the practice in justices courts. In connection with this subject, Mr. F. alluded to a plan of his own, which he designed to propose at the proper time, having in view the establishment of town courts, having a limited jurisdiction, with stated terms, with a clerk, and subject to the usual regulations for drawing jurors, &c., the judges to be elected in districts composed of one or more counties.

Mr. WATERBURY then took the floor—urging the Convention to direct their earnest attention to the lower courts, where the great mass of litigation came from that was constantly accumulating in your higher courts, and involving parties, by costs and delays, in utter ruin. He was for going down to the root of the evil, which was in the lower courts. The ends of the law should be within reach of every man, and at a cheap rate. It could not be necessary, nor was it endurable, that a man forced into the court, to obtain his rights, should be beggared in order to settle what was called a principle of law. He knew a neighbor who was well off in the world who was made the victim of a principle of law, which it cost him all he was worth to get established, and he died a beggar. For one, he did not want law established at the expense of his all. It seemed to him it should be done at a cheaper rate to the individual and more at the expense of the public, who were the gainers by it, if the law thus established was worth any thing. If not, nobody ought to suffer for it. He went for a system which would enable us to settle our difficulties near home. The poor did not want to be "lawing it" at your county seats, or at the capitol, if they could settle their controversies among neighbors and friends. He went for this court of conciliation; and he was astonished to hear it spoken of as women's work. One of the brightest messengers the world ever saw was the messenger of conciliation and reconciliation, from God to man. He again urged that this body would direct their main attention to our domestic courts—believing that there all the difficulty lay, and that then we should begin the work of reform.

The committee rose and reported progress, and the Convention

Adjourned to 9 o'clock to-morrow morning.

FRIDAY, AUGUST 14.

Prayer by the Rev. Mr. PREBLE.

FUNDS IN CHANCERY.

The PRESIDENT presented a communication from the Chancellor, accompanying reports of registers and clerks in relation to the funds, of which a particular account was called for by Mr. MANN's resolution, adopted yesterday. The communication was as follows:—

SARATOGA SPRINGS, August 12, 1846.

Dear sir—I see by the debates in the Convention, of Monday and Tuesday, that a resolution is under dis-

cussion in relation to calling upon the Registers and Clerks in Chancery, for a statement of the items composing the fund under the control of the Court of Chancery, as contained in my statement of July last. It would require many month's labor, and the examination of the proceedings of the court for many years back, to get a much more perfect statement of the nature of the funds, and the owners and claimants thereof, than is contained in the annual statements which the Registers are required to furnish to the Chancellor, and the Clerks to the Vice Chancellors, under the 127th rule of the court. I have procured most of those annual statements, and herewith transmit them to you for the use of the Convention. I also send you a state-

ment of about half a million, which is deposited in the Trust Company by Receivers and others, under the orders of the court, upon trust, to accumulate for the benefit of the creditors of broken banks or others, who may eventually be found entitled to the same, but which does not stand in the names of the Registers or Clerks, and will not therefore be found in these accounts. These accounts will, I think, be found sufficient to furnish the Convention with the information desired, so far as it could be obtained from the records of the court, in time to be of any use in the deliberations. Most of the funds, except in suits which are yet pending and undetermined, is vested upon trust, to pay annual allowances out of the income, and to pay over the principal, after the termination of particular estates thereon, or to accumulate for the benefit of infants until they become of age, or for unknown owners in particular suits, or for creditors who are entitled to come in and establish their claims, &c. It will also be seen by the account of the Assistant Register and Clerk of the first circuit, that there is about twelve thousand dollars, which he denominates the dead fund, belonging probably to various individuals and suitors, who are unknown to him, and for which no claims have been made for the last six years. The management of the suitors' fund, which must always be large in this state, and particularly in New York, requires great care to preserve it from loss. But I believe no losses of any amount have been sustained in the Court of Chancery, though many millions have, from time to time, passed through the hands of the Registers and Clerks. It may, however, be a proper subject for the consideration of the Convention, whether it may not be expedient, considering the importance of the subject, to have an officer somewhat analogous to the Accountant General in England, to take charge of all the funds brought into court and required to be invested for the benefit of suitors in all of the courts of the state. Many persons who would make very competent registers and clerks of court, would not have the financial talent and the requisite responsibility to manage these large funds, and to keep them properly invested for the benefit of suitors and the unprotected classes to whom a great portion of such funds generally belong. And it is impossible for the courts themselves to watch over and superintend such investments.

am, with respect, yours

R. HYDE WALWORTH, Chancellor.

Hon. JOHN TRACY,
Pres't of the Constitutional Convention.

After a brief conversation between Messrs. JONES, MANN, and WORDEN, this communication, with the accompanying documents, was referred to select committee of three.

Mr. HART presented a remonstrance from the trustees of Fulton Academy, Oswego county, against the withdrawal of the Literature Fund from academies and colleges. Referred to the committee of the whole having in charge the report of the committee on education.

Mr. W. TAYLOR presented a like remonstrance from the trustees of Manlius Academy; which received a like reference.

ACCOUNTANT GENERAL.

Mr. WORDEN moved that the select committee to which was referred the communication from the Chancellor, respecting the funds in chancery, be instructed to take into consideration and report upon the propriety of the appointment of an Accountant General. Mr. W. said he threw out the suggestion a few days ago that a public officer was necessary to take charge of the funds paid into court; and he adverted to the fact, that in England such an officer was appointed to take charge of the moneys that were paid into court in the progress of litigation. By means of such an officer, the difficulties with which they had met would be obviated; for there would be a public record of all moneys, and the names of the owners, so that every one could see what was the amount, and to

whom it belonged. He believed there was much in the suggestion of the Chancellor, that registers and clerks were not appropriate persons to manage such funds.

Mr. CHATFIELD opposed the resolution.

Mr. BROWN thought such an officer would not be requisite; nor would he consent to the establishment of a bureau. He called attention to the proposition which had been made to vest all these moneys in the state treasury.

Mr. WORDEN wanted this money kept under the supervision of law, and not of individuals, to subserve individual interests. The gentleman from Chautauque (Mr. PATTERSON) had in his possession \$600,000 of money, which was the subject of litigation; and it ought not to be in private hands. There ought to be some recognized officer to have charge of these funds.

The resolution was adopted.

SERGEANT-AT-ARMS.

Mr. MANN offered the following resolution:

Resolved, That HIRAM ALLEN be appointed Secretary of this Convention, to take effect on the 1st of June last. The duties of sergeant-at-arms, and keeping and distributing the public documents, shall be assigned to this Secretary. His compensation as secretary shall be in full payment for his services as Sergeant-at-arms and Secretary of this Convention.

Mr. M. said the Comptroller had scruples about the payment of the sergeant-at-arms, and it was necessary to constitute him a secretary to entitle him to his remuneration.

Mr. PATTERSON said at the commencement of the session the gentleman from Herkimer (Mr. HOFFMAN) said such an officer was necessary, the Comptroller differed from that gentleman, and it might be that he properly differed. The sergeant-at-arms however had faithfully discharged his duties and must be paid.

Mr. JONES:—It may become necessary to call our clergymen secretaries!

Mr. PATTERSON:—Yes! perhaps so.

Mr. SIMMONS could not vote for such a resolution. He could not believe we had a Comptroller so weak as to be satisfied with the mere change of the name of an officer. If the Comptroller would not pay, the next legislature certainly would.

Mr. MANN:—The gentleman forgets that we have already passed a similar resolution calling our librarian a secretary, and for the same purpose.

Mr. SIMMONS:—Well, there is a propriety in calling a librarian a secretary. The duties of the two are somewhat similar. But when you come to call a soldier a secretary, and a gun a goose quill, it was too small business.

The resolution was adopted.

THE JUDICIARY.

The Convention again went into committee of the whole on the judiciary article, Mr. CAMBRELENG in the chair.

Mr. STOW resumed the debate and entered upon a discussion of the tenure of office of judges and the organization of courts. In the consideration of this subject he said it was necessary that they should ascertain whether the evils and difficulties were inherent in the subject; whether they arose from the organization of our courts or from the number of those

who administer our laws, or from the laws themselves. If from the organization of the courts, the duty would devolve on this body; but if from the laws, the remedy must be found with the power by which the laws were made. He glanced at the forms of our government, which is the freest and most complex, and necessarily involved complexity in its tribunals. We live under two governments with relations to each and the various separate states which compose our union. He illustrated at some length his position that a civilized government must necessarily be an intricate one, and went on to show that the majority of the judiciary committee had run into the evil of attempting to do too much. He examined the organization of our courts and first of the common pleas.—He said its evil was not a lack of jurisdiction either over subject, matter or person; its rules of evidence and mode of procedure were similar to the supreme court, and the common pleas had been emphatically the tribunal of the people. The great evil was in not having competent men to preside in those courts—an evil which would have destroyed any other court.—He pointed out how he would elevate the common pleas. Local judges were necessary, and these local judges he would elevate by making one a surrogate and the other a supreme court commissioner. The president judge he would make itinerant. The advantages of this were seen in England, where a judge was not allowed to preside in a court in his own neighborhood—the place of his birth and his residence. John Wesley too, well understood this principle when he adopted the itinerant system amongst his ministers. He next examined the organization of the supreme court, which he wished to preserve even though he should expose himself to the charge of ultra conservatism. He would, however, make great changes in its circuit system. Supreme court judges should hold the circuits; they should mingle with the people without becoming so familiar as to be despised; they should interchange circuits, and hold special courts for the disposal of non enumerated cases, and sit in banc in two courts—an eastern and a western—there also interchange so as to enable them to dispatch all the business while consistency of practice was preserved. The court of errors should be so constituted as to separate its judicial from its legislative functions. He advocated a larger number of members elective in the court of last resort than was proposed. The representation in that body should be more popular—it should partake more of the character of a jury. He would give seats there to eight judges from circuits, two chancellors, and four judges of the supreme court, leaving the power of the court in the hands of the representative portion of that body. He next proceeded to an examination of the court of chancery, its powers and their origin. He was desirous to preserve equity power while he would simplify its proceedings, and dispense with the absurdities of a bill in chancery in many cases. He intimated, however, that this was the duty and the province of the legislature. He did not regard it as a matter of vital importance whether equity powers were vested in one distinct court of equity, or in the courts of law. It was simply

a question of convenience and expediency, and he thought experience showed that it was both more convenient and expedient to keep them separate. A division of labor was found best from the manufacture of a pin upwards. Instead of one overshadowing court to which all other chancery officers were subordinate, he would prefer separate and distinct courts, and give to each a location, with three chancellors to constitute a court of review. He went at great length into a review of the existing and the proposed systems, and showed the necessity of securing courts in which confidence would be reposed by the people.

When Mr. S. concluded there was an evident reluctance to proceed with the discussion, no one being desirous to take the floor.

The CHAIR was proceeding to put the pending question, when

Mr. WORDEN expressed the hope that the question would not now be taken. He desired himself and he knew other gentlemen desired to speak on this question, but he did not feel well enough to proceed to day. He thought they had better lay the subject aside and proceed with the consideration of Mr. TALLMADGE's report. [Cries of "no," "no," "no."]

Mr. PERKINS then took the floor, and said he thought there was not a clear understanding of the distinction between common law powers and chancery practice, and he proceeded to explain the technicalities of the pleadings of each. He showed that there were many facts to be found by a chancellor which a jury could not possibly find. A jury could not wind up a corporation, gather up the effects, and make a distribution of them amongst the creditors. Military tribunals were dilatory and expensive. He referred to a case tried across the river, the expense of which was \$300, when the fact involved could have been found by a jury in one hour. He proceeded to explain wherein he differed from the report of the majority, and to specify the principles of a plan which he had prepared, and which at an early opportunity he should ask leave to have printed.

Mr. JORDAN here suggested that as the house was thin, and the heat oppressive, and several gentlemen who desired to speak were not now in a condition to do so, if the house was in the frame to hear them, and that the committee had better rise and report progress.

Mr. STEPHENS had a word or two to say, if no other gentleman was ready to take the floor, not in vindication of a report that had undergone so searching an analysis, but rather to express his confirmed conviction that so far as it proposed to amalgamate the two systems of practice, it embodied a principle that would receive the general approbation of the people at large, and that we could present to them no more important measure of reform. If he could have had his way, he would have gone even further than the committee, and have blended completely these two courts into one. Mr. S. went into the history of the origin of the court of chancery in England, whence it had come down to us, as a separate and distinct tribunal. He traced its history in this country, and showed how entirely this institution seemed to have been a characteristic of the colonies, founded

under the auspices of the English government—and how generally it had been discarded by the colonies planted as it were in defiance of, and in hostility to, the institutions of the mother country. He pointed to the fact that in the new states generally, and in the older ones where they had recently amended their constitutions, this court, as a separate organization, had been discarded. He believed that nothing but the prejudices of education, and attachment to what was old and tried, no matter what the inconveniences to which it induced any to favor a continuance of this separate organization. He believed that it was unsuited to the spirit of our people and of our institutions, and that they would be satisfied with nothing short of a plain, simple organization of the judiciary, and with modes of proceeding equally intelligible and simple. And from the conciliatory spirit that prevailed here—the disposition in all quarters to yield a little of their own preconceived opinions—he indulged in the hope that we should arrive at a result satisfactory to ourselves and the public. Mr. S. dwelt at some length on the proposition which he had some instrumentality in bringing forward—the institution of conciliation courts—expressing his regret that this project, which was before the judiciary committee, and distinctly advocated by more than one member of that committee, had not received more attention and met with more favor in that quarter—believing that had gentlemen of that committee, who had since come out warmly in its favor, taken that ground earlier, that at this moment the proposition would have stood in higher favor even than now, with the Convention.

Mr. LOOMIS replied to the objections of Messrs. MARVIN and STOW to the plan of the majority of the judiciary committee. The objection, he said, was not to the force proposed by the committee, as inadequate, but the organization suggested was not such as to make this force to do the greatest amount of business. Now, Mr. L. did not believe that it was within the scope of human ingenuity to devise a system, contemplating a division into separate courts, that should do the same amount of business as the same number of judges united in one court—and for the reason that it would be in the power of the one court to direct its energies to that section where business might accumulate, and to withdraw its unoccupied force from other sections. Indeed it would be found to be absolutely necessary if we had two courts to try issues of fact, to authorize the legislature to make provision so as to secure an equal amount of business in the two. The gentleman from Chautauque would have nine supreme court judges, and would divide the state into two parts, with a supreme court in each half—the judges in one half of the state to belong to that half, and to have no business in the other half. Then he would have a common chief justice to preside in both courts. But the statistics showed that the accumulation of business to be decided in banc, was enough and more than enough to occupy the two tribunals all the time they could spare—all the time indeed—either in hearing arguments or deciding them.—But of what use was the chief justice except to

give off-hand opinions in matters that could not admit of delay? Certainly none; for he was not to investigate principles as the other judges must, in their closets. But the gentleman would require some of these judges to sit as part of the court of appeals. What time would they have for that, occupied entirely as they must be in the supreme court? As to the court of appeals proposed by the majority, and to the objection that it would be immediately broken down with business, Mr. L. insisted that it would be a much more efficient court than our present court of errors, for they would be eminent lawyers capable of appreciating a principle of law at once, without having every point distinctly argued as was now the practice before the court of errors. And yet this court, doing legislative business four months in the year, and having three months leisure, accomplished all the business before them. He had not the slightest doubt that this court of appeals would be found amply adequate to the business to be put upon them. But the gentleman from Chautauque proposed that these supreme court judges should hold the circuits throughout the state also and in every county. Mr. L. hoped we should have circuits at least once a year; but this was not to be hoped for under the gentleman's system. Practically, with other courts by which the gentleman proposes to relieve his system, it would be the present system of a supreme court doing the appellate business and never holding a circuit in the world. Mr. L. glanced at Mr. STOW's improvement upon this system, enlarging the number of judges, but still dividing the state into two districts, saying that the same objection applied to it as to the original plan, though with less force. Again, the plan of having three chancellors to do the business now falling upon the chancellor and the three vice-chancellors, besides the circuit judges, who had all now full employment, would be entirely inadequate. In his opinion the business of the court of chancery was destined to accumulate as much in the twenty years following, as in the twenty years past. There was that in the character of its proceedings, forms being simplified and shortened, which would command the public favor and draw within its vortex the business of the country.—He concurred with the gentleman from New York (Mr. O'CONNOR) that in uniting the law and equity tribunals, we should rather approximate to the chancery system than to the court of law—that this was the rational, the equitable system—which provided a remedy according to the exigencies of the case, and which was most wanted. The report of the judiciary committee gave the power and duty of the gentleman's three chancellors to the thirty-two judges, leaving it to expand *ad libitum*—so that should equity business predominate, you would have a system adequate to every emergency. The expansibility of this system—its elasticity, was its great excellence. As to the system of district judges holding circuits, called county courts, Mr. L. characterized it a double system of circuits—one class held by a presiding judge elected in a particular district, and the other held by the supreme court judges—a system entailing upon counties a double expense, and upon parties and

witnesses the inconvenience of assembling a second time to attend trials. He could not see why a circuit coming round should not try all the issues. Mr. L. continued to contrast the plan of the judiciary committee with that of Mr. MARVIN, objecting particularly to that section of the latter which contemplated making the surrogate and a supreme court commissioner a part of their county court—their offices to be supported by fees, or to peddle out justice. Mr. L. had hoped that such a proposition would not have found an advocate here. Mr. L. insisted that the causes of the inefficiency of the county court lay in the system itself and not in the want of material for judges. It was neither an office of honor or profit, and would not command the requisite talent. He next proceeded to attack the position of the gentleman from Erie, in favor of separate jurisdictions of law and equity that the decisions of a court of chancery were a matter of discretion—that the chancellor undertook to do right without reference to law—not that he decided against law; but that the system allowed him to do as he pleased in certain cases. But, if Mr. L. knew any thing of the principles of equity, they were as well settled as those of the common law. Nor could he construe away a statute law as the gentleman supposed. He was bound just as much by rigid rules of law as the common law judge. And whatever might be said of the stretching of the power of our court of chancery, the supreme court had kept pace with it step by step. But both gentlemen went as far as he did in desiring simplicity and directness in the forms of proceeding. The difference between them and him was, that they desired separate and distinct forms for each of these two jurisdictions—and yet he ventured to say that if either of them could divest themselves of the influences of education, and their predilections for separate and distinct forms of practice, and would sit down and mark out a mode of procedure, they would find that they knew no more distinction between cases in law and cases in equity, than between cases of tort and cases of assumpsit. But no one proposed to make a set of forms for all cases. The forms would vary with the peculiarities of the case. Thus much for the attacks on the system of the judiciary committee. He believed we wanted one court of last resort to settle great principles of law—not mere technical questions as to the forms of procedure. Then we wanted another court which should diffuse itself over this broad state to try issues of fact. These were the main features of the plan of the judiciary committee, and he doubted not it would prove, with some modification in detail, a convenient and efficient plan. The objection of the gentleman from St. Lawrence that under this, and most of the other schemes, a judge might sit in review of his own decision, it would be easy to obviate that by an express prohibition.

Mr. PERKINS said his objection was that the judge who decided the cause in banc, might sit in the court of review.

Mr. LOOMIS replied that it was of no importance which. Nothing was easier than to provide that the judge in such a case should decide the cause—though he was not so clear that

it ought to disqualify a judge because he happened to have heard the case, and had bestowed some thought upon it. He was not aware of a court of appeals anywhere which was constituted wholly of a set of judges who had none of them decided on the case below. Mr. L. said, in conclusion, that he did not expect this article would be adopted without amendment; but he had thought it proper that objections to it, which he thought untenable, should be answered as they were made, that the Convention might see both sides.

Mr. MARVIN replied to the objections to the want of force in his supreme court, saying that gentlemen familiar with judicial proceedings had been of opinion, that simply dividing the court into two parts would cure this evil of the courts being blocked up, and that in a few years you might consolidate them into one, and let them discharge circuit duty. But Mr. M. said he proposed to occupy fifteen minutes, on another occasion in indicating what the reform would be or might be made under his plan.

Mr. HARRIS then obtained the floor and moved that the committee rise, which was done.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. HARRIS, having the floor, addressed the committee at great length. After some general remarks on the transcendent magnitude of the subject before the committee, and the responsibility which rested upon every member in his action upon it, went on to say that the wisest institutions were useful no longer than they retained the public confidence. This remark was entirely applicable to our judicial system. It had been condemned, and with united voice, the people of this state demanded that it should be wiped out of our institutions. Indeed the system had no advocate, in or out of this house.—Mr. H. said that having been for eighteen years a humble member of the legal profession, and have seen and *felt the evils* of the present system, he had, immediately on its becoming certain that he was to have a seat in this body, turned his attention anxiously to this great question. He had, however, formed no plan for submission to the Convention, nor was he wedded to any particular scheme, when he came here. But he came rather to hear what others had to propose, and to give to each of their propositions his best attention, and select from them that which his judgment approved. Still, in the course of the reflection he had given to this subject, he had come to the conclusion to support no plan that did not embrace these four points—first the election of judges by the people, at stated places and periods, not too short nor yet too long to enable the people to reach and remove an unworthy incumbent—next a union of equity and law jurisdiction in the same court—third, a uniformity in the administration of justice, securing, if possible the same decisions of the same questions throughout the state—and Mr. H. was happy to say here in advance that the general plan of the judiciary committee corresponded very nearly with the results of his own previous reflections—and fourthly, a simplification of the practice of our courts of law and equity, and a material reduction of the

expense of legal proceedings. He regretted that so cardinal a measure in the work of reform had been omitted in the majority report—for without it, he should regard any plan, however wise in other respects, as radically defective. The complex and unwieldy machinery of our present forms of practice, would crush any system. Your judges, however able and learned, crippled with the armor in which they would be encased, would be borne down to the earth by the weight of it. These proceedings must be simplified—the administration of justice must be cheapened, or all our efforts would prove abortive. Here our present judiciary had made shipwreck. On this rock it had split. The time was when even these courts, ill adapted as he deemed them to be to the ends to be attained by such a course—the time was when they might have retrieved their standing by adopting reforms in their mode of practice, and curtailing their machinery, so as to keep the administration of justice progressive. In this way, they might have discharged their duty in a manner tolerably acceptable to the public. No man had a higher respect personally for our judiciary than himself; no man appreciated more highly their purity of intention—their judicial acumen and ability; but he was obliged to say that it was by reform here that they might have saved the system. In 1830, when the laws were revised, their attention was specially called to this subject by the revisors. The legislature also gave mandatory directions to the courts, to this effect—that the chancellor should have power by general rules to establish and alter the practice of that court, in cases not provided for by statute, and at the end of two years from that period, and at the expiration of every seven years thereafter, revise the rules of the court to the attainment of these improvements—the abolition of bills, answers and other proceedings, expediting the decision of causes, the diminishing of costs, and the remedying of abuses and imperfections, &c., &c. Mr. H. did not hesitate to say, that odious as was the court of chancery now, yet that had the chancellor, in the spirit of this recommendation and this enactment, pursued earnestly and diligently the work of reform in the practice of his court, we should have stood here to-day, if assembled at all, (and he doubted whether we should have been) acknowledging the obligations of the people to an efficient court of chancery, and to continue it in our constitution. It was because our judiciary were so much engaged in their duties, and so much wedded to their systems, that they did not discover or appreciate the demand there was for that reform. It was because they had slept on—content to go forward in the same old beaten track trodden by our ancestors, that we were brought now to this juncture when the court of chancery was about to be abolished. The manner in which the chancellor had carried out the injunction of the legislature every seven years, was best illustrated by the well known anecdote of the enquiry of a professional man when he heard that a new edition of the chancellor's rules was coming out. He inquired whether it was to be in one or two volumes. The same thing was, in a less degree, true of the supreme court.

They too, under the same injunction, instead of making the practice of the court more simple and less expensive, it had only been rendered more difficult and complicated. And hence, these loud complaints of the abuses connected with our judicial system. The project of the gentleman from New York (Mr. O'CONNOR) Mr. H. deemed impracticable, at least for the present—and he had been unable to devise anything better than an amendment, which he intended to offer—contemplating the election of a chief justice to preside over the judiciary department, and whose duty it should be from time to time, to prescribe such rules and forms of practice of the supreme and subordinate courts as shall tend effectually to simplify and reduce the expense of proceedings in those courts. If danger was apprehended from this of paralyzing our system too much, these rules might be submitted for adoption to some other portion of the judiciary, but he desired somewhere in our system an officer who should be alone responsible to the people for a faithful, energetic, persevering reform in the practice of our courts and the expenses of litigation. Mr. H. now passed to a consideration of the subject of uniformity of decisions in our courts, and remarked that of all the projects submitted, that of the majority of the judiciary committee struck him as best adapted to secure that end.

Mr. WORDEN here interposed—saying that there was no such plan before the Convention as that recommended by a majority of the judiciary committee.

Mr. HARRIS would be glad to have the gentleman explain.

Mr. WORDEN. I will at the proper time.

Mr. HARRIS. It is a very extraordinary statement. [A voice, "Jordan, what will you say to that?"]

Mr. HARRIS. I do not understand the gentleman from Ontario. Does he mean to say any thing affecting my argument?

Mr. WORDEN. Yes, sir. That report never did receive the assent of a majority of the judiciary committee. The gentleman has undertaken to say what the fact was. I believe it got three votes in committee.

Mr. JORDAN. I beg leave to say that the gentleman from Ontario is entirely mistaken.—Our chairman never presented a report as a majority report, that was not so in point of fact.

Mr. WORDEN did not hear the gentleman from Columbia.

Mr. JORDAN repeated, and appealed to Mr. RUGGLES.

Mr. RUGGLES (in his seat) said he had been looking for a paper which he thought he had in his drawer, but it was at his room. He would get it and confront the gentleman from Ontario.

Mr. WORDEN was understood to say that the gentleman from Columbia from first to last voted against every proposition in the report, and in favor of every one contained in his (Mr. W.'s) plan. He appealed to the gentleman from Essex (Mr. SIMMONS) to say whether he was wrong or right. Three gentlemen did agree that the report might be brought in, but not as one to which they assented. He had the report which was agreed on, (holding up a roll of pa-

pet,) which was twice as long as the present constitution of this state.

Mr. JORDAN regretted that any gentleman should take it on himself to go as far as the gentleman from Ontario had done. He considered it in the first place as a direct imputation on the conduct of the chairman of the committee. In the next place it was untrue. [Laughter.] Mr. J. did not know what the gentleman meant by assenting to the report. If he meant that each, perhaps all of us, originally had some different notions, and that we advocated these views in committee, then the gentleman was right as to most of these propositions. But the gentleman was mistaken entirely in saying that the gentleman from Columbia (if he meant Mr. J.) voted against all the propositions in this report. He voted against one or two, perhaps more of them. But he did not consider himself as so much wiser than every body else, that they could not propose something worthy of adoption—and he did yield his individual opinions in two or three particulars, to harmonize the views of the committee—that we might bring in a report. Not to have done that, would have been disgraceful to the committee. In the end a majority did agree to the report, and no doubt our chairman could show that fact from the journal of the committee.

Mr. BROWN had a word to say—and he hoped the gentleman from Ontario would not leave his seat. [Mr. WORDEN had gone from his seat, and was conversing with a member in one of the aisles.—Having returned] Mr. B. went on to say that this report was submitted fourteen days ago. It had been treated throughout as the report of the majority of the committee, and by all up to this time. The allegation now put forth by the gentleman from Ontario, imputed a direct falsehood to those who were instrumental in bringing it forward. He could not regard it in any other light. If the gentleman did not mean it to be so, he had no more to say. He would state again, that the gentleman might understand him—because this concerned the respect due to himself and others of the committee—it concerned the credit due to his honorable friend the chairman of the judiciary committee and all the rest of us—that he understood it as a direct imputation of falsehood on our part. Am I mistaken? asked Mr. B., (turning to Mr. WORDEN.)

Mr. WORDEN regretted this sensitiveness. He had brought forward nothing that amounted to a charge of falsehood, or any thing else derogatory to the character of any gentleman of the committee. This report had been spoken of here, time and time again, as one of the provisions of which the majority had assented; and it seemed to have stood before this body, as a report which, in all its features had met the concurrence of a majority of the committee. Now he asked the gentleman from Orange, if that was so? If the majority were understood to be pledged conscientiously and fairly to the support of this plan? He asked the chairman of the committee if that was so?

Mr. BROWN:—I will answer the gentleman.

Mr. WORDEN:—In all its features and particulars?

Mr. BROWN:—Not in every particular, or in

every slight shade or section. But in regard to all its main features, they were as much pledged as any ten gentlemen could be. It was not possible to form a plan of this kind, that would command the assent of everybody, in all its details; but in all its leading features, it was agreed to by a majority. As Mr. B. stated, when the report was submitted, in all its essential features, it commanded the assent of a large majority of the committee. He so stated, over and over again; and now stated it. On the evening when the report was adopted, all were present, except Mr. STEPHENS, (who left his assent to it with Mr. JORDAN,)—the gentlemen from Essex and Herkimer did not assent to some portions of it, and it was modified, and as modified, did command the assent of a majority.

Mr. WORDEN:—Did not the gentleman himself dissent, and did he not not consent to the plans being submitted, only on condition that he should have leave to dissent in Convention?

Mr. BROWN did dissent from some portions of it.

Mr. PATTERSON here rose holding a MS. book.

Mr. BROWN (who had just received a paper from Mr. RUGGLES) asked the gentleman to give way whilst he read what took place.

Mr. PATTERSON: If the gentleman from Orange will give way I will read from the record.

Mr. WORDEN said he had the files also.—The committee he said, after great labor—a labor which he believed was as honest and faithful as ever thirteen gentlemen bestowed on any subject, went through with the various propositions before them, and agreed to a plan in detail, by votes *pro* and *con*. That plan he had in his hand, with the exception of eight or ten sections—and it was longer than the present constitution of New York. When the final question came as to reporting this plan he did not know how many votes it got. Weary with this plan and wearied with labor, the committee finally agreed that the chairman should draw a plan—a plan to which the chairman himself dissented in some prominent features, and that that plan should be treated as coming from the committee. At the same time every gentleman was at liberty to dissent from it. After that agreement had been made, a plan was handed about the house, and gentlemen signed it, he presumed with the understanding that it should be presented as he had stated. Mr. W. signed it himself, with a qualification. He believed the report had been brought forward in that spirit, honestly and fairly, by those who had brought it forward. But it should admonish these gentlemen, and should have admonished the gentleman from Columbia the other day, that it was not prudent to be making insinuations against other gentlemen on the committee. As to the plan which Mr. W. had the honor to present, that gentleman voted with him throughout on every essential feature of it—

The CHAIR interposed. It was entirely unparliamentary to refer to proceedings in committee. It had never been done or heard of heretofore, any where.

Mr. WORDEN continued. The chairman of the committee had made no statement not com-

porting with his high character. Mr. W. had no intention to impeach him or any other member of the committee. But he supposed it was not a report which a majority of the committee assented to.

Mr. PATTERSON here said as recollections might vary, he would read an extract from the journal of the committee kept by a secretary from the beginning to the close of their labors. The last evening the committee met, it appeared a resolution was adopted agreeing to the report as amended—ayes 9, noes 3—Messrs. WORDEN, KIRKLAND and BASCOM, voting in the negative. And then on motion of Mr. BROWN it was resolved that the chairman present the report to the Convention to-morrow morning. Mr. O'CONOR was not present at that meeting.

Mr. O'CONOR said it was because the action of the committee was departed from. A paper was handed to him with seven names on it, and knowing that it had received the sanction of a majority of the committee in private, there was of course no use in attending to see that carried through.

Mr. BASCOM enquired whether, when the vote alluded to was taken, it did not consider two distinct motions to reconsider, then on the table—one of them relating to the number of courts, and the other in relation to the election of judges?

Mr. PATTERSON said it was true that at some former meeting the committee agreed to have two courts. But two of those stated that they voted under a misapprehension. As to the report containing 42 sections, it was true that there was such a report drawn up; but that was twice lost by a tie vote. After that, the Chairman went to work and drew up a report, leaving out the objectionable sections of that report, and for this he had Mr. P.'s hearty thanks. One proposition in it varied from the original—but the majority voted for it. Mr. P. voted against it, but agreed to the report as a whole—the understanding being that we could vote as we pleased in convention. But the whole was agreed to by ayes and noes as it stood on record.

Mr. BROWN had a word of explanation in regard to the paper circulated in the House before the last meeting of the committee. There was great apprehension that we should be able to agree on nothing. The gentleman from New York (Mr. O'CONOR) could not from his position very well recede. Under these circumstances, it was agreed that no effort should be made to frame a report which should command the assent of the majority, and the gentlemen from Columbia and Dutchess met at his room, drew up this report, and it was circulated here, seven of the committee signing it. At the meeting that evening it was remodelled to suit the taste of the gentlemen from Herkimer and Essex, and adopted distinctly, by a vote of 9 to 3. It was as legitimate and fair a report as ever came before such a body.

Mr. SIMMONS said this was the first he had ever heard of a paper being circulated for signatures—but went on to say, that, whilst every thing in the report was adopted by a majority, it was not by a majority constituted of the same persons—that when a motion was made that

the chairman present the report, Mr. WORDEN objected—that the question should be on agreeing to it—that but two or three would agree to it, though the committee were willing to have it reported, for the purpose of having something before the body to act upon. From that time there was a good deal of difficulty. The chairman had a great responsibility thrown upon him; and Mr. S. must give him the credit of exhibiting in as high a degree the virtues of Christian patience and fortitude, as he ever knew.—After a while, an abridgement of the work at large was presented; and he understood then, as now, that a majority of the committee were in favor of the substantial things in the report; but that it was not expected of us, any more than of other committees, that every gentleman who assented to it would not be at liberty to approve or dissent from it in Convention. He defined his position when it came in. Some approved it more fully than others. In one sense, the report never was agreed to by a majority—but essentially it was agreed to.

Mr. WORDEN hoped the gentlemen from Dutchess and Orange understood him precisely as the gentleman from Essex said—that each one in committee, reserved to himself the right to oppose such parts of it as he saw fit—and almost every gentleman expressed a dissent to some part of it—

Mr. RUGGLES: (In his seat.) That will not do Mr. WORDEN.

Mr. WORDEN: Is the gentleman from Essex right?

Mr. RUGGLES: Entirely right as regards himself.

Mr. WORDEN intended to convey the same idea that the gentleman from Essex did—and he begged here to say that this plan if adopted in toto, as it now stood, would not be a bad one, but an improvement on the old one.

Mr. HARRIS now resumed and concluded—saying that after what had passed, he should call the report, by way of designation, the majority report. He went on to approve warmly of the plan of having a large number of judges all of equal grade, visiting every portion of the state—as the one best adapted to secure uniformity of decisions, and a prompt administration of justice. He cited the opinion of Judge PARKER (to whom he paid the compliment of having discharged the duties of his station more to the acceptance of the public than any of his predecessors), as to the ability of a judge to discharge the circuit duties that would fall upon him under this system; saying that it was highly satisfactory, and confirmed his own previous impressions of the practical working of the system. He expressed his approval also of that portion of the plan which required the judges to do circuit duty, and which formed the court of appeals of judges who had had six years service at the circuit. These trials also by a judge of the highest court would tend to diminish litigation. From the best reflection he had been able to give to the majority report, he was satisfied that it was substantially the best—and that under a proper simplification of practice, it would prove the best system which this state or Union ever saw. The feature of electing judges he also regarded

as an experiment that might be safely tried, and he quoted at some length from the opinions of prominent members of the Convention of 1821, and adverted to the experience under the change made in regard to electing justices of the peace—to show how utterly groundless were the fears then expressed. And in reference to the allusions made to this section of the state, and to the local excitement which had pervaded it and still did, Mr. H. said gentlemen need entertain no fears on that score. He had the consciousness of knowing that to a considerable extent he enjoyed the confidence of this infected district, as gentlemen would have it—and yet he would scarcely venture to accept a nomination

for judge in this district against the present district judge (PARKER,) who had presided upon the trials that had grown out of this excitement, and had sent scores of those implicated to prison. So ably and impartially had that officer conducted himself throughout, and so entirely to the satisfaction of this whole people had he discharged his responsible duties, that he ventured to say no man among us could successfully stand a canvass with him for the office of judge of the supreme court. Mr. H. having closed,

Mr. MORRIS obtained the floor, and the committee rose.

Adj. to 9 o'clock to-morrow morning.

SATURDAY, AUGUST 14.

Prayer by the Rev. Mr. RAWSON.

Mr. GREEN presented the petition of six ladies of Jefferson county in favor of "woman's rights," which, on his motion, was read and referred to the committee of the whole having in charge the report of committee No. four.

The PRESIDENT presented a report from the clerk of the second circuit in relation to the sale of infants' estates, which was referred to the select committee of five to abstract.

THE JUDICIARY

The Convention then went into committee of the whole, Mr. CAMBRELENG in the chair, on the reports of the judiciary committee.

Mr. MORRIS resumed the debate, and proceeded to give a general statement of his views of the system he should prefer. Believing that they should commence at the source, and thence rise, he began by noticing the organization of towns and of the justices courts therein established. A less number of justices courts, he was of opinion, would be advisable. He illustrated his position by detailing the system as it exists in New York city, where an immense business was done both in the number of cases and the amounts involved. There the justice was remunerated by a salary, all fees being paid into the county treasury, and therefore his cupidity was not excited. In the rural districts, of which there are two in New York, the justices receive fees. While the salaried justices have few appeals from their decisions, notwithstanding the great amount disposed of by them, the rural justices' decisions are often appealed from; certioraris are very numerous, and their decisions, unlike the decisions of the salaried justices, are very often reversed. He next proceeded to notice the system as it existed in the rural counties, and suggested that in each town in the county there should be a town location for the preservation of the records, which are now insecurely kept. He also recommended that the town clerks should be clerks of justices' courts, should issue precepts, &c., and that the justices should alternate in the trial of causes, the trials to take place at the court house, instead of taking the jury to a bar-room. Having disposed of the town organizations, he proceeded to notice that of the counties. He proposed to have a presiding justice of the

county, who shall be the surrogate, and who shall have associated with him the justices, alternately, to dispose of the business that shall come up from the justices' courts, and other matters that might devolve on that court. He proposed to give that court power to dispose of certioraris, and to give it general sessions' jurisdiction. He preferred certioraris to appeals, for which he gave his reasons. The next organization which he proposed was the supreme court. He saw no reason for any intermediate tribunals, but many advantages in dispensing with them. He was also desirous to see a perfect union of law and equity. He would dispense with the legal fictions now resorted to, and have the real parties before the court. He was opposed to giving the legislature power to establish inferior tribunals, for he would not have these tribunals from which there shall be incessant appeals. If the courts are insufficient, let the legislature add to the strength of the courts, but not create others. He was in favor of the election of the judges by the people, either in districts or by general ticket. The supreme court judges he would elect by general ticket, from the particular district in which each one was to serve. Such was the outline of his views on the subject.

Mr. W. B. WRIGHT said it had been truly remarked, in the progress of this debate, that amongst the leading causes that originated this Convention, was the imperious necessity of judicial reform. He would go farther, and assert that a reform in the judiciary was, immeasurably, the most prominent of the expected benefits to be secured. Whatever portion of time, therefore, (said Mr. W.) we shall bestow upon the discussion of this grave and important subject (ever keeping in mind that our session must necessarily terminate by the first of October next,) will not be wasted; nor will it be so regarded by those whom we represent. The people expect that upon this subject, more than upon all others, there shall be a full, frank and liberal exchange of sentiment, and that we shall approach it, not in the spirit of professional selfishness, nor with contracted views of hostility towards an enlightened class of our fellow citizens, but with minds enlarged and liberalized, and elevated above the influences of the meaner

passions that cling to man in his best estate.—In a matter that so deeply and vitally concerns not only the rights of property, but the liberty, aye, the life of the citizen, there should be no sordid interests or narrow sectional prejudices to subserve. If he knew his own heart, although an humble member of the legal profession, he could not be controlled in the discussion and settlement of this important subject by any motives of self-interest, or by any other motives save those which regard the promotion of the public good; and whilst he might be permitted perhaps egotistically, to say this of himself, he cheerfully embraced the occasion to declare this solemn conviction of his mind, that there was not in this chamber or out of it, an enlightened and high-minded member of that profession to which he esteemed it an honor to be attached, who could be prompted by avarice or cupidity or selfishness, to desire that the action of the Convention, on this momentous subject, should be of such a character as that the public interests would not be fully subserved. Believing this, he deeply regretted that here and elsewhere, a few individuals should be found to lend themselves to the illiberal task of exciting public prejudice and hostility against a numerous and respected class of citizens—of arraying what they denominated laymen against those pursuing an honorable and dignified profession; but whilst he regretted this, he rejoiced in the conviction that the illiberality was confined within extremely narrow limits, and that there was too much of magnanimity and intelligence pervading the masses of this great state, to denounce an entire profession, because forsooth a few unworthy members—not lawyers, in the just sense of the term; for that man whose mind is deeply imbued with the cardinal rules of law, that are but the immutable principles of ethics and truth, can scarcely be otherwise than upright and honorable in his relations with men—because these pettifoggers, as they may be properly called, taking advantage of the eminence of their position, have at times abused the public confidence. But there was another circumstance that had transpired in this debate, that he still more deeply regretted. It was that gentlemen attached to the legal profession—holding somewhat of an elevated rank in it—should possibly to subserve ulterior ends, descend to the task of giving something of form and shape to the misty, undefined, unshapen prejudices that it may be supposed possess the minds of a small part of the community, arising as he insisted wholly from the unworthy practice of the professional charlatans to whom he had alluded. Are not these gentlemen aware (said Mr. W.) that it is a characteristic of prejudice to grow and expand, and to seize upon sophistry with a zest outstripping that with which it seizes upon truth? Sir, our constituents expect that we shall approach and discuss this deeply interesting subject, divested of all prejudice against caste or profession—divested of all professional selfishness—with no narrow views of hostility to this or that class of citizens—with no hidden purpose of elevating or prostrating, by our action, any profession; but with the single object of constructing a judicial system, by and through which the law may be administered, and justice

dispensed, efficiently, speedily and economically. Nor is it expected that we shall take upon ourselves the grave duty of codifying the laws, or of abrogating, so far as applies to our own state, either the common or the civil law, or of maturing any system of jurisprudence that shall amalgamate or blend them together. This codification would be the labor of months, nay, of years, rather than of days allotted to our session—if indeed it could ever be successfully accomplished. But he begged leave here to remark, that the intimation thrown out that in this state, now or hereafter, the common law may be in jeopardy—that it may be supplanted by an imperial code, originating in the despotic ages of the Roman empire, and that now measurably supposes “a discretion in the judge, which is the law of tyrants”—had filled his mind with alarm; and he was sure that the carrying out of such a project, should the thought emanate here, would induce the people to lament, for all future time, the call and assembling of this Convention. He took the occasion to say that he was opposed to any judicial system which contemplated even remotely the abrogation of the common law. What is the common law? A system of principles and precepts, founded in reason and truth, reduced to order by the wisdom of ages, that justice may be administered by unchanging rules, not to the distinguished and the great alone, but to all mankind. It had contributed more to the promotion of human liberty—more to the elevation of the masses in the scale of political and social existence—than probably all other influences combined. Why is it that in the old world, rational liberty exists only with the masses of England—that property and life are secure? Because of the benign and blessed influences of the common law. Why is it that dignity and public confidence have been largely imparted to the higher courts of this state? Because justice has been diligently and faithfully meted out through the prescribed forms, and upon the principles of the common law. True, that in those forms there are defects—palpable, glaring defects. These may and should be remedied. There are what appears to us now, absurdities, that may be removed. But, in the language of an eminent British civilian, which he begged leave to quote, “Notwithstanding the rudeness and defects of the common law, we should ever remember its favor to personal liberty, and its admirable machinery for separating law and fact, and assigning each to a distinct tribunal; wherein it excels all other systems of jurisprudence that have appeared.” It should be the task of the present day to render that machinery less complicated; not to utterly demolish it. But enough on this point. He could not suffer the occasion to pass without entering his solemn and deliberate protest, at the threshold, against any attempt to overshadow the common law by any other system of jurisprudence. It has been (said Mr. W.) well remarked, that in organizing a judicial system—or rather in constructing the frame work, as little else can be done by constitutional provision,—we should first ascertain the defects of the existing one; for after all, our duty is not to construct a system, fanciful and untried in all its parts, but to remedy defects which experience

has shewn in that which exists. Many of these defects are apparent—they are as familiar to lay as professional men,—and any plan, therefore, which it is thought will most effectually remedy them, should address itself to our favorable consideration. He proposed briefly to glance at some of these defects, with the view of ascertaining whether, by the plan proposed by the majority of the judiciary committee, they would probably be obviated. In the first place (said Mr. W.) a radical defect in the present system is, that, by its organization, neither suitors nor the public have that confidence in the inferior courts of record which is absolutely necessary for the effective, expeditious and economical working of the system. Hence expense and delay have, in some degree, their origin in this source. Were this confidence fully extended to one court of original jurisdiction, it requires little sagacity to foresee that much of delay and expense, at present incident to a suit at law, would be avoided. Could the suitor entertain entire confidence in the capacity and integrity of the judge that first tries his cause—could he feel that his case had, at the outset, been correctly and fairly adjudicated—there would be an absence of motive and desire to encourage appellate jurisdiction. By our present system, not only suitors but the public have lost all confidence in these inferior courts. With a very few honorable exceptions, alluded to yesterday by the gentleman from Erie, (Mr. Srow,) our courts of common pleas have become a by-word of reproach throughout the state. No person has any confidence in them, and least of all the legal profession. As has been truly said, the profession will not, nor cannot promise success to a client, however strong his case may be, who seeks his remedy, or looks for justice through the medium of a court of common pleas. Hence it is that much of the business that now crowds our appellate courts, has its origin in, or has necessarily passed through, the common pleas. The causes of this want of confidence are apparent. The judges know little of the elements, much less of the practice of the law;—they are unfitted by their ordinary avocations to correctly discharge the grave duty thrown upon them, (their slender and insufficient compensation not justifying the devotion of any portion of their time, off the bench, to legal studies)—and so far as experience had enabled him to form a conclusion, their decisions are more frequently the offspring of impulse and prejudice than of deliberation and enlightened reason. Besides, they are, to a great extent, partisan judges, owing no responsibility to the people—they are sometimes appointed more to subserve partizan than judicial purposes, and there have been cases where from the fact that they owed their selection, not to their own merit, but to the influence of one member of the bar, they have become his willing creatures. Now, can it be wondered at that there should be so little of public confidence reposed in these tribunals? Should it be a surprising matter that the calendars of your supreme court are lumbered up with cases that have originated in or passed through the common pleas? But there are other circumstances connected with this common pleas tribunal that tend to bring the entire administration of law

into disrepute, and load the people with unnecessary and oppressive burdens. When we speak of delay and expense to suitors, who are compelled in many cases, by statute, to pass through this court, it is only of those who have the pecuniary ability to resort to appellate jurisdictions. But to those with limited means, not only is there no redress, but the law erroneously administered, addresses itself neither to the reason nor the respect of the citizen. Again, this court so inefficient and unpopular, so destructive, at times, of the ends of justice and of law, costs more to the people of this state than all your other courts of record of every grade.—Yet there are gentlemen upon this floor disposed to continue in some way, this onerous and odious system. The gentleman from Oneida, (Mr. KIRKLAND,) not now in his seat, stated the other day, in a very able exposition of his views upon judicial reform, that he did not believe that the people were prepared to give up their county courts—their domestic tribunals—that a vast amount of business was done in them—and he proposed in his plan to confer additional powers, that of surrogate, upon their chief officer. Now, said Mr. W., let me say to any gentleman who coincides in opinion with the gentleman from Oneida, that he widely mistakes the public sentiment on this subject. Eight-tenths of the people of this great state, could they vote on that distinct question, would wait eagerly and impatiently for the opportunity to forever blot out these “domestic tribunals” from our system of jurisprudence. Is it any reason because the legislature has imposed upon these courts multifarious duties, rarely performed, but if performed, in many cases, erroneously or imperfectly, that they should be continued? Cannot these duties be transferred to other officers, or other tribunals, where they may be more effectively exercised? Certainly, gentlemen cannot fail to see how easily this may be accomplished. Of these duties the attention of the committee has been particularly drawn to the powers now exercised by the common pleas judges on appeals from the orders of commissioners of highways, and it has been rather significantly asked, where this power would be lodged? The case (said Mr. W.) cannot be regarded as a fortunate one, as in his judgment, should the court be continued it should be forthwith disburthened of this duty. Were it intended to bring a court into public disrespect, probably no more successful mode could be devised than to charge its judges with the power of itinerating from town to town of a county to settle disputed questions in relation to the location of a district road! Some gentlemen have said that they would continue the county courts for the purpose of hearing certioraris and appeals, and doing the minor business. The bulk of the business they now do is of this character; and to continue these powers in their hands would be, in effect, a continuance of the old system.—Now, sir, the majority report of the judiciary committee proposes to abolish these inferior and inefficient courts of record and to bring near to the people in the shape of a court of original jurisdiction one that shall be uniform, efficient, enlightened, and which will commend itself to public confidence—it proposes that the law

shall be administered, at the threshold, in such a way as shall command popular respect, and subserve public justice—the end of all judicial administration. In this respect it commanded his cordial approbation, and the great principle which it established should receive his hearty support. It would go far to restore public confidence in our courts for the trial of issues of fact, and in proportion as that confidence should be entertained, would expensive, protracted litigation cease. Another of the defects of the present system (said Mr. W.) is the expense and necessary delay incurred by suitors and the public. The principal causes of these evils, in the higher courts, may be found in the inadequacy of the judicial force, and the multiplication of appellate courts. It is not in the possibility of things that three men—nay, that ten men—should discharge the vast legal duty thrown upon them by the present system, or that one man, with original and appellate jurisdiction, should accomplish the equity labor of this wealthy and populous state. Hence causes have accumulated by hundreds upon the calendars of your courts, only to be finally disposed of after years of delay, and a large expenditure of means, by the public and litigant parties. It is not the delay and expense of bringing a cause to issue and trying it in a court of original jurisdiction, that have called forth the loudest complaint—it is because when a man gets into court there is no certainty that he will get out of it in an ordinary life time, and should he succeed, there is something of a certainty that the expenses of protracted litigation will have sensibly impaired his fortune. Now it would seem a simple matter to remedy these defects. Yet, under the present system they could not be wholly remedied by an increase of judicial force in the higher courts, even though that force were distributed into sections throughout the state. Something more must be done, and that the majority report proposes to do, viz : to diminish the number of the appellate courts, and if he might be permitted to use a vulgar phrase in illustration to place the courts “the right end foremost.” In his judgment the present system invited litigation, and encouraged delay and expense in the administration of the law, without benefitting the public, the suitor, the lawyer, nor any one else but those who subsist upon the “spoils of office.” There is a class of men in all communities, who, if you had a dozen appellate courts, would not be content until they had each been resorted to. Again, we commence a suit now in a court having the least of legal capacity or public confidence—the next step brings us nearer to that which is desirable in a court—and after one or two further steps we reach that judicial tribunal, where, from its exalted character and the capacity of its members, public confidence centres. Now so long as there is a want of confidence, even slightly, in these intermediate courts, there is a tendency in the human mind to reach forward to that tribunal, where full confidence is reposed. But should we by any system reverse this order of things—send into our counties to exercise sole & original jurisdiction, judges, who from their exalted character and acknowledged ability, and dispossessed as they necessarily must be of local feeling or prejudice—shall command public res-

pect and confidence at the outset—multiply their numbers so that the business may not only be correctly but expeditiously performed—let the nisi prius and banc courts be held by the same individuals—organize but one appellate court for the correction of errors—and he believed that neither the public, nor the professional man, nor the suitor would have reasonable cause to complain of delay or expense in the administration of law or equity. The majority report contemplates the carrying out of these leading principles. The only doubt on his mind had been whether the force proposed would be adequate to the expeditious discharge of the vast and constantly accumulating judicial business of the state. The interesting and admirable statement of the honorable chairman of the judiciary committee had satisfied him upon this point. But if the force was deemed inadequate he would increase it now : for he was wholly opposed to conferring authority upon the legislature to establish inferior courts of civil jurisdiction. If this power should be conferred, he had a dread that hereafter, in some unlucky hour, something like our present common pleas system might be fastened, for evil, on the state. Another defect in our judicial system seemed to him in having, in the same court, one class of judges sitting in banc and another at nisi prius. The admirable working of our judicial system, prior to 1821 when the judges of the Supreme Court sat in banc and at nisi prius, appeals with peculiar force after an experience of twenty-five years under the present system. It is certainly important to the suitor that he should have a judge to try his cause who may afterwards sit in banc with others to review the case ; and it is important to the judge that he should mingle with the people, acquire their confidence, consider himself as one of the millions embarked in the great vessel of state, instead of shutting himself out from intercourse and fellowship with the masses. This defect the majority report proposes to correct. Another defect is, that the mode of the appointment of the Judges, and the tenure of the Judicial office rendered them not only independent of, but wholly irresponsible to the people. With the exception of Justices of the Peace our judicial force is created by a central power, and the tenure of office of the Judges of the Supreme court, Circuit Judges and the Chancellor is, in effect, for life. The result is, that there has grown up in this State, what may be denominated a judicial aristocracy, feeling no responsibility to the primary source of all power. The evils growing out of such a system have struck each member of the Judiciary committee with more or less force. All agree upon remedying the evils in part—all recommend a diminution of the term—all are not disposed however, to go the length of directly entrusting the people with the election of the Judiciary.—What are the objections to entrusting them with the power? In his opinion they were exceedingly specious, and not sustained by experience. The gentleman from Albany (Mr. HARRIS) yesterday ably demonstrated this truth. It is said that the judiciary should not be subjected to popular excitement or partizan influence.—Under the plan proposed by the majority of the judiciary committee, can any reasonable dread

be apprehended that in the election of these officers unusual popular excitement will exist, and are they not by the present mode of appointment subjected to partizan influence? Who selects most of your judges now?—The politicians of a party caucus. He meant no disrespect to the present judges of the supreme court, indeed he entertained the highest confidence in their capacity and moral worth, but he would ask, has a judge been appointed in this state for the last twenty-five years who was not a partizan? Nay, has not the office, in numberless instances, been bestowed as a reward for partizan services, and will it not be again should the system of appointment be continued? Again, experience had shown that the people are not apt to err in the discharge of a duty of this grave character. More than three thousand judicial officers, in this state, are at this moment, elective by the people, and who will declare that the present incumbents of the office of justice of the peace may not creditably compare with those once selected by a central power? So, also, the highest court of the state has ever been elective; but he had never heard it alleged that the abrogation of the court for the correction of errors was desirable on account of legal incapacity or inefficiency, although so far as it is concerned, that care has not been taken by the people in the selection of its members (they being regarded rather as legislators than judges,) that might have been expected had it exercised judicial power alone. Now it seemed to him if the principle was correct to subject to the popular ordeal the highest and lowest of the judicial officers, it was equally correct to apply it to those intermediate. For his part, he had no fears in submitting these selections to the popular judgment. He had had occasion often to mark the caution and circumspection with which the most violent partizans approach the choice of their inferior magistrates, and he believed that a far greater degree of circumspection would be exercised in the selection of those of a more elevated grade. In the choice of judicial officers partizan influences never could wholly prevail, nor popular opinion be moulded and controlled by demagogues.—Another defect, said Mr. W., is, (and it goes far to lessen the dignity of the judge, which some gentlemen have so deeply at heart) that judicial officers may descend to receive fees or perquisites, or that they may dispense, in any way, official patronage. He did not know how others might feel, but to him it was a mortifying—he might say, a disgusting spectacle, to witness a high judicial functionary descending from his eminent position to receive a paltry fee for granting an order or taxing an attorney's bill of costs; and it became still more so, when he saw him engage in a petty partizan struggle to appoint some favorite either to the office of district attorney, clerk, register, or injunction master of his court. The report of the majority proposes to elevate these judges above all malign influences arising from these sources. It proposes to give them an ample fixed compensation—to prohibit the taking of fees in any case—it gives them no power of appointment—and therein it reaches public desire and expectation. Another defect to which he would al-

lude, was the multiplication of inferior officers or *attaches* to the courts. When the suitor is now presented with a large bill of costs, the fault of its extent lies not with the attorney or solicitor. That bill is swelled to its enormity by the fees of these officials. The gentleman from Oneida gave the other day apt illustrations of this truth, in the cases of examiners and masters in chancery. The majority report—he might say all the reports—contemplated the abolition of many of these offices, and for this the profession would thank them,—for this every layman, whether he shall ever employ the courts or not, should thank the distinguished gentlemen composing the judiciary committee. It is a ready and united response to universal public sentiment.—Now, if the adoption of the majority report would cure these leading, prominent defects, (and he believed that in a great measure it would,) should not that report be received with consideration and favor; especially as they were likely, by the multiplicity of plans, to fall into inextricable confusion. It cannot be expected that all shall be suited—all our peculiar notions of judicial reform cannot be embraced in one system—perhaps no system that can be framed will be perfect, either in its theory or detail. He did not say that the system proposed by the majority of the judiciary committee had perfection stamped upon it—may he observed in that system an evil, (not from the necessity of things to be avoided,) which measurably impaired that most desirable object, the unity of the supreme court, but because that it will radically reform present abuses, and remove present prominent and glaring defects, it should, in its leading features, receive his vote. He would have preferred—he still preferred—that constitutional provision should be made, somewhat conformable to the suggestions of the gentleman from Albany, (Mr. HARRIS,) for the prescribing of such rules and forms of practice in the supreme court, from time to time, as should tend effectually to simplify the practice and reduce the expenses of that court; but if it cannot be done now, all know that the power is in the legislature to be exerted at any future time. One word further in conclusion. He regretted to differ with his esteemed friend from Monroe (Mr. STRONG) but he was opposed to changing the present character and condition of justices courts, and, by constitutional provision, extending their jurisdiction. With their present jurisdiction, an immense sum of litigation finds its way into them, to be decided far from satisfactorily to the public in numberless instances. He was unable to satisfy his mind that the people desired any further extension of jurisdiction to these inferior tribunals, but on the other hand, he believed that they were content that they should be let alone. He had satisfied himself that in the proportion that power may be extended to these courts, should petty, sectional and neighborhood strifes and controversies be increased: for the court of a justice of the peace—wherein neighborhoods assemble and enlist in behalf of one or the other of the litigants—is peculiarly the arena for engendering animosity and strife, that years may not in some cases allay. Thus, these tribunals, designed for public benefit are oftentimes, incidentally, productive of serious mis-

chief. He doubted the policy of extending the sphere of this indirect and perhaps unavoidable evil.

The Chairman was about to put the question, no gentleman being disposed to address the committee—

Mr. CHATFIELD was inclined to address the committee, but he preferred doing so on a future occasion.

Mr. RICHMOND also was now unprepared. They had other judicial plans laying on their tables, which he has not had time to read.

Mr. W. TAYLOR said the discussion hitherto had been general, and not on the pending amendment, and therefore he was not prepared to vote. He should prefer a postponement of this question.

Mr. PERKINS thought the vote might be taken now. It was necessary that it should be disposed of; for this question was the lever on which other things depended.

Mr. O'CONOR made some remarks on the difficult position in which the committee was placed, and suggested that a question should be taken on one of the resolutions heretofore submitted, to settle a principle, without regard to details.

Mr. W. TAYLOR also spoke to the same point. He said it was necessary that they should know what was to be done with the inferior courts, before they fixed the constitutional provision as to the power of the legislature in relation to them.

Mr. LOOMIS thought it was not necessary to go back. They might go on and debate these sections; and they could do this, as well as on resolutions simply confined to principles. Those gentlemen who were not prepared to speak, would have ample opportunities hereafter, and therefore he again hoped the committee would go right on.

Mr. PATTERSON said the simple question was whether they should unite law and equity and the question might as well be taken distinctly, without reference to other matters. Having disposed of that, they could go to other sections containing distinct propositions, and act upon them. He could not see how anything would be gained by abandoning the sections and taking up resolutions. He hoped the question would now be taken on the 3rd section.

Mr. RICHMOND was prepared to vote upon the question of the union of the courts of law and equity, and had been from the day this report first came in. But he was not prepared to vote for this third section as reported by the committee, unless it was more satisfactorily explained than it had yet been. He believed that the latter part of the section (which says the supreme court shall have law and equity jurisdiction, subject to regulation by law) would give the legislature power, were they so disposed, to appoint, or direct the appointment of officers occupying the same position and doing perhaps, the very same business now done by the masters and examiners in chancery, which would in his opinion be only changing the names and retaining the substance of a system which had become justly obnoxious to a very large portion of the people of this state. He might be mistaken about this, but he thought he had just

grounds of fear; at all events he was of the opinion where language was doubtful it was best to amend so as to make it plain and distinct so that all could understand it and it had long been a standing rule with him (Mr. R.) to call things by their right names. The gentleman from Chautauque (Mr. MARNIN) the other day put certain questions to the committee who reported this article as to who were to discharge the duties of some 300 subordinate officers in these courts, as now organized carrying the impression as Mr. R. understood him that the system as reported by the committee would be likely to be overloaded with business if the judges had to take all the testimony in chancery and do all other duties which there was a probability this system would put upon them. A member of the committee replied that it might be necessary for the legislature to appoint certain officers to do a portion of this work.

Mr. LOOMIS:—To whom does the gentleman allude?

Mr. RICHMOND:—To the gentleman from Herkimer.

Mr. LOOMIS said the gentleman had totally misapprehended him. He had been most decided for a long time against the continuance of masters and examiners.

Mr. RICHMOND still feared, notwithstanding this explanation, that if we adopted this section, some thing would grow up he cared not what it was called, of precisely the character of masters and examiners. He desired to call attention to this that it might be fully guarded against. He wanted things called by their right names. He would not leave a door open for the legislature to create another batch of these officers.

Mr. JORDAN called the attention of the gentleman to the 9th section:—

§ 9. The testimony in equity cases shall be taken before the judge who shall hear and decide the case in the same manner as testimony is taken upon the trial of an issue at law.

Mr. RICHMOND was perfectly aware that that section was in this report.

Mr. LOOMIS hoped the gentleman would not impute to the committee what they were decidedly and unanimously opposed to.

Mr. RICHMOND had no design to cast imputations upon the committee. He meant only to be understood as saying that authority was given in this report to create such officers, although he believed, from the explanations of gentlemen, that the committee did not intend to have any such officers.

Mr. PATTERSON:—Where will you find the authority?

Mr. RICHMOND:—In this third section abundant authority is given for the legislature to provide as they please for taking testimony; for the latter clause of the section says in such manner as shall be provided by law, and all know that the legislature is the law making power. Mr. R. would give an instance which he thought might illustrate somewhat the course of proceeding in the court of chancery. This happened within a few miles of him in an adjoining town to the one in which he resided, in Monroe county, which is in part represented by the gentleman over the way, (Mr. STRONG.) A

man sold a small farm to another in winter, when the snow was on the ground, representing that the soil was good for the growing of winter wheat. He was to receive a good price for it, and about \$1,100 was paid down. When the snow melted off, and the buyer could see the soil, he found that he had been grossly cheated. He went to the man selling him the farm and told him he must make him recompense for the deception he had practiced on him. The seller would do nothing about it—would listen to no terms—and the buyer was obliged to go into chancery for redress. The suit was not yet decided. The costs had already run up to \$4,000, or double the amount of the value of the farm. The fees of one examiner for taking testimony were over \$300, and Mr. R. ventured to say that any justice of the peace in that town could have taken the same testimony in a better form for 12 or 14 shillings. We laymen know very well how this is done.—Testimony is taken to the chancellor by the basketful, and he never reads it, nor can he. These examiners are paid by the folio or number of words for taking testimony, and in many instances they take down all the rigmarole and irrelevant matter that can well be obtained from a witness, as by so doing they are enabled to realize enormous bills of costs. Now, Mr. Chairman, said he, I am opposed to these officers perambulating the county, taking testimony by means of which they fill their own pockets at the expense of the parties in the suit. He was in favor of taking testimony in open court before the judge in all cases where it could be done, and he wanted a union of law and equity powers that they might go hand in hand together. In conclusion he would say that he would give no vote that could by possibility perpetuate the present odious system, or that would allow the legislature to create as bad a one in its stead.

Mr. RHOADES said that whilst this discussion had been going forward in regard to a judicial system at large, his attention had not been called particularly to this third section and the substitutes—but since the prospect was that we were to come to a question, he had examined it; and instead of the one being the converse of the other, as he had supposed, he found that the original and the substitute were precisely alike, so far as he could discover, in effect—both in fact proposing to unite these two jurisdictions of law and equity. The only difference seemed to be that one proposed to establish all the courts there should be, and the other authorizes the legislature in some degree to regulate this matter. He should be glad of some explanation on this point.

Mr. LOOMIS, in reply, said that he offered the substitute for the section in order to have the question which the gentleman from New-York (Mr. O'Connor) desired to raise under his resolution, raised directly on the section itself. That gentleman did not like the phraseology of the original section, under the belief that it might convey to the legislature an intimation that the intention was that these jurisdictions, though proposed to be united in one court, were to be kept distinct in practice. Mr. L. did not suppose the original section liable to this construction; and he only intended to frame the section

so as to meet the views of the gentleman from New-York. If that gentleman did not see fit to sustain it, Mr. L. should not, as he regarded it as immaterial.

Mr. SWACKHAMER went into some explanations. He originally proposed a substitute for this third section—to the effect that the judicial power of the state should be vested in one supreme court and in such subordinate courts as should be established by this constitution. At the request of the gentleman from Herkimer, he accepted that gentleman's version, though he confessed he did not fully understand its purport. Certainly nothing was further from his intention than to sanction the organization of the law and equity jurisdictions in separate courts. Indeed his only object was to unite them—and notwithstanding what had been said by the gentleman from Chautauque, (Mr. MARVIN) he still believed such was its effect.

Mr. BASCOM said the substitute vested the judicial power in certain tribunals enacted by this constitution—leaving it to the legislature to distribute jurisdiction among them as it might see fit. But to vest certain jurisdiction in one court, was another thing—for judicial power meant one thing, and the jurisdiction now exercised by your courts, another. Courts should be established by the constitution—the distribution of jurisdiction among them should be left to the legislature. Whilst up, Mr. B. read a proposition which had been agreed upon by Mr. STREPHENS and himself in regard to conciliation courts, which he intended to offer at the proper time; but which, meanwhile, he should like to have printed.

Mr. CHATFIELD, whilst he agreed with the judiciary committee in the end sought to be attained—that is, the union of the two courts—objected to the language employed to effect it. He would not give this court the same identical jurisdiction now possessed by the supreme court and the court of chancery. He should prefer to see the section amended so that it should read—"There shall be a supreme court having general jurisdiction in law and equity."

Mr. JORDAN examined into and stated the effect of the section as it stood, and as proposed to be amended by the gentlemen from Kings and Herkimer—preferring the original section. But he thought there was good sense and propriety in the suggestion of the gentleman from Otsego, and the substitution of the word "general" before the word "jurisdiction," instead of the words "the same," would be an improvement of the section. As to the 13th section, which gave the legislature power to establish inferior courts—it was a very broad section, and it might well be a question whether it ought not to be amended materially. As to the principle of bringing these two jurisdictions of law and equity together in the same hands, he believed it would work, and with a tolerable degree of success. And regarding it as a settled point that these two jurisdictions would be put into the hands of the supreme court, then the amendment of the gentleman from Otsego would be all that was necessary. But in relation to the proposition of the gentleman from New York, to amalgamate or fuse these courts into one—putting them as it were into a crucible and

melting them down, so that you could not tell which was law and which equity—some gentlemen entertained great doubts about it. But he did not see, though he had been in practice many years, and devoted his attention to it more than to law or constitution making—he did not see how he could with any degree of facility, get up a system of practice, under existing laws, that would operate. But he was with them in this sentiment, that if it could be made to operate he was willing to see it so—that is, to expedite and cheapen justice. But if we placed these two jurisdictions in the supreme court, subject to regulation by law—and if the legislature thought there was a probability of bringing them together, this section would leave the matter open for this purpose to the plastic hand of the legislature gradually to bring about the consummation desired, and which he should like to see, if practicable. All agreed substantially in the ultimate end to be attained, if practicable, though we differed materially as to the mode of arriving at it. Mr. J. said he had heretofore, on the spur of the occasion, submitted some general remarks on this whole system. He should take some suitable opportunity hereafter to show how the committee contemplated carrying out this machinery from beginning to end—its motive power—and how every part and portion of it might be filled out by the legislature—how judges are to be selected and classified—how clerks were to be appointed, &c., &c. As yet we had discussed general principles—and having formed the skeleton, it was incumbent on the committee to show how it was to be clothed with flesh and blood, and set in motion. That he should undertake to do, and to contrast the plan with that of the gentleman from Chautauque (Mr. MARVIN.)

Mr. TALLMADGE expressed a wish to hear from some one of the committee on the judiciary, an exposition of the practical working of this machine—particularly what other and inferior tribunals they proposed to organize. If we could have this on Monday, he would be bound for it, in a short time the house would be ready to vote. The expense of the system was another point in which he should like to be enlightened. Taking the number of judges of the supreme court and court of appeals, provided for here, and allow them a salary of \$3000, and we had \$109,000 to start with.

Mr. JORDAN said he should confine himself to the two higher courts, and show how the system could be carried out. As to the 13th section, providing for the creation of subordinate courts, he had already said that that required amendment—and so far as the general operation of the system was concerned that might be laid out of view.

Mr. TALLMADGE said his suggestion was answered in part—but before assenting to this beginning of 36 judges with salaries in the aggregate amounting to \$109,000, he was anxious to know what additions there were to be in the shape of subordinate courts especially of criminal jurisdiction—in order that he might contrast it with the plan of Mr. MARVIN which provided specially for subordinate courts and for lessening their number. But on the other hand, Mr. T. expressed himself in favor of a court of ap-

peals forming no part of a supreme court. He again, however, expressed the hope that we might have the information called for in the beginning of the next week.

Mr. CHATFIELD remarked that it had been several times intimated, as a matter of course, that these judges of the higher courts were to receive a salary of \$3000. But he believed if this matter was left to the legislature, that it would be fixed at nearer half that amount. If settled here, he did not believe it would be fixed higher than \$2000. The sum of \$3000 was assumed by the chairman of the judiciary committee, as the basis of his calculation of the expense of the proposed system, compared with the present; but gentlemen might dismiss from their minds any apprehensions that the salaries of these judges would be anything like \$3000. Mr. C. went on to say that he intended to move, when up before, his amendment—providing simply that there should be a supreme court, with general jurisdiction in law and equity—and that it took precedence of the motion to strike out the section and substitute of the gentleman from Kings. And he urged that the latter went further than the gentleman from Columbia supposed inasmuch as it lodged the judicial power in one supreme court and in such subordinate courts as shall be established in this constitution; and thus virtually struck out the thirteenth section, which gave the legislature power to establish subordinate courts.

Mr. SWACKHAMER said the blow was aimed at the thirteenth section mainly.

Mr. CHATFIELD went on to say that he did not want to see that section connected with this third section, in this indirect manner. It had no necessary connection with it. When we reached the 13th section, it would then be in time to talk about the subordinate courts. He proceeded to urge his amendment; and especially on the ground that the section as it stood, would seem to imply, with a union of the two courts, a recognition of their separate jurisdictions, as now exercised. That inference he desired to avoid, and to present the simple question of the union of the two jurisdictions—which he desired to see brought about.

Mr. SWACKHAMER said the gentleman from Otsego and himself concurred entirely.—And he was happy to see that the gentleman from Columbia was also coming round to their views, and the views, he ventured to say, of this body. He was not tenacious of his amendment, though he did want to reach this 13th section, which gave the legislature the power to establish as many inferior courts as they might think proper. This left the matter entirely at loose ends. He wanted to bind it up by the constitution itself.

Mr. WORDEN asked the gentleman how he supposed this 13th section varied the constitution from what it had stood for the last 25 years?

Mr. SWACKHAMER said that was a matter of no sort of importance. The principle was false in itself, whether it had age to recommend it or not.

Mr. WORDEN said the same provision had been in the constitution for the last twenty-five years.

Mr. NICOLL preferred the amendment of the gentleman from Kings to that of the gentleman from Otsego. This great reform of an amalgamation of the two courts should not be left to the caprice of the legislature to carry out—but should be fixed and definite in the constitution, of which we now had the control.

Mr. W. TAYLOR, under the avowal of the gentleman from Kings that his object was to aim a blow at the 13th section, hoped his amendment would be voted down, and that that of the gentleman from Otsego, which presented the naked question of combining in one court law and equity jurisdiction, would be considered without reference to collateral questions, and adopted. Mr. T. said that having been interrogated on this subject of judicial reform when a candidate for a seat here, he had avowed himself generally in favor of such a reform as should cheapen, simplify and expedite the administration of justice—and particularly in favor of dispensing with the court of errors, and of combining law and equity in one court. He believed that the general belief and desire was that this last measure might be adopted, and the practice of the courts very much simplified. But from his inexperience, he had found himself embarrassed—but he had now to acknowledge his obligations to gentlemen of the legal profession, for the light they had thrown upon this subject—for they had enabled him to come to a conclusion satisfactory to his own mind on this important question. He alluded to the prejudices that existed in the public mind against placing men of the legal profession in the legislature and in this Convention—lest peradventure they might be found arrayed against the reforms which the people demanded. But whatever feeling might exist out of doors, in that respect, he was satisfied that no such feeling existed here—and for one, he thought it due to them to say that in this matter of judicial reform, they had taken a noble and proud stand, and with great ability and zeal had come up to the work of establishing our judicial system on the best possible foundation. He added that it had been owing to the able and liberal views of this subject taken by gentlemen of the profession, that he had come to the fixed and deep conviction that we might combine the jurisdictions of law and equity in the same court—and thus save an immense amount of tedious and expensive litigation. Such, it seemed was the opinion of the majority of the judiciary committee—after a long and patient examination and review of the whole subject. And the fact that some of the committee differed from the report of the majority, and had presented antagonist plans in several instances, gave strength to, rather than detracted from the weight due to the majority report in itself—inasmuch as it was relieved from all suspicion of having been concocted by the profession, to suit personal or interested views. And taking it for granted that the majority of the committee agreed in opinion that as there was no difference in the principles of law and equity, and that the two jurisdictions might be amalgamated in one court, he for one, was ready to vote—as this was a result to which his own previous reflections had led him, and which he was happy to find was the result of the arduous

deliberations and labors of the judiciary committee.

Mr. WORDEN argued at some length in favor of retaining in the legislature some power over the organization of subordinate courts, in order that the system might be made to adapt itself to the exigencies that might arise in the progress of this great state in population and business.—And he insisted that substantially, the legislature had this power under the present constitution, and had exercised it. And he asked if gentlemen were prepared to assume that this thirty-two judge court, without any other court, or the legislature being authorized to create any, would answer the public exigencies for the next quarter of a century.

Mr. TILDEN here moved that the committee rise—Lost, 30 to 37.

Mr. WORDEN then took the floor, but had not proceeded far, when he gave way to

Mr. STEPHENS, who moved that the committee rise which was agreed to.

CONCILIATION COURT.

In Convention, Mr. BASCOM rose to present a provision for the formation of conciliation courts, as agreed on by the gentleman from New York, (Mr. STEPHENS) and himself. He said it was but little considered by the judiciary committee to whom it was referred, and found little favor there. Within a day or two however, a general provision of this sort had been introduced by the gentleman from Oneida (Mr. KIRKLAND)—and that proposition had found warm advocates in this body. Under these circumstances the gentleman from New York and himself had consulted together and had framed a section carrying out the original proposition of that gentleman—which he now proposed to offer with a view to have it printed. Mr. B. went into a brief review of the history of this institution in Denmark, where it was instituted as early as 1795. The main feature of this institution was a mere cost regulation, carrying out in Christian rule, that before you turned your adversary over to be dealt with by the judge, you should make a reasonable effort to conciliate and settle the difficulty before the arbitrators—who, without the aid of counsel, heard the parties, and sought to bring them to a settlement. If either of the parties was refractory and obstinate, and no agreement could be brought about, the other party was entitled to a certificate to that effect, and would then bring his adversary into the courts. The object of this amendment would be first to try this experiment in the city of New York—and if it worked well there, to allow the legislature to extend it to other sections of the state. The proposition was as follows:—

There may be established in the city of New York one or more tribunals of arbitration or conciliation, each to be composed of three arbitrators or conciliators, one of whom shall be clerk thereof. They shall be paid a reasonable compensation to be fixed by law, and all fees received by them shall be paid into the public treasury. The legislature may provide for similar tribunals in other localities of the state if it shall be deemed expedient, and may afford parties inducements to submit their differences to the arbitrament or conciliation of such tribunals, by regulation of costs in other courts.

Mr. CHATFIELD remarked that there seem-

ed to be a doubt in some minds, whether two individuals had the constitutional right to submit their difficulties to arbitration. But, in fact, we had these arbitration courts now at every man's door, and they were resorted to every day.

Mr. STEPHENS replied to Mr. C., and urged that there could be no possible harm in allowing the legislature, in its discretion, to establish such courts, with such powers as to them should seem proper. At the same time, he would not go so far as to make it mandatory on the

legislature to do this, as was proposed by some who had recently come to the support of the proposition. At present, however, all that was asked was that it might be printed.

Mr. RHOADES hoped that the proposition would not only be printed but adopted. He liked the project, as explained by the gentleman from Seneca.

The proposition was ordered to be printed and was referred to the committee of the whole on the judiciary report.

Adj. to 9 o'clock on Monday morning.

MONDAY, AUGUST 17.

Prayer by the Rev. Mr. RAWSON.

Mr. CHAMBERLAIN presented the remonstrance of inhabitants of Livingston county, against the transfer of the literature fund to the common school fund. Referred to the committee of the whole having in charge that subject.

CANALS AND FINANCE.

Mr. BOUCK offered several amendments which he intended at the proper time to move to the report of committee number three, of which Mr. HOFFMAN is chairman, for the purpose of having them printed.

The Secretary read them as follows:—

1. The aggregate indebtedness of the state at the time of the adoption of this constitution, shall not be increased, unless to rebel invasion or suppress insurrection.

2. The auction and salt duties, and all the receipts into the treasury, not appropriated to other funds or specific objects, shall be set apart for the use of the general fund.

3. The tolls collected on the canals and railroads, the rent of surplus waters, &c., the proceeds of property belonging to the canals, shall constitute the canal fund, and are appropriated to the maintenance of the canals and the payment of the canal debt and interest, except as herein is otherwise provided.

4. After paying the expenses of collecting the tolls, the superintendence and repairs on the canals, and other expenses (if any) properly chargeable to the canal fund, \$420,000 shall in each fiscal year, be set apart from the canal revenues as a sinking fund, to pay the principal and interest of the general fund and railroad debts—as set forth in the annual report of the Comptroller, of the 12th of January, 1846, on page seven; and also \$1,750,000 in each fiscal year shall be set apart from the canal revenues to pay the principal and interest of the canal debt. The balance of the canal revenue shall, at the discretion of the legislature, be applied to pay any deficit which may occur in the revenue of the general fund, to meet the expenses of the government, or to the payment of the public debt, or to the completion of the enlargement of the Erie canal, or to the completion of the Genesee Valley and Black River canals.

5. The legislature may, to meet casual deficits or failure in the revenue, or for expenses not provided for, make temporary loans, which singly or in the aggregate shall not exceed one million of dollars. Besides such temporary loans the legislature shall not in any way or manner create a debt which shall in the aggregate exceed five millions of dollars, except to rebel invasion or suppress insurrection; and every law authorizing a loan of money, except for temporary purposes, shall provide for a sinking fund from available sources for the payment of the interest on the moneys loaned, and the extinguishment of the principal in twenty years, or a less time, from the time of contracting such loan or debt; and the moneys arising from any loan shall be applied to the purposes mentioned in the acts authorizing the same, and in the final passage of such acts, in either house of the legislature, the question shall be taken by yeas and nays duly entered

on the journals, and the assent of two-thirds of the members present in each house, shall be necessary for the passage of any such law; and such law shall not be repealed or modified to affect injuriously or adversely, the securities and interest of the holders of the stock issued upon the faith and credit thereof.

6. The rates of toll upon the canals shall be so regulated and adjusted, as that the aggregate amount of revenue received therefrom shall not be diminished, until the existing canal debt is paid. After that period, the tolls may be reduced thirty per cent; and after paying all the expenses properly chargeable to the Canal Fund, \$300,000 in each fiscal year shall be set apart for the use of the General Fund; \$800,000 in each fiscal year shall be paid over to the School Fund—and the balance shall be appropriated to a fund for the purpose of internal improvements.

7. No direct tax shall hereafter be levied on the real and personal property of the people of this state, for internal improvements.

8. If any state stocks outstanding shall fall due, and the funds herein provided shall not be sufficient to pay the same, the legislature shall provide for such payment by the issue of new stock, payable at the shortest period within the ability of the canal revenues to meet the same.

9. The legislature shall not pass any law to loan the credit of the state to any corporation, institution, individual or individuals, or in any manner or way guarantee the payment of any stock, bond, or other instrument, made, executed, and issued, by any corporation or institution whatever, or by any individual or individuals whomsoever.

Explanatory of the foregoing Propositions.

The sinking fund of \$420,000, in each fiscal year, to pay the General Fund debt and interest, is based on a debt of \$5,885,549, the amount stated in the last annual report of the Comptroller.

The Sinking Fund of \$1,750,000, in each fiscal year, to pay the canal debt and interest, is based on a debt of \$16,944,815.

A calculation will show that, at the rate of 6½ per cent interest, the Sinking Fund will pay the General Fund debt in 26½ years, and the canal debt in 24½ years.

After taking from the canal revenues \$500,000 for collection and repairs, and the sums mentioned for a sinking fund, making in all \$2,195,000, there would, from the canal revenue of the fiscal year 1845, be a balance of \$223,000; and probably from 1846, of \$42,000.

The amendments were then referred to the committee of the whole, having Mr. HOFFMAN's report in charge, and were ordered to be printed.

THE JUDICIARY.

The Convention now resolved itself into committee of the whole, Mr. CAMBRELENG in the chair, and resumed the consideration of the reports of the judiciary committee.

Mr. WORDEN was entitled to the floor, and he continued the remarks which he commenced on Saturday, by an examination of the distinctions between the several departments of our

government—showing wherein the judicial department differed from the rest. Such an organization as here exists, was necessary to the existence of civil liberty. The legislature, the executive, and the judiciary, were alike necessary to make and administer our laws. And what is law? It is that power which guards the interests and the rights of all. It guards the weak against the strong—the oppressed against the oppressor. It equally regards the earnings of the poor and the humble, and the treasures of the rich; and all civilized nations find it necessary to establish courts to give it efficacy. How then shall we organize this great department, that it may attain this end? In answering this question, he elaborately reviewed the origin of the courts of law and equity, going back to the Saxon laws, and noticing the progress made in systems of jurisprudence for the protection of individual rights. He then examined the courts now in existence, whether exercising equity jurisdiction or that of law, and maintained the necessity for a chancery, though a chancery reformed, and the common pleas and local county courts, such as they can be made. The courts proposed by the majority of the committee, were highly objectionable, in his opinion. The court of twenty-eight or thirty-two judges, would involve conflicting interests and conflicting opinions, and be inadequate for the purposes designed. He went through a statement of the duties to be discharged, to show that thirty-two judges could not possibly perform the physical labor that would devolve upon them; and reviewed the report of the majority of the committee, in all its details, at great length.

Mr. SIMMONS next took the floor and commenced an elaborate speech to shew the distinction between law and equity and the necessity of separate jurisdictions. His speech was replete with authorities both ancient and modern. Having disposed of some incidental questions, and being about to enter upon his main argument, he gave way for a motion to rise.

The committee then rose, reported progress, and obtained leave to sit again and the Convention took a recess.

AFTERNOON SESSION.

The judiciary report was resumed in committee of the whole, Mr. CAMBRELING in the chair.

Mr. SIMMONS having the floor resumed. He remarked that he had undertaken to show, and had fortified himself with very many authorities in the shape of the opinions of distinguished men, in ancient and modern times, that these two jurisdictions should not be blended, in the sense proposed by the gentleman from New York, (Mr. O'CONOR.) He now proposed to show from the very nature of things and from principle, that this must be so—that these two classes of remedies were in essence distinct, and that it was not only unphilosophical but impracticable to blend them—that to attempt it would result in the loss of actual remedies and the destruction of rights. He denied that the difference between these two jurisdictions was merely in the forms of proceeding. The difference in the forms of proceeding was accidental. It was simply because the one borrowed its powers from the civil law, the other from the federal. But the substance of the remedies

was entirely independent of the forms. A great deal had been said in derogation of special pleading in common law proceedings. The great use and value of these pleadings was to compel parties to come to an issue for a judge and jury to decide. They went on until the statements on both sides were bolted to the brim, and the disputed fact was brought out. The great office of pleadings was to separate disputed from undisputed facts, and to force parties to agree as to what the question was. But in civil law proceedings, the party stated his case at large, without reference to disputed or undisputed matter, and the court was obliged to sift out the disputed from the undisputed matter—and with this additional labor thrown upon him, the judge had also to determine upon the rule applicable to the case.—Hence the delay in chancery in the first step towards the decision of a cause—in finding out the point in dispute. The pleadings at common law in fact, were simplicity itself compared with the proceedings in chancery. But the remedies in chancery and at law differed not merely in form but in substance, and Mr. S. went on to show this. Rights ceased to exist when there was no remedy to enforce them. Courts were instituted to enforce rights and redress wrongs. We had set forms of proceedings, or prescribed remedies, so classified as to reach all ordinary cases arising between man and man. These cases fell within the jurisdiction of a court of law. Nondescript cases, where the law recognized a right, but had no remedy at law, fell within the range of a court of equity—which might be regarded as a sort of residuary legatee of remedies not within the scope of a court of law: Without this remedy in such cases, the rights secured by them would have no existence. Again, a court of law tried only suits between two parties. A court of chancery tried cases where there were more than two parties, having different and antagonistic interests, which could not be settled at law without a multiplicity of suits. Mr. S. here ran over a volume of Pages' reports to show that scarcely a case was to be found there, that could have been adjusted except at the expense of half a dozen law suits. Again, the remedies in a court of law were absolute—those of a court of chancery conditional. The remedies of law were also retributive—those in equity preventive. To blend the two jurisdictions would render the law uncertain and courts arbitrary. Mr. S. here paid a high compliment to the present chancellor, who he said was regarded by some of the most eminent judges in the land, as the ablest chancery lawyer in America—and said he was pained to hear the remarks that had been made here in derogation of the court of chancery, as something that ought to be wiped out—to use the contemptuous figure of one gentleman—and in ridicule of the rules of the present incumbent—challenging gentlemen to point to the rule that was not necessary. But Mr. S. was opposed to the one man court. The true number for a court was four—and he gave his reasons for that number.

Mr. S., without concluding, gave way for a motion to rise and report progress.

The committee rose, and the Convention Adj. to 9 o'clock to-morrow morning.

TUESDAY, AUGUST 18.

Prayer by the Rev. Mr. RAWSON.

FUNDS IN CHANCERY.

The PRESIDENT laid before the Convention a communication from the Chancellor acknowledging the receipt of Mr. MANN's resolution, accompanied by a circular addressed by him to the registers, clerks, &c., requiring a compliance with the resolution, and the employment of such additional assistance as may be necessary to secure a prompt compliance with the wishes of the Convention. Laid on the table.

Mr. MANN, from a special committee on this subject, to whom a previous communication had been referred, made the following report :

That they have examined and considered the communication and accompanying papers separately and collectively, and from the documents before the committee they discover that the papers submitted purport to contain the annual returns from the several chancery circuits, made by the register, assistant registers and clerks by order of the court, and under the 127th rule of said court:

It appears to the committee that the aggregate amount of funds in the hands and under the control of the chancellor, reported to the Convention in answer to a resolution adopted by the Convention requesting the chancellor to report the aggregate amount of funds under his control, was made up from the papers and returns submitted to the Convention, and referred to this committee.

By a close examination of the returns and papers submitted, the committee discover many essential errors in the aggregate amounts, and the returns (from which the aggregate report was evidently made) to be defective in very many particulars, some of which give only abstracts, omitting many of the most essential details necessary to make any correct statement from them, which would be useful to the Convention, or to the people at large.

Your committee also observe, that these annual returns make no statement of interest and accumulation, or interest accounts, and leave this portion of these funds entirely to conjecture or presumption.

There appears to be one small statement of interest of cash funds in the second circuit, accruing upon \$37,424 63; but no statement of interest for the \$275,563 r turned as invested in bonds and mortgages; with this exception, no statements of interest or accumulations are presented. This fact alone is considered by your committee sufficient to render the statements and returns imperfect, and fall far short of the actual amount of these funds.

The interest and accumulations of the funds, if properly invested in bonds and mortgages, New York state and city stocks, and other dividend-paying stocks, with other substantial securities, would, when added to the principal, enlarge the aggregate amount to a very great extent, which interest and accumulations are as much a part of the funds as the principal itself.

Therefore your committee feel it to be their duty to state, that the communication from his honor, the chancellor, and the accompanying papers, do not contain the detailed and essential particulars, names of interested parties, suitors, owners, heirs, claimants and others, who have a right to know the precise amount and condition of these large funds, including the exact amount of principal, interest and accumulations, that no good or definite result can be arrived at from the documents submitted to your committee.

It further appears to your committee, that large amounts of these funds are in the hands of registers and clerks, and more directly under their control and direction and management, than they are under the immediate control and direction of the Chancellor himself; and the funds are so placed generally, without any adequate security from those who have the more immediate direction and control of them. This arises, no doubt, from the great mass of complicated duties and business forced upon the Chancellor, which ren-

ders it impossible for him to have the immediate supervision and management of these multifarious funds.

With a view to the better security, safety, and permanent investment and accumulation of these funds, for the use and benefit of infants, orphans, widows, heirs, and all parties interested therein, and upon the presumption that the Court of Chancery, as at present organized, will be abolished by the Convention, should the people ratify their action:

Your committee recommend the adoption of a provision in the constitution, requiring the legislature to provide by law, for the placing and depositing the funds and securities now held, or that may hereafter be held by, and under the control of the Court of Chancery, in the State Treasury for safe-keeping, investment, and disbursement; and that the Chancellor be requested to furnish to this Convention the items constituting these funds, in accordance with the resolution adopted and transmitted to him on the 13th instant, at his earliest convenience.

Your committee further report, that they have examined the aggregate report of the Chancellor referred to them, showing \$2,921,900 39 as the amount of funds in his hands and under his control; and on comparing the aggregates and recapitulation of that report, with the returns and papers (from which it appears to be made), find that it is defective, as no interest or accumulations are included in the amount, and that it is even less than the returns and papers before us show the aggregate to be; this, it appears to the committee, occurs from clerical errors inadvertently made.

Owing to the apparent inadequacy and defects in the returns and papers referred to the committee, they cannot recommend the printing of any of them by the Convention; as a whole, no correct information would be derived from them.

All of which is respectfully submitted.

GEO. S. MANN, Chairman.

Mr. MANN explained that this was a unanimous report of the committee, except as to the disposition to be made of the funds, Mr. TAGGART preferring that they should be deposited in the county instead of the state treasury.

Mr. TAGGART repeated substantially the same statement, and gave as his reason that justice to the localities where the money and property were owned required that the county should be the depository. He said he should hereafter move an amendment to the article on this subject to carry out his views.

Mr. MANN briefly pointed to some of the errors which the committee had discovered, and said one was of an amount of not less than \$30,000.

Mr. STRONG moved that the report be printed, which was agreed to.

DEBATE IN COMMITTEE.

Mr. SHAW offered two resolutions,—one to terminate debate on the judiciary reports in committee of the whole, on Thursday next, at 2 o'clock P. M.—and the other to limit speeches to 15 minutes.

Mr. MANN said these resolutions consumed more time than they saved; and he hoped they would be withdrawn.

Mr. BURR opposed the resolutions. Although he had been impatient at the time consumed on a subject which had heretofore occupied the attention of the Convention, he thought this was of so much importance that it should be fully discussed. He was gratified to hear the able legal gentlemen of this body give their views in relation to it; and he hoped it would be discussed in committee of the whole, but that the speeches would not be repeated in the house.

Mr. DODD moved to lay the resolutions on the table. Carried.

THE JUDICIARY.

The Convention again went into committee of the whole, Mr. CAMBRELENG in the chair, on the judiciary reports.

Mr. SIMMONS resumed and continued his speech. He reminded the committee that at the adjournment last night, he was showing that the subject matter of suits in chancery is very different from the subject matter of suits in courts of law, and this difference creates the necessity of a division of the business—and not the mere forms, which are but the shell, and not the kernel. He proceeded further to illustrate and explain this position. If this Convention, said he, did any thing which shall go to confound or to throw into confusion these two distinct jurisdictions, it would materially obstruct the progress of the science of the law, considered as the great embodiment of practical morality on earth. He glanced at historical circumstances, to show the progressive advancement of humanity, which was brought about by small contributions, as rivers are formed from the droppings of the mountain; and went on to show the necessity of reports, to enable the judiciary to apply the humanised principles which are incorporated in our system of laws, to cases as they arise. He proceeded at great length to show the impossibility of blending equity jurisdiction with that of law, in the same court. He then examined the proposed organization of our courts. He approved of much of the report of the majority of the committee, and should support it, unless he could get something better; but he was in favor of separating some of the thirty-two judges for the equity department.

Mr. HOFFMAN spoke of the importance of the legislature in reference to the judicial department. If no rule were prescribed by legislation the work of judicial legislation would devolve on the judicial department, and the judges themselves must decide the rule of right. Where there is law he held that there was prosperity and progress, and where it was not there was desolation and ruin. But the law must be the law of Heaven. It must not be the declaration of men occupying those seats; they might declare it, but God must have made it, and God only. He repudiated as detestable the idea that the will of any set of men constitutes the law. He then proceeded to notice the necessity of courts to administer the law, observing that at present we have no courts either at law or in equity—for they are overwhelmed and buried by the business before them. The courts do not deny justice, but they are unable to administer it. The necessity of reform in our judicial system had engaged the attention of members of the legislature heretofore, the gentleman from Essex, (Mr. SIMMONS) among the number. The attempt to remedy existing evils was made in the legislature, but it failed. He detailed the efforts made by himself and others, and the plans they proposed. He held it to be necessary to elect the judges, contending that if they were not elected by the sovereign body, they would look in vain for judges to stand by the constitution against the encroachments of power. His views on what he deemed the judicial

system to be, he had written and published and he saw no reason to change them. Assuming them to be sufficiently known, he should proceed to apply them to the report of the majority of the committee some part of which he approved, while other parts he disapproved. He mainly agreed with the proposed organization of the court for the Correction of Errors, but he disapproved of the judges of that court being unemployed so great a portion of the year. One consequence would be that they would be paid an inadequate compensation which would not secure commanding talent. It had been suggested that they could be sent on circuit, but this he held to be impracticable. He objected also to the composition of other parts of this court by district judges, who were not elected to represent the state. He examined the operation of this system in the circuits themselves, and said he preferred any number of co-ordinate courts to the district system. He desired to see state judges and to see them sit in circuit, banc, and the court of last resort. This would give them character with the people, and make the administration of justice satisfactory. He would have each judge to hold a circuit alone, once a year, unsupported by an associate, that his ability might be tested by this ordeal. He next proceeded to notice the union of law and equity in one tribunal as proposed by one of these sections. On this subject he agreed that the report of the committee was entirely right. The same court might administer remedies both in law and in equity. The best argument he had heard against it was by the gentleman from Essex, who contended for a separation as a saving of labor and as affording facility and dispatch; but such advantages, would not in his estimation, counterbalance the evils of a separation. He desired such a reform in the pleadings in both jurisdictions as to make them intelligible. He wished to preserve all that was good in existing systems and destroy all that was bad. He saw no reason to give way to alarm and terror, but was of opinion that if the reform proposed in 1841 and 1844 had been carried out, they should have been in a better condition at this day. He was in favor of trying every question of fact by a jury that could possibly be so tried. He regarded the trial by jury as a school whence were derived valuable lessons of wisdom. There the judge was compelled to make his law so plain that it could be understood by twelve men, and he was in hopes it would lead to the law being made so plain that it could be understood by every man who had to live or die by it. If the chancellors and judges were all compelled to go on circuit, they would soon devise means by which proceedings could be shortened and questions of fact in chancery could be submitted to a jury. Legislation had been tried and it had failed, but circuit practice would accomplish it. Chancery practice would soon be found no more difficult than actions of assumpsit. He was also in favor of the blending of the two systems to avoid the necessity and the expense of two sets of courts. He contended that there would be no practical difficulty in the union. He next proceeded to enquire what would be done with local courts. The report by preserving justices of the peace in civil suits admitted that local

courts were necessary and indispensable. Some gentlemen were willing not only to preserve them but to give them a larger jurisdiction; but before gentlemen committed themselves to that matter he invited them to a consideration of the necessities of the case. Every court to do justice—and they could not do justice without it—must have power to set aside a default, but no gentleman would propose to give such power to a justice. Again, it was necessary that a court that shall administer justice among men, should have power to present an amendment of pleadings, and to grant new trials; but such power no one had or would propose to give to justices. Hitherto, the justices' courts had not had jury boxes whence to draw juries as in courts of record, and he was of opinion that their best chance to make proceedings cheap and safe was in county courts. There they could safely invest power to set aside a default, to amend pleadings, to appoint referees, and to grant new trials, which they would not give to justices. It had been supposed that the proceedings in justices' courts would be made so much cheaper, but he proceeded to show that this was a fallacy; and therefore they ought not to drive people to courts which were ineffective and expensive. It would be better to give the justices the choice at once of carrying their cause to the county courts without trial in justices' courts.

Mr. WARD asked the gentleman from Herkimer to yield to a motion to rise.

Mr. HOFFMAN yielded accordingly.

Mr. SIMMONS said he had an amendment which, if in order, he desired to offer. It was as follows:—

Resolved, That the report of the judiciary committee be so arranged that sixteen of the judges be arranged into four courts of general jurisdiction, one of which shall be a court of equity; each court to hold terms in Banc at least twice yearly in each of the four districts of the state to be composed of eight senatorial districts; and the other sixteen judges to compose four courts of local jurisdiction within a judicial district, one of which shall be a court of equity, which shall hold respectively at court two terms in Banc yearly in each of said districts, and at different times and places from the other courts: The former courts to be entitled supreme courts, the latter superior courts; the judges of the former to be selected for sixteen years; of the latter for eight years. The legislature shall have power to constitute such county, city and town courts as may be deemed necessary; and to transfer such jurisdiction and powers from the equity to the common law courts, and from these to the former, and to prescribe such similar and common forms of proceeding and of remedies, as may be deemed practicable and expedient.

He offered this to put himself right. This amendment would leave it open for the legislature progressively to assimilate all the practice and to attain all the objects the most sincere reformer could desire, and at the same time it omitted to confound courts of general with courts of local jurisdiction, while it would give to the friends of local jurisdiction precisely the same benefits that they could have from the report of the majority of the committee, and uphold the character of the courts of general jurisdiction. He desired to have it printed for the perusal of members.

The CHAIR informed the gentleman that he could only offer it for that purpose when the committee had risen.

Mr. SIMMONS said he was desirous to get

it before the committee, for it seemed to him that it embraced a central point around which the extremes would be balanced as a magnet balanced a needle. It appeared to him to contain a principle which would reconcile the conflicting views in this house, and point to a perfect unanimity of action. It secured the advantages for which gentlemen had contended, of local jurisdiction, together with uniformity of practice, while it abolished the distinctions of law and equity, if that should hereafter be found practicable.

The CHAIR said the proposition was not now in order.

Mr. LOOMIS suggested to the gentleman from Essex that he might give notice of his amendment or resolution of instruction, which would answer his purpose for the present.

Mr. SIMMONS said that was all he desired. The committee then rose and reported progress, and obtained leave to sit again.

The Convention then took a recess.

AFTERNOON SESSION. FUNDS IN CHANCERY.

Mr. TAGGART, from the select committee to whom that subject was referred, submitted the following minority report:—

That having duly considered the subject of such communication, he has arrived at the conclusion that it is inexpedient to provide for the creation of any officer to take charge of such funds; but that provision should be made for the safe keeping, investment and disbursing of such funds by such county and State officers as shall seem most conducive to the benefit and convenience of the parties interested therein; and for that purpose recommends the following to be incorporated in the Constitution, either as a separate article or as separate sections in some appropriate article:—

§ 1. The Legislature shall provide by law for transferring and depositing all funds and securities now held, or which may hereafter be held by or under the control of the court of chancery, or of any other court or courts, or of any register, assistant register, clerk or receiver of any court, for safe keeping, investment or disbursement, in the State Treasury, or with a county treasurer, as follows:—

1. All funds secured by real estate in any county with all securities relating to the same with the county treasurer of the county in which the real estate is situated,

2. All funds belonging to infants, widows or lunatics, not secured by real estate, with the county treasurer of the county in which the infant, widow or lunatic entitled to the same resides, if a resident of this State.

3. All funds arising from the sale of real estate hereafter to be made, directed to be invested by order of any court, and all securities taken upon the sale of real estate hereafter made by order or direction of any court, with the county treasurer of the county in which such real estate shall be situated.

4. All other funds and securities mentioned in this section, in the state treasury or with the county treasurer, as shall be provided by law.

§ 2. The Legislature shall provide by law that every county treasurer having in his custody or under his control any of such funds or securities, shall account with the board of supervisors of his county as often as shall be required for the faithful execution of the trust reposed in him as depository of such funds and securities, and shall annually transmit a statement of such funds and securities to the State Treasurer.

The report was ordered to be printed with the majority report submitted this morning, and referred to the same committee of the whole.

THE JUDICIARY.

The committee of the whole, Mr. CAMBRELENG in the chair, again took up the reports of the judiciary committee.

Mr. HOFFMAN having the floor, resumed and concluded his remarks. He argued that we could not and would not give justices of the peace all the power necessary to make them safe courts—and that the remedy was to retain something in the shape of the county courts, exercising local powers of indispensable necessity, and elevate their character by an adequate compensation. And he went into some details of the mode in which this might be done. Mr. H. went on to condemn the one-man court adopted by the supreme court in matters of practice; and to advocate dispensing with the present system of clerkships, and substitute another contemplating the employment of clerks of local courts.

The question was then put on Mr. CHATFIELD's amendment to the third section—so that it should read:—

“There shall be a supreme court having general jurisdiction in law and equity.”

This amendment was adopted without a count.

The question then recurred on Mr. SWACKHAMER's motion to strike out the entire section, and insert:

“The judicial power shall be vested in one supreme court, subject to the appellate jurisdiction of the court of appeals; and in such subordinate courts as shall be provided by this constitution.”

This amendment was negatived, 24 to 44.

Mr. PATTERSON now moved, as the committee seemed disposed to settle principles before setting details, that the 12th section be now taken up. That section was as follows:—

“§ 12 The justices of the supreme court shall be elected by the electors of the respective districts at such time as may be provided by law—but not within ninety days before or after the general annual election.”

Mr. O'CONOR thought it desirable, before proceeding to take up that section, to determine whether we were to have county courts or not. The sixteenth section proposed to abolish the county courts. A proposition to amend that would bring up the question. The twelfth section contemplated district supreme courts. It must depend on the decision of the county court question, whether we were to have these district supreme courts.

Mr. MARVIN was not sure that he understood the effect of the last vote. He wanted a vote in some way on the question whether equity and law powers were to be vested in the same court. That we might have a direct vote on that question, he moved to strike out of the section, as amended, the words “and equity,” so that it should read, “There shall be a supreme court having general jurisdiction in law.”

Mr. BASCOM remarked that this presented a very important question. He very much doubted the propriety of increasing the number of judges who were to exercise chancery powers from eleven, the present number, to thirty-two. If, as some supposed, it was impracticable to so assimilate the modes of proceeding in law and equity, he would prefer to rest equity powers in four chancellors, and the power of administering law in a reasonable number of judges. But he believed it was practicable, and hence he had presented a minority report, with a view to permit this assimilation to take place, if the legislature chose to do it. He suggested

that this proposition left room for the legislature to make that distribution of the legal and equity powers among the judiciary, as the gentleman from Essex (Mr. SIMMONS) desired.—As it was, we had decided that we would form a portion of a system, and leave the legislature to form the rest. If this was to be the result of this elaborate reform, and if that was the settled determination of this body, then he had only two lines to offer as a substitute for the whole article—to this effect, that the judicial power shall be vested in such court or courts as shall be established by law. He wanted the Convention to take the responsibility of establishing a judiciary system or of throwing it on the legislature. For he was prepared, if any part of this responsibility was thrown upon the legislature, to throw the whole of it there. He only retained his amendment to give the gentleman from Chautauque time to present distinctly the question he desired to raise.

Mr. MARVIN said he voted under a misapprehension of what the question was. He did not design, by any vote of his, to declare that the courts of law and equity should be united and merged into one. He proposed this amendment, to get a vote distinctly on the question whether we shall abolish our court of chancery. That question was raised by his motion. He desired to see in this constitution, what there was in the present—a provision authorising the legislature to confer on any courts of law such equity powers as they from time to time should see fit. But his desire was to keep up the two courts, with a separate organization.

Mr. KIRKLAND did not regard the proposition contained in this section as necessarily involving the question whether we were or were not to have one single court, and that court to represent the existing supreme court and the court of chancery. The question involved was simply whether we were in favor of having the two courts united in the same tribunal or tribunals. He apprehended that it would be necessary to have, at all events, more than one court in this state, to represent these two courts, and to do all the business thereby devolving on them—including all the business now done by the circuit judges, examiners, and the greater part of that now done by masters. In voting for the proposition as it stood, he did so, not supposing that he thereby voted for more than this—that we united in the same tribunal or tribunals the existing courts of law and equity—in other words, that the powers and duties of the law and equity courts should be exercised by one or more courts. With that view, he should vote against the motion of the gentleman from Chautauque.

Mr. CHATFIELD enquired how this section differed in principle from the gentleman's own report.

Mr. KIRKLAND replied that the jurisdiction was the same in both. His fourth section however, established more than one tribunal.

Mr. CHATFIELD (after some explanations with Mr. KIRKLAND, from which it appeared that Mr. C. misunderstood Mr. K.'s position in regard to the amendment) went on to say, that he did not see the object of the amendment, inasmuch as his own put an end to the question,

uniting as it did, in express terms, the two jurisdictions, and being adopted by a large majority.

Mr. MARVIN asked what the difference was between the section as it stood originally, and as amended, except that the legislature had no power over it. Had there been any vote by which the question of a separation of the two courts had been passed upon? He did not understand that by the amendment, we had passed upon that question at all. If he had, he should not have called it up again.

Mr. CHATFIELD said he gave his views with reference to that question, when he proposed his amendment, and he presumed others understood it the same way. As to the difference suggested between the original and the substitute, that the former left something to the legislature, and the latter nothing, Mr. C. said, in this respect the two were precisely alike in effect. The legislature would of course have power to prescribe the manner in which jurisdiction should be exercised, but could not give jurisdiction.

Mr. STETSON had no doubt what the vote would be; still he agreed that the question alluded to by the gentleman from Chautauque (Mr. MARVIN) had not been decided. The gentleman from Seneca (Mr. BASCOM) was alarmed lest, by this amendment, we had made a demonstration against any other courts whatever. Mr. S. did not understand it so.

Mr. BASCOM said his position was, that it settled this point—that it left a part of the duty of enacting a judicial department to the legislature. The amendment of the gentleman from Kings (Mr. SWACKHAMER) contemplating the establishing of courts by this constitution, had been voted down.

Mr. STETSON said that to some extent, the vote alluded to harmonized with the views of the gentlemen from Chautauque and Essex.—For it showed a disposition to preserve the words law and equity, though a disposition to confer these powers on the same court. As the section stood now it only meant a supreme court having a jurisdiction in law and equity. The word "general" meant nothing beyond it. Still, we might confer on the legislature power to create subordinate courts having equity jurisdiction. The words law and equity being left in, many might naturally suppose that the vote taken did not involve the question of fusion. And it did not. He knew what the vote would be on the amendment, and gentlemen in favor of fusion were strong enough without availing themselves of the aid of the vote taken as indicative of a concurrence in their views.

Mr. SWACKHAMER hoped this amendment would be voted down. It involved the existence of that old dragon of the court of chancery.

Mr. BASCOM said he should vote for the proposition to strike out—and for the reason that he was not sure that he understood the effect of the amendment of the gentleman from Otsego. There might be a covert design in the choice of this precise language. The proposition of the judiciary committee was that this supreme court should have the same jurisdiction in law and equity, as the court of chancery and supreme court now had, subject to regula-

tion by law. He objected to this that it did not imply that the legislature might abolish this jurisdiction in chancery. The proposition of the gentleman from Kings, which obviated this objection, did not find favor—and there seemed to be no disposition to vest the judicial power where we could find it, but there seemed to be a disposition to leave a portion of it not vested, so that the legislature might hereafter create as many courts as they pleased. He would like to know how far this section had been changed by the amendment of the gentleman from Otsego? What was the meaning of general jurisdiction? He ventured to say that it would be construed to mean the jurisdiction that existed as a living, known thing, at the time the language was used—not such as the judges or the legislature might hereafter prescribe, as the words subject to regulation by law, might have implied. Under these convictions, he should vote to strike out "and equity"—and he should probably vote to keep it from being put in any where else. If equity was to be administered, he wanted it exercised under control. He would not put equity powers, such as now were exercised by the court of chancery, in any tribunal.

Mr. CHATFIELD said it was very difficult to ascertain what the gentleman did want.

Mr. BASCOM preferred the language of the old constitution. He wanted the judicial power vested, and the legislature left to define the jurisdiction.

Mr. CHATFIELD:—Then he wants something more than he wanted when he submitted his minority report. I find no where in the old constitution an expression that the judicial power, except that of trying impeachments, shall be vested in justices' courts, a supreme court, and in surrogates.

Mr. BASCOM:—Not precisely, but in effect.

Mr. CHATFIELD said the old constitution no where contained a clause vesting the judicial power. It created the supreme court and the court of errors, and recognized the county and justices courts, speaking of them as existing things. The majority report followed out the spirit of the old constitution in parcelling out the judicial power, more nearly than any of the minority reports. But where did the gentleman from Seneca lodge this equity power?

Mr. BASCOM:—I leave that to the legislature.

Mr. CHATFIELD:—But controlled by the provision that there shall be three courts—a supreme court, a surrogates' court and a justices' court. Does the gentleman mean to confer equity powers on the justices' courts? Or would he confer it on the surrogates?

Mr. BASCOM:—Some of it.

Mr. CHATFIELD went on to say that the gentleman lodged this power no where, except where this third section rested it—in a supreme court. And yet the gentleman was going to vote it out of this section! Mr. C. did not understand what the gentleman meant by insinuating a covert design in his amendment, nor did he appreciate his criticisms on the word general.—Mr. C. intended to give this court jurisdiction in law and equity co-extensive with the state—and of all subject matters of litigation in courts of law and equity. Nor did he suppose that the

word was susceptible of any other construction or meaning. The section left no residuary power to be exercised by other authority. It did not give the legislature power to create other and subordinate courts. That was to be looked for in another part of this report. When we approached the 17th section he should have something to say about that. He did not like that section. He had very great doubt about leaving any such power to the legislature at all. He was not certain but what it ought to be struck out altogether, and specific provision made for subordinate courts.

Mr. SWACKHAMER :—Does the gentleman go with us in striking out that section?

Mr. CHATFIELD :—Sufficient for the day is the evil thereof. If necessary, I shall let my views be known, when we come to it.

Mr. LOOMIS said the criticisms upon this section seemed to suppose that the next question was on re-considering. That was not so. The vote just taken had settled the question of phraseology. Thus far the propositions to amend had come from the friends of the section as it stood, in principle. This proposition was from the other side, and raised the distinct question of a separation of equity and law. That was the avowed object, and he hoped that a direct vote would be taken upon it—for, as yet, no direct expression had been had on that point. He apprehended that a large majority would be found in favor of uniting the two jurisdictions. As to the language of this section, it had been a matter of a great deal of trouble in another place. No equal number of words in his report, had been the subject of more discussion in committee, of so much hyper-criticism and philological learning, as these. The idea that to retain the words law and equity here, would prevent these courts from being blended, he thought fallacious.

Mr. SWACKHAMER called for a count on the amendment in advance, and

The question was put on striking out "and equity" and lost 7 to 61.

Mr. BASCOM then moved to strike out the words "law and equity"—so that the section should read :—

"There shall be a supreme court having general jurisdiction."

Mr. JORDAN enquired if the gentleman meant general jurisdiction over legislative, ecclesiastical and other matters!

Mr. BASCOM intended such general jurisdiction as should be prescribed by law. He varied his amendment to that effect.

Mr. STRONG called for a count on his amendment, and it was lost, three only rising in the affirmative.

Mr. O'CONOR moved to add to the section—"and in each county a county court having original jurisdiction in civil cases."

Mr. PERKINS enquired if the gentleman intended to exclude criminal jurisdiction?

Mr. O'CONOR did not—but wished simply to raise the question now whether we were to have local or county courts with original jurisdiction. Provision for criminal jurisdiction might be added.

Mr. RICHMOND asked if the gentleman in-

tended that the county courts should have jurisdiction in law and equity?

Mr. O'CONOR replied that that was another question. He wanted to raise this point disembarrassed of every other. When the main question was disposed of, these would come up in turn.

Mr. CROOKER suggested that the gentleman should leave out the words with original jurisdiction.

Mr. O'CONOR said that was the precise point he desired to raise.

Mr. STETSON remarked that the 13th section raised this question—and the gentleman would probably be more successful when we came to that section, than by pressing his amendment now.

Mr. O'CONOR supposed that before settling any question as to the constitution of the supreme court—either in respect to the number of judges, their classification, or the mode of selecting them—that it was important to have the question settled whether we were to have the ancient county court preserved. Hence, he would urge this question to a determination now. The thirteenth section, or something like it, would be necessary, according to his views, whether we had the county court or not. We had now a supreme court having general jurisdiction over the whole state. We had a regularly organized though inefficient county court in every county. Before approaching the question of the constitution of the supreme court, he wanted the question settled whether we were to annihilate utterly this ancient institution, the county court, or improve, elevate and strengthen it, and make it of use in relieving the supreme court, which, constituted as it might be, some believed would be overwhelmed with business. Hence, he thought this the proper time to dispose of the question.

Mr. LOOMIS thought it unnecessary to settle this question before arranging the supreme court. Indeed, it would be embarrassing, as every gentleman would vote on the details of the supreme court with reference to his model of a county court—and when we came to that question might find themselves disappointed in that, and unsatisfied with what they had done in regard to the supreme court. Mr. L. preferred to go on and settle this section, then to take up the question of electing judges, and then as to the other details. After that, we should be in a condition to settle this question of county courts, and what jurisdiction they should have. For himself, he was in favor of a county court, as such; but if gentlemen meant a district county court, he was opposed to it. He wanted a county court for local purposes.

Mr. NICHOLAS thought this county court question should be settled first, as it would have an important bearing on the number of supreme court judges.

Mr. JORDAN differed with the gentleman.—If it was to have any bearing on the organization of the supreme court, it ought to be settled what kind of a county court we should have. The naked question of a county court, would not of itself aid us at all in settling the details of a supreme court. The kind of county court he would have, would not change his arrange-

ment of a supreme court at all—for he would confine it to criminal jurisdiction, mainly, and to such miscellaneous local business as now devolved on that court. It would be such a court as would not interfere with the jurisdiction of the higher courts, on which we must rely to do the judicial business of the state. We gained nothing by determining merely that we would have a county court, unless we went further and determined what kind of court it should be.

Mr. RICHMOND insisted that we could not vote on the number of supreme court judges, nor hardly on their jurisdiction until these inferior courts were settled. The propositions to increase the jurisdictions of justices and to cut off appeals, would materially affect the question of the organization of the supreme court. So with the question of a county court, and its organization.

Mr. TILDEN took it for granted we were to have a common pleas court in some form and if so, and it was made an efficient and useful court, it would materially affect the question of the number of supreme courts judges. But if not, there would be force enough in that court, as organized here. Hence he urged the importance of settling the county court question first.

Mr. NICHOLAS supposed of course that having determined to retain county courts, we should go on and organize them on a better footing than now, before proceeding to arrange the reference court.

Mr. PATTERSON here moved that the committee rise, which was done—and the Convention

Adjourned to 9 o'clock to-morrow morning.

WEDNESDAY, AUGUST 19.

Prayer by the Rev. Mr. SELKIRK.

The PRESIDENT laid before the Convention a preamble and resolutions, adopted by citizens of Jefferson, Lewis, and Oneida counties, in favor of the resumption and completion of the unfinished canals; which was read, together with an elaborate memorial.

Mr. KIRKLAND moved the reference of these papers to the committee of the whole, having in charge the report of the committee of which Mr. HOFFMAN is chairman. Agreed to.

Mr. K. then moved that they be printed. He said they contained much valuable statistical information. They came from a large meeting of the inhabitants of several counties; they were on an important subject; and they had precedents in the printing of memorials from other counties.

Mr. CHATFIELD opposed the motion to print.

Mr. STETSON was willing to follow the usual custom, whatever it was. If the Convention printed memorials on one side, it must print on the other; but this had not been done. He instanced the refusal to print several very important memorials which had been presented, and said if this should be printed, the action of the Convention would be partial. He moved that the motion to print be laid on the table.

Mr. ANGEL called for the yeas and nays on that motion; and there were yeas 51, nays 40, as follows:—

AYES—Messrs. Allen, Bascom, Bergen, Bowditch, Brown, Burr, Cambreleng, Chatfield, Clark, Cook, Cornell, Dodd, Dubois, Flanders, Graham, Greene, Hart, Hunt, Hunter, A. Huntington, Hyde, Kemble, Kennedy, Kernan, Kingsley, Loomis, Mann, Morris, Nellis, Nicoll, Perkins, President, Richmond, Riker, St. John, Sanford, Sears, Shaw, Sheldon, Stanton, Stephens, Stetson, W. Taylor, Tilden, Townsend, Tutthill, Waterbury, Willard, Witbeck, A. Wood, Youngs—41.

NAYS—Messrs. Angel, Archer, F. F. Backus, Baker, Bruce, Bull, D. D. Campbell, Chamberlain, Conely, Crooker, Dana, Danforth, Hotchkiss, E. Huntington, Jordan, Kirkland, McNeil, Marvin, Miller, Nicholas, O'Connor, Parish, Patterson, Penniman, Rhoades, Salisbury, Shaver, Shepard, E. Spencer, W. H. Spencer, Stow, Strong, Swackhamer, Taggart, Tallmadge, Warren, White, A. Wright, W. B. Wright, Young—40.

Mr. CROOKER offered the following resolution, which was adopted:—

Resolved, That committee number Eighteen be requested to inquire into the propriety of reorganizing a provision for discouraging the holding of land by corporations, except when used for their necessary business purposes.

THE JUDICIARY.

The committee of the whole resumed the consideration of the reports of the judiciary committee, Mr. CAMBRELENG in the chair.

The pending question was on the amendment of Mr. O'CONOR, modified as follows—to come in at the end of section three:—

“And in such county a county court, having original jurisdiction.”

Mr. PATTERSON had but a few remarks to submit upon this question. The amendment proposed that we should have a county court with original jurisdiction, without defining what sort of a court we should have. He stated yesterday, that unless we define the court first, we should find ourselves in the predicament of the judiciary committee, where, although a majority voted in favor of a county court, yet those constituting that majority could not agree to any particular plan for the organization of a court. He wanted a plan presented here in advance and voted upon. Then we could vote understandingly. But if we voted nakedly upon the question of a county court, we should find ourselves in an embarrassed condition. He did not believe there was a gentleman on or off this floor, who would consent to the establishment of just such county courts as we have had in the several counties of this State heretofore. Perhaps the gentleman from New York (Mr. O'CONOR,) would be willing to have such courts established in the country, but he believed no persons out of that city would consent to it. The returns which had been received here in relation to the expenses of these courts, show that the whole amount of judgments have not amounted to so much as the expenses of jurors. It would have been more to the pecuniary advantage of the people if they had paid out of their own pockets the verdicts rendered, rather than to have submitted to the expense of these formal trials. Then why continue such courts as these? It had been said that it was necessary

to have local judges in order to have an authority to issue writs to apply in local cases ; but why should not this power be given to the surrogates of the counties? If there were to be five judges in each county who received a fixed salary, what was to be the amount of their salary? It could not be said that a fixed salary could be made which would apply to all the judges in the different counties, both where the business was large and where it was less extensive—the same in Rockland as in Oneida. His own plan would be, in providing for local courts, to elect two judges in each county, who, with a judge of the supreme court, should hold sessions of oyer and terminer. And this, he believed, would be as good a court of local jurisdiction as could be had. Some gentlemen, like the gentleman from Ontario; [Mr. WORDEN] had referred to one or two counties where the county courts were good enough. That gentleman had the good fortune to live in a county where there was an effective court. Such, however, was not true of the State generally. He again asked the gentlemen to submit their plans for a county court. One had suggested the election of a first judge, who shall be a surrogate, and with two justices of the peace hold general sessions. This struck him as the least objectionable, and as creating the least additional expense. But the gentleman from Herkimer (Mr. HOFFMAN) objects to this as a one man court. We have such courts now. The justices courts are one man courts. There are the circuit courts, which are one man tribunals. Let any man go into a circuit court, and then into our county courts, where five men are perched up for ornament, and he will be satisfied that the circuit judge will do more in one week than the others can in four. No one would propose to pay all five judges large salaries, and unless you did you could not get competent men. Mr. P. then examined the plan submitted by his colleague, (Mr. MARVIN.) This he thought the best plan for a county court, if we were to have one. You could afford to give the president judge a good salary, and would thus get a good man. But when the judiciary committee had got their report drawn out for a district court of common pleas, with a president judge to be elected in each of the eight judicial districts, they saw at once that this president judge might as well be called a judge of the supreme court, because in each of these districts four judges of the supreme court are to be elected, and if more judicial force is necessary, then add it to the supreme court. Why call one of the judges elected in a district a president judge of common pleas, and send him to the different counties of the district to hold the common pleas courts, and the next week allow one of the supreme court judges, elected in the same district, to follow him and hold the circuit court in the same counties? The committee, in looking over the whole matter, concluded that it would be better to have but one set of judges, and call them judges of the supreme court; have all civil suits commenced in that court, where the cost is no more than in a county court, and where the rules and forms of proceeding will be the same throughout the state. In this way one appeal, at least, can be saved, and in addition to

that the number of appeals, in his judgment, will be less from a judge of the supreme court holding a circuit, than from a judge of the common pleas. Mr. P. examined the objections to the plan reported by the committee, arguing that they were invalid. County judges were now paid large sums of money for fees, when the services might as well have been rendered by the justices of the peace. He read the items of a single case that had been handed to him within a few days, where a county judge bound over some parties in a riot case. He thus made out the following bill for services:—

Attendance, 25; 4 oaths, 50; orders for warrants and warrants for 24, \$12.....	\$12 75
Subpoenas for 20 writs \$5; attendance on return 20; subpoenas for 20 writs \$5.....	10 25
Svearing 42 witnesses 5 25; drawing and engrossing 20 folios of depositions 7 50.....	12 75
A tondance and orders that 17 delendants give security 9 50; 22 recognizances 5 50.....	14 00
Attendance and orders that 10 witnesses give security \$5; 10 recognizances 2 50.....	7 50
A tondance and orders to discharge 7 defendants without bail.....	3 50
Attendance and orders to discharge 17 defendants on giving bail 8 50; do. 10 witnesses 5.....	13 50
One day's attendance on examination.....	2 00
	\$73 25

Mr. J. J. TAYLOR: Was that for a single day's services?

Mr. PATTERSON knew nothing about it, except what appeared on the face of the bill.

Mr. TAGGART wanted to know if that judge had ever been indicted?

Mr. PATTERSON could not tell.

Mr. BROWN: What in God's name was that judge about when he made those charges?

Mr. PATTERSON: It appears by the bill that he was examining and binding over some individuals charged with a riot. He could not see what use there was in having five judges to run up bills like the one he had read. Mr. P. spoke of other duties now thrown upon county judges, which he thought had better be dispensed with. Such were appeals from the acts of road commissioners &c. If two judges are to be elected in each county to sit with the judge of the supreme court, to hold courts of oyer and terminer, they, with the surrogate, might hear certioraris from justices' courts, and transact such local business as is now done by the county judges. But he would not like to see a county court having original civil jurisdiction in any county in the state. If the delegation from New York desired such an one, he should not object to allowing them to have it in their own county. The gentleman from Genesee (Mr. RICHMOND) had discovered in the 3d section a provision which would allow the legislature to appoint 168 examiners in chancery. He (Mr. P.) did not believe the same discovery could have been made by any other gentleman in the Convention. The article provided distinctly that the judge who decided a cause shall hear the testimony, and the power given to the legislature had no reference to the appointment of such officers as examiners in chancery. He hoped no other bugbear like this would be found in the report of the judiciary committee.

Mr. STETSON regretted that we were precipitated into a discussion of this question of a local court before we had discussed and passed

upon the organization of the higher courts ; for he believed that all parties in the end would feel constrained to organize courts with some sort of jurisdiction to stand between the supreme court and courts of justices of the peace. As it now stood a large number of the judiciary committee, and others who supported their plan for organizing the higher courts, would oppose the establishment of an intermediate court, as they regarded it hostile to their plan ; hence he believed this particular question would stand a better chance if its consideration could have been deferred. For himself he should acquiesce in the general plan proposed by the committee, for he believed that it was the best that we could get under all the circumstances of our condition. He would say more—he approved the views of the committee in the recommendation that the judges of the supreme court should try all the causes heretofore tried in the supreme court and common pleas, so far as that could be done without overwhelming that court, or extending the division of its parts to the destruction of its unity. There was sound reason in the plan, for trials would be more expeditious, and the abler the judge the fewer the errors. Again, it was due to the masses who litigated for the smaller sums that they should, as far as may be, have as good a judge to try their causes as those who litigated for larger sums. But there was a large class of business proceeding mainly from courts of justices of the peace, now administered in the county courts, to which the jurisdiction of the supreme court could not be brought, so as to try the issues before the jury, without manifest danger of overburdening that court ; or if you increased its numbers to meet the demand of making it a mere common pleas system, without the unity of a supreme court. He would say then, that, when the question was put, will you organize a local court, having some sort of jurisdiction?—gentlemen could not wisely answer *No*, without they could certainly demonstrate that the supreme court, as it was proposed to be organized, could easily administer the law, and try the causes in the class of inferior cases to which he referred. Mr. S. then proceeded to compare the judicial force proposed with that we now have ; and both with the amount of business to be done, as derived from the statistics of business, furnished by the clerks of the courts. He showed that we now had three hundred and forty-two judges of courts of record ; and in lieu of this, the committee gave us thirty-six, all told. He admitted a comparison of numbers was not a true index to the comparative force for despatch ; for the disposition of it, and its improved ability, so far as the pleas were concerned, would forbid such a comparison. He showed that there was a great mistake in the report of the select committee, Doc. 43, upon the statistics of litigation. It had gone forth to the public, and excited alarm. The clerks of the supreme court had returned the number of causes put upon the calendar of that court, at each term, during two and a half years, ending May term last—running through ten terms—the select committee had footed up these several items, and the aggregate of 5573 causes had gone to the public as having been placed on the calendar of that court in the

brief time of two and a half years ! The truth was, the same causes were counted twice, and up to eight times over—as they went on to the calendar every term, some of them eight times. The whole number of causes actually argued in that two and a half years, was 1053 ; and the number remaining upon the calendar at the end of the term was 665—showing that 1718 instead of 5573, was the number on the calendar of the supreme court in that two and a half years. The average number placed on the calendar annually for the last two years, was 721 ; and the average number argued each year was slightly below 400. He believed that in five years the whole number of causes on the law side alone, to be argued at the terms of the eight districts, would rise to 1000, giving annually 125 to each district ; and there would be a proportionate quantity of non enumerated and chamber business. Here then we had a standard by which to measure the capacity of these judges in the dispatch of business, and of the amount of business to be done. No one complained of the ability or industry of our present judges. It was admitted that they did all that these men could do. It appeared then, from this guide, that one cause and one third of a cause, with its proportional quantity of non-enumerated and chamber incidents was all that these judges could hear argued and decide and dispose of by written opinions in each day. That was about the ratio of the dispatch of the present judges of the supreme court, upon four hundred causes a year. And he would say that if gentlemen expected by their proposed organization to improve the ability or increase the dispatch of judges they would be sadly mistaken. If he stood solitary and alone in the opinion, he nevertheless would confidently express his belief that before ten years had gone by, the popular cry would go up, “oh that we could have such judges as we had before 1846,” as we now heard the cry “oh that we had such judges, as set upon the bench in 1821.” He knew that there was a thousand causes operating to make the judges of our court slightly unpopular ; but the causes were small and evanescent. Attorneys were frequently disappointed in results, when the fault was more with themselves than the courts, and the public was sensitive because business was behind, when no human power could bring it up without an increase of force, in proportion to the growth of the country since 1821. The judges now suffered from these slight and temporary considerations, but sir, (said Mr. S.) the “good that men do lives after them,” and soon after we shall have parted company with the present judges of the higher courts, we shall look back upon their learned decisions and indefatigable industry with pride and satisfaction, mixed with regret that we are having a quality not quite so good. The new organization then would not increase despatch beyond the mere numbers it would add to the force. He had shewn that 125 causes would arise on the law side in each district. There would in his opinion be as much on the equity side, making in all 250 causes in each district, to which must be added the non-enumerated and chamber business in the same ratio. This would require 188 working days, and travel would increase the number of days

to 200, equal to two-thirds of the working time in each year, amounting to eight months. Now twenty-four of the thirty-six judges must be employed upon this duty, and eight months in each year was equal to sixteen of these judges—eight were to be constantly employed in the court of appeals and we might reasonably suppose that two of this whole number would be unable to do business from sickness or other causes. We thus had given employment to twenty-six of the thirty-eight judges, leaving ten only to do all the business now performed by eight at the circuits, and also the superaddition of all the business done at the common pleas, and taking the evidence taken in the court of chancery, for which over \$16,000 was now paid to only part of the examiners. Really it seemed to him that, to take this evidence alone would require at least one judge for every district, eight in all. The returns of actual trials in the circuits, shew 950 for the year 1845 in those counties from which we had returns. From the common pleas for the same year, we had of all sorts, original causes, appeals and certioraris, over 2000, actually tried. It was at least in point of time equal to that done at the circuit. His conclusion was that the force proposed was at least inadequate to administer justice in the first instance in all those cases which proceeded from justices courts. Mr. S. proceeded at much length to show, that from principles of economy that class of business ought not to be sent to the Supreme Court at the centre of the county, where suitors for small sums with their witnesses would have to wait as spectators subject to heavy expenses nearly a whole week, and then perhaps to go home and come again without a trial. For that class of cases it was better to bring the judge to the parties than to carry the parties and ten witnesses to the judge. There should be at least one county judge for every ten thousand inhabitants, who would go into the neighborhood where the parties and witnesses were, and hear new trials from justices courts; and such too of a large amount under their present jurisdiction, where the defendant should elect to be tried before this higher justice. As to justices of the peace he would say that a large portion of them were fully capable of performing the duties upon the county bench, but the difficulty was when a case arose which required nursing, the plaintiff or person having charge of it would avoid the candid and capable justice and select one who felt a bias or was incapable of conducting a trial upon accurate legal principles. Now a defendant should not be left to be thus devoured, or forced to endure a greater evil than that of appeal or certiorari. The only correction he knew of was the proposition of the gentleman from Herkimer (Mr. Loomis) to establish a local court that should go to the neighborhood, when causes enough had accumulated. The gentleman from Franklin (Mr. FLANDERS,) had encouraged such a system and every gentleman who had spoken admitted that reform was necessary in that direction.

Mr. O'CONOR said, as he had proposed this amendment, and was frequently referred to, it would seem to be proper that he should state his object in presenting it, and the views he entertained on the general question. He had not

heretofore made any remarks on the general scope and structure of the judicial system, presented by the committee on the judiciary; he should therefore avail himself of this occasion to speak somewhat at large on that system; and before he sat down, would urge upon the committee the retention of county courts in their present legal character, having original jurisdiction in suits between party and party, and to be so newly organized and officered as to give them the degree of vigor required, and to enable them to perform that large portion of the judicial business of the state, originating between residents of the same county. It might be, as the gentleman from Clinton (Mr. STETSON) had said, that the report of the majority would certainly command the assent of the Convention; and that it was but a waste of time for him to present his views in opposition to the system reported. But conceiving, as he did, that this report destroys nearly all the good features in our existing and past judicial systems, and furnished nothing that can be deemed an equivalent, he should consider himself wanting in duty to his constituents, if he did not at least enter his objections to it, and show, to the best of his ability, the objections to it which existed. They were told at an early stage of the proceedings of this Convention, that it would be a sad business if, instead of going into committee of the whole, and there settling preliminarily certain important principles, we should refer particular matters to select committees. It was urged that if we did so, we should virtually make those committees the Convention; that when a strong committee of respectable gentlemen was sent out charged with any particular subject, they were sure to return animated by an *esprit du corps*, and banded together to carry it—presenting a force altogether irresistible. For his part, he gave but little weight to that argument, and voted against those who urged it, perhaps because he was unskilled in legislation. He supposed a report would come in merely as a basis of action for the Convention, and that even the members of the committee would themselves treat it merely as a basis of action. But perhaps he was in error. Perhaps it was true that when a report was made and thus returned to the Convention, gentlemen could not be induced to alter a word, a line, or a letter, because it was the report of a committee. He certainly should greatly regret the vote he had thus given, at the outset of our proceedings, if such should prove to be the case. He begged to say, however, whilst he should call the report of a majority of the judiciary committee—while he would not dispute the right of any to apply that title to it—he felt bound to refer to the proceedings of the committee so far as was necessary to deprive the report of some claims to consideration which its advocates have put forward for it. It was but a day or two since a gentleman, a member of the judiciary committee, commented at large on the vast extent of the labor which that committee, for two months, had devoted to this report; and he led them to conclude that it was the result of those labors, and had ultimately received the deliberate sanction of nine members of that committee. This the gentleman gave the Convention to under-

stand, or his remarks led to such an understanding. The gentleman might not have intended to produce the impression that this report, in its length and breadth, was the result of such labor, and that it received the concurrence of nine members of that committee. Now, he would take occasion to say that the committee held forty-two meetings. On reaching the forty-first, there was a report prepared which never yet has seen the light, each branch of which received the sanction of a majority, and the whole of which had that of six members, while other six dissented and prevented its approval. Then came the report in question, which is no more like the report referred to than the famous report of committee number five, on which the Convention first commenced its labors. That report had been prepared, as had been observed by the gentleman from Orange, (Mr. Brown,) by two members of the committee, and, on private application, it received privately the signatures of seven members of the committee, by which it became adopted, as what the committee, in a legal sense, was willing to have brought before the Convention. It was also true that at a meeting of the committee, subsequently held, which he did not attend, it would have been useless for him to do so, the seven signatures formed a majority, and the general scope of it, at least, was prejudged, signed and settled. That paper had received a formal sanction from nine or ten members; and perhaps it would have received his own signature, if he had been there, in order that it might be reported as a basis of action for this Convention. But it was not a report regularly eked out from the labors of thirteen, at forty odd meetings, and finally agreed to by nine. It was got up by a few, and others were induced, one by one, privately to approve of it, that some basis of action might be presented—after the committee had been wearied out by the difficult labor of trying to agree on some system. He did not complain of this; but he took leave to say that it was entitled to no particular weight as having the sanction of the committee, or being the result of the deliberations of the committee.

Mr. JORDAN enquired if the gentleman from New York intended to say that the report, as drawn up and presented to the Convention, was not presented to the committee when every one was present but the gentleman from New York himself, read over section by section, amended, and finally received the sanction of the majority of the committee who signed it?

Mr. O'CONOR remarked that he had already admitted all that. After it received seven signatures in private, it was agreed to by others, one gentleman approving the alteration by proxy; but he was on the north river at the time. But what he objected to was that this should be received as the result of the labors and arguments of the committee.

Mr. LOOMIS asked the gentleman from New York to point out any one principle that was not contained in it, but which was in the general report previously made by the committee, except as to the organization of the court.

Mr. O'CONOR: In that respect there was a most material deviation; the very court of appeals now in the report, was deliberately reject-

ed in full committee, and no attempt ever made to stir that decision. The original report contained forty-seven sections, and was, he believed, longer than the whole of the present constitution. It contained a court of common pleas in each county, with president judges for districts embracing many counties. He, however, freely admitted that notwithstanding the circumstances he had referred to, this report was entitled to be discussed on its merits and treated as a majority report. So he had intended to treat it. He had always called it the report of a majority of the committee, and acquiesced in its being so called, but he did not wish to have it passed before the Convention as the result of the labors of thirteen gentlemen; nor to have minority reports dispraised by contrast on the ground that no one agreed with the other. What time had they to make an agreement, for the new majority report was signed one afternoon and presented the next morning? He had made these explanations to correct the remarks of the gentleman from Columbia (Mr. JORDAN), and also that the report might stand on its own merits without the aid of the praise that was given to it on account of the great amount of previous deliberation bestowed upon it, when it was not the result of those deliberations. It might however be unfortunate that we should have had any discussions about what took place in committee. He should not have spoken of it, but for what had fallen from the gentleman from Columbia on the same subject, giving the report more credit than it was entitled to receive, and throwing some odium on those who did not agree to it. So much then for the origin of this report, and now he had no more to say about it. He was sure that every gentleman who had anything to do with bringing it here was animated by honorable motives, and the report was to be regarded as the honest result of the fair and impartial judgment of the two or three gentlemen who prepared it, than any one of whom no gentleman could be found on this floor entitled to more respect. And now why should their system be objected to? He had many and serious objections to it. He thought it would be impossible to do the business of the state under such a system, and that what was done would be badly done. It was in substance and effect a system of district courts, without any supreme court, having original jurisdiction as heretofore. Again, it dispenses with the court of errors, and substitutes a court of appeals as a court of last resort—a court wholly unlike it in every essential respect—a kind of mongrel court between the two we have had without the merits of either. If he understood it aright, the courts we had prior to 1821, were perfectly unexceptionable. All agreed in commending the system we had up to that time, which however failed on account of the prejudices which had been excited against the judges, for their real or supposed political bias as members of the council of revision.—Then we had justices courts as we have now, except then the jurisdiction was not so high. We had common pleas or county courts as now, with the exception that the senior judge held for life. We had also a supreme court of original jurisdiction and also of appellate jurisdiction—repre-

representing the English king's bench—the supreme fountain of justice, and possessing jurisdiction over all officers who are subject to *mandamus* as any of the prerogative courts, by which all officers are left within their appropriate spheres of action, and compelled them to execute their duties therein. We had an ultimate court of appeals, consisting of the senate, aided by the chancellor or the judges of the supreme court. That court was admirably framed for the development of the principles of liberty established by our revolution, and to be enjoyed under new methods of government; and for the modification of our borrowed jurisprudence, by adapting it to this new state of things. It was emphatically the court of the people, composed of individuals selected from the various sections of the country; coming together and making a fair representation of the general mind of the whole people. It was the common remark of most eminent technical lawyers, that it was the best court in the state—that it was hourly infusing new blood into the law, and invigorating and sustaining our jurisprudence, which might perhaps have become too contracted by the influence of decisions made under a monarchy. With these tribunals erected by the constitution of 1777, no fault had ever been found, except one single exception taken to the constitution of 1777. And what was that fault? Why that the members being a portion of the legislative department, were not the proper persons to judge of the constitutionality of a law in whose passage they had taken part. From our legal history it was shewn that the court of errors had never pronounced any state law unconstitutional. In this objection there was theoretical soundness, and experience has verified the theory. But that was the only objection to that court. From its large numbers, it was as favorable to the development of free principles, and from the manner of the election of its members, it was sure to present a high grade of intelligence. In 1821 it was thought necessary to strike at the supreme court, and therefore its members were reduced, and the circuit system was introduced. The system thus introduced justified the observation made on this floor—that the court was composed of two distinct parts, one portion of which had no living, practical, active knowledge of the people or the existing relations of society, while the other had greatly diminished opportunities of knowing the law. This was the main, if not the only error committed in 1821. With these lights of experience before us, what, in the rearrangement of our judicial system, ought now to be our ruling principle of action? Ought it not to be to hold on to that which is good, and which has been proved by time and experience to be good in our existing institutions, and to part with or modify that only which the same tests have proved to be bad—that only which has failed in the working of our system? Surely every sensible man would agree that this was their true course. It was not right to depart entirely from the lights of experience—the lessons of wisdom—and present an entirely new machine of untried powers and qualities, and to set it to work on speculation. At least we ought not to do so, without being very sure that it was competent

to perform the duties of the old one. In this view of the course to be pursued, he deemed it all-important that we should still have a supreme court having some character of unity, so that it should be really, as well as in name, the supreme court of the state of New York, and that it should represent in the reports which are to be issued of its decisions the weight and power and majesty of this whole people. Hitherto we have always had such a court, but shall we have such a court in this proposed judicial system? Most certainly not. The proposition is to have judges elected in eight districts or sections of the state, each set of whom shall hold a court within its district. By this we shall have eight local district courts. In fact eight legal courts. Nothing more in fact, than enlarged courts of common pleas. And how are we to ascertain the decisions of those courts? Were they all to issue reports? Certainly not, for that would overwhelm us at once. We shall then know nothing of these decisions, and hence the law of one district will not be the law of another, and in no respect can they be placed in point of dignity and respectability on the footing of a supreme court which is a unit—which represents the whole state and sits for the whole state.—He hardly knew how these local district courts were going to discharge the business of a supreme court of the state of New-York. They would answer very well as courts of common pleas, in which a man might commence a suit for debt and follow it up to judgment; but when a question arose that was not of a local character, he did not see how they could be made to answer. Suppose occasion to occur for a *mandamus* to the directors of the Hudson and Erie Railroad Company, which has its location in no single district, to which of these district supreme courts was application to be made for the writ? He knew it might be said that a provision could be introduced to meet such a case. But nevertheless, other cases of like difficulty would arise, which cannot be anticipated. Suppose one had occasion to apply for a *mandamus* to the comptroller of the state—to which of these courts should he apply? He supposed to that district court in which the comptroller lived. [A voice. To any one of them.] That would hardly do. He might call upon the comptroller to grant him certain rights, and the gentleman from Erie might apply for the same right, and the gentleman from Oneida might apply for the same. He could grant it to one only. Each of the disappointed might wish to apply for a *mandamus*, and if he could apply in his own district, the comptroller might have a *mandamus* commanding him to grant the same thing to each of several parties in different districts of the state, nothing like what could arise if they had one supreme court as heretofore. If the power was confined to the district court of the district in which the officer to be coerced resided it might answer where there was only one; but how would it be managed where as in rail-road companies and boards of officers the parties to be coerced resided in different districts? Again, how would these district courts operate?—The plaintiff commencing a suit in the supreme court would lay his venue in one of the counties of a particular district, and would lay it where

he pleased. If a defendant had ground to change the venue and carry the cause within a different district, where must he apply? Gentlemen would tell him that application must be made to the district wherein the venue was laid. Well, suppose the judges were elected in and belonged to and locally confined within respective districts, was it altogether fair to allow him to lay his venue in the city of New-York when suing a gentleman in Chautauque, and compel the defendant to make his application to the judges of the New-York district for a change of venue. The gentleman from Chautauque might think if his motion was denied, that great injustice had been practiced in the case. This very evil was well guarded against when the superior court of the city of New-York was created. They were not allowed to send their original processes out of the county of New York and arrest a man; but when gentlemen came to the city of New-York, processes could be served on them there, and they could thus be made liable to have the action tried there, though the cause of action arose, and the witnesses for the defence all resided in another county. The legislature, however, gave to the supreme court the power to change the venue. They did not entrust that power to the local judges.

MR. BROWN:—Does the gentleman suppose that the judges are to be local?

MR. O'CONNOR proceeded. I speak on the supposition that they are to be local. I purpose to show presently that the evils to result from their interchanging, for the purposes designed by the committee, would be attended with still greater inconvenience. To attempt the attainment of those ends, a totally unendurable degree of rambling and perambulation must be imposed upon the judges, literally excluding them from all the ordinary enjoyments of life—converting them, as it were, into wanderers and vagabonds; and yet the objects aimed at would be in no appreciable measure attained. He conceived, upon the whole, it would be far better to forego an attempt to produce unity of decision by an interchange and circulation of the judges between the different eight benches, and let these district judges be local. He illustrated his position by examples given from cases that he could imagine would occur. He said, with one supreme court for the whole state, he could attend to all the cases he might commence, without going out of his county, except on the day of trial, or ever being called by a bar-motion to more than one place at the same time. Under this new system, how would it be? All bar-motions, every material step in the case, requiring the action of the court in banc, must be taken in the district embracing the county in which the venue is laid. An attorney in full practice would have such cases in several, perhaps in every district. How would he attend the eight different sets of terms, held at the same time and in different places? It would be impossible, just as impossible as to practice at one time in several states of the union. Both the prosecution and defence of every case in the supreme court must be conducted by attorneys residing within the same district. Thus it was apparent that it would be impossible for counsel thus to practice as at present, in business arising

in different portions of the state; and equally impossible that a citizen of the state should have himself defended from any assailant, wherever residing in the state, as now, by his favorite counsel, who would understand him and his business, and upon whose knowledge and earnest fidelity he could rely with safety and confidence. To exemplify this, he would ask the gentleman from Orange who was acquainted with the practice, where was the lawyer who defended his clients in eight different courts of common pleas? Now and then he believed gentlemen were admitted in a couple of courts where the counties adjoined. [A gentleman here remarked that he practiced in three such courts.] Well then, the gentleman is a rarity. [MR. CROOKER here remarked that he was admitted to four.] I can only say that the gentleman is a greater rarity. MR. O'C. was admitted in two but he had never tried a single case in one of them. A gentleman to practice in eight districts must have eight offices. He continued for some time to illustrate the difficulties attending such a practice and then proceeded to notice the suggestion that the judges of these districts could be made by the legislature to interchange, and thus many of the evils of this district court system would be remedied. How often under such a system would any two of them meet during their judicial term of eight years? It would puzzle a good mathematician to prove that they would meet at all. Would a rare meeting or two of this kind produce that comparison and interchange of opinion, concurrence of judgment and that uniformity of decision which was attainable in a court having a moderate number of judges when the latter have opportunities of coming continually in contact with each other? If they did interchange what sort of an operation was it to have on the judges themselves? We have 59 counties, and these judges were to go round and interchange in the holding of circuits in all those counties. The only fair way of making this interchange was for the judges each to hold a circuit through the state before they came back to hold a second circuit of their own, and thus each would hold 58 circuits before he held one in his own vicinage. Then as to the banc courts; each judge would be in his own district one eighth part of the time devoted to bench duties; the other seven eighths he must be absent in other districts. In this way alone can be produced a proper circulation of this new circulating medium in legal administration. No man who had the proper affections of our nature would take such an office, it would require of him so much absence as to deprive him of all the enjoyments of home. There was nothing in it either to gratify pride or ambition. According to one gentleman's views, (MR. CHATFIELD'S,) they were only to be paid \$1,000, or at the most \$1,500 a year, and they were all to be on a dead level in office. He asked what sort of judges were they to get by such a system? Why they could have none but the most inferior grade of judges. All the judges were to be elected in districts, and yet they were to interchange so that the electors would only have their own judges one-eighth of the year. What inducement had the electors to trouble themselves much about selection? What would they

gain by it? Why the gentleman they would elect for eight years they would have but for one; the rest of the term he would be wandering about the state; and to get to one portion of it, we had been told, it was necessary to go into Canada, and to return by the same way, so that justice could not visit it during a war with our strong neighbor Britain. The nisi prius or circuit system was desirable as an auxiliary to the studies of the bench.—But it was not necessary or expedient to carry it to this impracticable and oppressive extent.—Carried to a moderate extent it is a benefit. But to keep the judge continually upon the ramble, is inexpedient, particularly when the main object, interchange of opinion and uniformity of decision was neither attainable, nor even in any degree helped by it. Carried to an excess the rambling system is unmitigated injury. The judge elected in Delaware or Orleans is not the most competent to try marine cases in New-York, with which he is not conversant. The New-York judge endeavoring in "Old Moriah" to try a cause between a miner and a wood-chopper, however ably and impartially he might preside, would from his ignorance of the very terms in use, excite the same unfavorable observations upon his want of familiarity with the matter, that the Delaware judge would from the dandy juror in New-York, by his want of familiarity with maritime transactions. These evils must be encountered to secure proficiency in the judges; and where the number is few, and the appointment from the whole state, they shrink into insignificance. But with an army of judges, elected in districts, for short terms, with salaries of \$1,000 or \$1,500 a year; each one kept almost constantly on the ramble, and employed in that which he least understands, we are likely to have an administration of justice the like of which was never heard of in any civilized country before. This bringing of justice home to every man's door, of which we had heard so much, was not practicable. For all combatants in the law were not next-door neighbors. We could approximate to such a result, but nothing more.—Our system was admirably constructed now for that, through our justices courts, our county courts, and our supreme court. Whether the cutting up of the supreme court would or would not tend to the convenience of counsel—whether it would tend to distribute more the business which now fell into the hands of a few lawyers living here in Albany—was not a matter of consideration with this body. The question was one in reference to the interest of suitors—and viewing the matter in all its relations, he conceived that great disadvantages would result to suitors from cutting up the court, and but a very slight convenience would result to counsel. To show how vain the effort to bring justice home to every man's door, as the phrase was, Mr. O'C. supposed the case of the state being cut up into judicial districts, with Newburgh as the seat of justice for one of them—that might accommodate his friend from Orange, (Mr. BROWN,) who was very well accommodated now, being within six hours steaming of Albany or New-York where the supreme court sat most of the time. But would his friend from Essex (Mr. SIMMONS) be accommodated? Where would the

centre of his district be under this new system and how far would he have to travel to get to it? [Mr. SIMMONS:—"About as far as to go to Albany.""] The truth was all those south of Albany down to New-York and for one hundred miles in every other direction were actually nearer to the centre of justice, as the supreme court now stood, than most of the inhabitants of other sections would be to the centre of any one of the proposed districts. True, there would be eight principal places, Troy, Syracuse, Poughkeepsie, &c., would be particularly blessed by having the supreme court located right there, and the people of the vicinage would have all the advantages of this beautiful system. But those living sixty miles off, who had to travel sixty miles, and not perhaps by steam on rail-roads or on the Hudson, would be about as far from justice almost as ever, with the additional disadvantage to counsel of being notified perhaps to attend on the same day terms of the supreme court held in the most distant places. He went on to urge that a supreme court of twelve judges, four of them setting in banc, and the rest on the circuit, would be adequate to do all the business of a supreme court under a well organized system—with the advantage of never holding a term at more than at one place at a time, and by interchanging often their small number, bringing them together often enough to produce that unity of opinion and decision which was not only necessary to the safety of the suitor but indispensably necessary to preserve the judicial character of the state. The first uniformity court in this new system was the court of appeals—answering to the supreme court in the present system. The effect of having this court of appeals the only uniformity court, would be that all causes variously litigated, would go there. The undying spirit of litigation so characteristic of a people, free, independent and prosperous, such as ours, would not abide by the decisions of these rambling district judges. They would say in Essex, for instance, when one of our judges from the city came up there to try causes, that he might know all about ships and maritime matters, but nothing of our affairs. And was there a lawyer there who believed that this court of appeals would survive for eighteen months the duty thus thrown upon it? Could these eight judges hear any more causes than three? Could eight run a race quicker than one? Or could eight hear men talk faster than one?

Mr. LOOMIS:—They can hear as many as thirty-five cases in the present court of Errors.

Mr. O'CONOR replied that this was so—and the sad mistake was in abolishing this court and substituting nothing like it—in abolishing that court, the supreme court and the chancellor's court, and substituting for the whole three this single eight-judge court, all of whom must sit together, too much was crowded into one spot. The court of errors, by its numerous members relieving each other is enabled to do vastly more business even of the small portion that fell to it than this court of appeals could, and at the same time produce a fair degree of uniformity. But most of these eight judges must always be present—and for the reason that they were to perform all the judicial duty of

producing uniformity, now devolving upon the supreme court and chancellor; with no ulterior appeal. The first court of uniformity—almost every thing will go there which now goes to those two courts; and as it is to be the court of last resort, before it will be made the final, full, elaborate, protracted arguments on which the ultimate destiny of a cause was to be determined; now only heard in the court of errors often occupying many days. He did not see how any practised lawyer could hope that that court would last? You might make it live by cutting off appeals in small cases, and making it the rich man's court; but to this the people would not submit, and if this was not done, he humbly insisted that the court could not live. His view was that we should have a system substantially preserving the great features of the present—preserve the justices court—also the county courts, giving them a good organization, and as heretofore original jurisdiction of suits between party and party. Mr. O'C. here gave way for a motion to rise and report progress—and the committee rose.

Mr. CROOKER submitted the following additional sections to the report of the judiciary committee—which were ordered to be printed, on motion of Mr. STRONG; and referred to the committee of the whole

§ 13. There shall be elected in each of the counties of this state, except the city and county of New York, one county judge, who shall hold his office for four years, and who shall hold the county court, and perform the duties of the office of surrogate.

§ 14. The county court shall have appellate jurisdiction of all causes tried in justices' courts; but shall have no original civil jurisdiction. The county court may, in the discretion of the county judge, be held at any place in the county, for the convenience of suitors; but its regular terms shall be held at the places where the courts of common pleas are now held.

§ 15. The county judge, with two justices of the peace, to be annually designated by the board of supervisors of the several counties, shall hold courts of general sessions, for the trial of all offences punishable by imprisonment in a state prison, for a term not exceeding ten years; and shall perform all the special duties now required by law to be performed by the county courts.

§ 16. In case of the non-attendance, at the time and place of holding the court of general sessions, of the justices so designated, or either of them, their places may be supplied by others to be summoned by the sheriff of the county.

§ 17. The county judge shall receive an annual salary, to be fixed by law. The accounts of justices for services in courts of general sessions, shall be audited by the boards of supervisors, and paid out of the county treasury.

The Convention then took a recess.

AFTERNOON SESSION.

The committee of the whole, Mr. CAMBRELENG in the chair, again took up the report of the judiciary committee.

Mr. O'CONOR resumed—reasserting the position with which he closed in the morning, that the best model for a judicial system was that embodied in the constitution of 1821, and its predecessor; and that its general features should be preserved rather than this untried experiment of localizing the judicial power, which in fact neither increased the convenience of suitors, nor brought justice nearer home to the doors of parties generally, than the present system. There was but one error in the system of

1777, and that was the mingling of legislative and judicial duties. The constitution of 1821 added to this another error—that of separating circuit and bench duty. That constitution laid the foundation of another—the degradation of our local courts to such a condition that they no longer commanded public confidence, and consequently all business flowed into the supreme courts, so that there was no longer any show of justice through it. These were the only defects in the system which its working had developed. The defects in the county court, confessedly, formed the real impediment to the working of the system. For there was no fault to be found with our judges—who performed unparalleled labor, and with conceded ability and learning. He insisted that we were called upon by every consideration due to the safety of the people, of regard for the legal reputation of the state, and the preservation of uniformity in the law, not to break down the system, cut our courts into petty fragments, and have no longer any regular system of jurisprudence. Mr. O'C. would preserve in all their strength and integrity our county courts, and elevate their character. He suggested also several modes in which they might be furnished with competent judges, and thus be made efficient courts, relieving the higher courts, and making a smaller number of judges necessary. He believed that from ten to thirteen supreme court judges would be able to do all the business now devolving on the supreme court and chancellor, and Mr. O'C. went into some details of the plan he would adopt in opposition to the new device contained in the report of the judiciary committee. He then proceeded to explain and sustain his amendment. He advised a county court of original jurisdiction, which would dispose of a large amount of business, would enable our system to work. He would terminate a large portion of suits in the county courts, another large portion in the supreme court, and the residue could be dispatched easily by a court of errors. The argument in favor of county courts had been found so powerful that the enemies of it had been induced to give us one in name but not in substance—a kind of little county cormorant to eat up the justices' courts—a perambulatory sort of court—a kind of bull-frog going, about the county to devour the small frogs. It was to be a mongrel court, neither the old common pleas nor the general sessions, but a mixture of both, with some additions. It presented the same novelty of character as this new supreme court and new court of appeals. Gentlemen were quite right in making efforts, under such circumstances, to increase the jurisdiction of justices' courts. If every thing was to be new and changed, why not these justices' courts? Perhaps it might be well to have an appeal downwards—and have the justices' courts the courts of last resort.—Mr. O'C. predicted that such a court would prove a mischievous machine for breeding the appeals now so much complained of, and would overwhelm the supreme court. He trusted that a mere experimental county court, shorn of its ancient powers and honors, would not receive the name of a county court—and at all events that it would not stand in the way of a county court with original jurisdiction of civil suits—between par-

ty and party which would cost no more. He trusted that in any plan that might be adopted, we should preserve the county court as a legal institution just as it stood, strengthening it by proper judges, and giving it full original jurisdiction, concurrent with the supreme court.—And the question now, in his judgment, involved the whole question of a supreme court split up into fragments. For the friends of that kind of court must admit that such a subdivision of the supreme court would be idle, if good and sufficient county courts were in operation.

Mr. JORDAN said, in addressing this body, he should endeavor to recollect that he was discussing a very grave subject, and addressing men of common sense and sober judgment—men who at least know a surrogate from a “bull-frog,” and a county court from a “cormorant.” He did not expect by any witticism of that kind or by any ridicule he might throw on the advocates of a plan he might not fancy, to convince sober-minded men either that he was right, or others wrong. He promised the other day, in as brief a manner as practicable, to explain what kind of a court that proposed by the committee would be, when the plan was carried out according to these great outlines. But before doing this, he must say that before the gentleman from New-York (Mr. O’CONOR) last addressed the committee, he (Mr. J.) supposed that they had heard quite as much about the proceedings of the judiciary committee as they desired to hear; and he had hoped that gentleman, who had said all manner of clever things about that committee, would have been content, in the absence of the chairman (Mr. RUGGLES), in consequence of sickness, to have let the matter pass over without further aspersions. Mr. J. had been accused of ridiculing the minority; and this accusation came from gentlemen, one of whom asserted in his place, a few days since, that no three of the judiciary committee agreed to this report, and another of whom now, after that bold assertion had been amply refuted, repeated the charge that this report was not the act of a majority. Again, the majority were accused of an intolerant, domineering spirit, because they repelled this assault. He disclaimed any intention to asperse the motives of the minority;—he stated a simple fact, and solely with the intention to vindicate the course of the majority, especially that of the honorable chairman; to show the intrinsic difficulties of the subject; and to inculcate here, as he had done there, a spirit of harmony and conciliation. It had been his ardent desire to prevent unpleasant and exciting collisions—to avoid anything in itself calculated to give just cause of offence to any, or to disturb that calm deliberation to which this great subject was preëminently entitled. And he did not intend hereafter, whatever gentlemen might say, by way of open charge or covert insinuation, against the majority of the committee or its representative the chairman, to depart from that course. And he hoped yet to convince the gentleman from N. York (Mr. O’C.)—more than two-thirds of whose remarks were calculated to bring the judiciary committee, and the plan they had proposed, into contempt and ridicule, rather than to show a better plan—that this great ma-

chine, which he predicted would break down in eighteen months—would operate efficiently, promptly and cheaply, and (if we got good judges) to the satisfaction of the whole community. One word more in regard to what the gentleman from New-York had said of the forty-seven section report. That gentleman was asked by the gentleman from Herkimer, (Mr. LOOMIS,) whether the report varied from any principle settled in it before he withdrew, except in regard to the construction of the court of appeals. He was forced to confess that he did not know it did, unless that this report did not contain the provision in regard to the ineligibility of judges for two years after their term had expired.

Mr. O’CONOR:—The court of common pleas was in, and a different court of errors.

Mr. JORDAN said it was true the court of errors was a little differently organized, and he regretted that the committee had not had the benefit of the light of the gentleman’s great mind on this subject. It was their misfortune that the gentleman’s business called him away, and that they had not his assistance in re-modelling the court of errors at the time the report was finally agreed to. But in the other particular he begged leave to say that the gentleman was wrong. There was no such clause in the 47 section report (as it was called) as that in regard to the ineligibility of the judges, although that matter had been discussed at large in the committee. It did, he believed, contain a county court, but a very different one from that proposed by the gentleman from New York—it had been placed there he believed to satisfy gentlemen who finally voted down the report as a whole, and was finally omitted in the report presented because a majority deemed it most desirable to do so. But he had this general remark to make, and he hoped for the last time, that this report was fairly brought in by a majority of the committee. And whilst saying this he saw here in their places the gentlemen from Chautauque (Mr. PATTERSON,) from Oswego (Mr. HART,) from N. York (Mr. STEPHENS,) from Tompkins (Mr. SEARS,) from Orange (Mr. BROWN) and from Herkimer (Mr. LOOMIS,) all members of the judiciary committee. Here were six, and if there was a man of them that did not agree to this report he begged he would rise and say so, and Mr. J. would sit down convicted of falsehood. Gentlemen had not gone so far as to charge that the chairman (Mr. RUGGLES) or he (Mr. J.) did not agree to it, and if eight make a majority of thirteen, he did not ask the aid of the gentleman from Essex (Mr. SIMMONS,) who agreed with a mental reservation, to make out a majority; though they would have been glad indeed to have had his entire concurrence. But to come to the details of this plan, and redeem his promise by explaining how it could be carried out by the legislature, so as to work well—(for the legislature would have certain duties to perform as well as this Convention.) He would premise that we were to fix the inflexible, unalterable parts—the legislature would have to give it its flexible and moveable parts—that those which should from time to time be altered and modified as the development of circumstances should require. He remarked the

other day that the committee could not claim for this plan the support of the Convention, unless they could show that the courts, as thus organized, would be efficient to do the business, to the satisfaction of the public. They had been told by the gentleman from New York, (Mr. O'Connor,) that a majority of the committee had come in here in a body determined to push this report through, every line and letter of it. That was the gentleman's (Mr. O'C.'s) language—and that he (Mr. O'C.) was now convinced of the overpowering and pernicious importance attached to a majority report. For he was now satisfied it was already to be considered as embodied in the Constitution—and that there was no more to be said about it. The committee, (said Mr. J.) were selected to do a duty; they had performed that duty; and it would have been unparliamentary, if not trifling with this body, after doing that duty, for eight of the committee concurring in a report, to have fallen to work and pulled it to pieces. The committee were not so regardless of what they owed to themselves, to the Convention and their constituents as to be betrayed into any such course; it would have been the work of madmen. Nor could they consider an abandonment of it, without explaining its principles, showing how it would operate, and endeavoring to obtain a majority to sustain it here, would be walking in the line of duty; unless indeed some gentleman could produce a better plan, and convince them of its superiority. He was inclined to do what he considered incumbent on those who agreed to the report—to explain and defend it; and that notwithstanding all the accusations against the committee; and the ridicule attempted to be thrown upon the report by comparing the judges to a flock of flying pigeons—characterizing them as an itinerant band of vagabond judges roaming about the state to peddle out justice; and he knew not what terms of reproach and ridicule had not been employed upon it—he would not repeat the epithets that had been so profusely showered down, nor did he intend to retort upon the minority report of his hon. friend from N. York (Mr. O'C.) He might with as much propriety compare his (Mr. O'C.'s) stationary judges to a bed of oysters, growing fast to any substance they might chance to rest upon; there would be just as much of argument in it. But he would condescend to no such course of remark; he intended to do his duty, and that done, the responsibility was off his shoulders—it would rest on the Convention, where it would be faithfully discharged—a responsibility, he confessed, he had felt oppressed with ever since this matter was sent to the committee. To begin with his explanation, he would first call attention to the court of appeals. There was one spontaneous sentiment among the judiciary committee, and he believed every where, that the court of errors, as now organized, should be abolished. To supply its place the report provided for a court of appeals; for the election of four members of that court, by general ticket, throughout the state—whose duty it should be to sit in this court, and do nothing else. It puts four judges of the supreme court with them—making a court of eight—any five of whom, (a majority,) might hold the court. This was done in view of the phys-

ical constitution of man—knowing that it was not in the power of any man to sit week in and week out, year in and year out, on the bench with his highest intellectual energies constantly employed. It would allow one, two or three of those elected to be absent, as they might arrange it, and yet keep up a court; it being the duty of four of the supreme judges to be always present. And it was pretty generally agreed that five able and sound judges were as safe to pass upon questions of law, as five hundred. The election of half the court by the whole people, was deemed to be important to preserve a favorite feature of the present court of errors; to infuse into it the popular principle. The committee proposed to divide the state into eight districts—four judges of the supreme court to be elected in each, making 32—they to be so classified under provision of law that one should go out in each district every two years, and his place to be supplied by a new election. Of these thirty-two judges, it was proposed that the senior class—those who had their two last years to serve, and who would of course be men of experience and practical law learning, should be judges of the court of appeals—the legislature to make provision for the classification of this class into two classes, so that they might alternate in the court of appeals, four always being present and at the same time, those not on duty here, might be engaged in doing circuit duty, so that if it should be necessary for the court to sit the whole year round, the judges should not be physically broken down. As to the terms, he supposed the legislature would fix on four a year; all of them to be held at the seat of government. And this because it would best comport with the dignity of the court, and because it was necessary that they should be in the neighborhood of a law library—the state having one of the best in the Union—that at Washington alone excepted. This location the committee thought better than to have the court holding their terms, first in New-York, then at Saratoga, then at Rochester, then at Buffalo, and then perhaps at the Pine Orchard, or on the top of Mount Holyoke or the White Mountains. It was hard to conjecture from their late peregrinations, where they would be found next. It was thought better to have the court located, so that the profession would know where to find it; and where the members of the profession, called there by important business, might see each other occasionally; it would have a tendency to improve and elevate the character of the bar as well as the bench—but the legislature would fix it where they pleased. These terms it was supposed would commence on the first Monday in May, August, November and February—and that they would continue their sessions until all the business on their calendar was done up; the court hearing arguments and deciding cases as they went along.—And what time was there for a judge to decide a cause so fit as immediately after hearing the argument? That was the way the supreme court at Washington did their business, and what court did business more ably and promptly? If this court, sitting the whole year round, as by their organization they might, could not do up the business of a court of last resort—then we should be

driven to the dire necessity—which God in his mercy avert! of having a divided court of last resort. Then might we look for conflicting decisions, and then might we be driven to divide this empire state. But he believed they could do all. It was said our supreme court sat all the while, and yet was running behind. But that court could not sit all the time, nor did they in point of fact. They had done all they could. One of them, whose memory was revered and his loss lamented, had already worked himself to death—he had doubtless fallen a victim to his laudable ambition in the service of the state; and another had been on the point of going the same way. This report provided against that in the way he had mentioned. He had shown how the four judges of the court proper could alternate. Those drawn from the supreme court, eight in number, might alternate in a similar manner; being classed into two classes, the first class might sit at the first term, the second at the second—four only of the eight being in requisition at the same time—they could sit all the year round, if the business should require it; and he had no apprehension that it would be overburdened with business. The more exalted the court of original jurisdiction, the less likely was it that its decisions would be appealed from.—Let the cases which are to come up on appeals, originate and be tried in a supreme court, before a judge of high character and order of talents, of great learning and experience, and be reviewed in banc by three judges of the same grade, and his word for it there would not be one case to ten appealed that formerly had been. But this court was not yet fully organized. The legislature would provide a clerk for it, and make provision for his compensation. He would have his office here where the court held its terms—would receive all papers coming up from the supreme court—would be present when the court was in session to enter their orders and decrees; to transmit papers for a new trial, or for judgment in the court below. The legislature would also provide an able reporter for this court of appeals; give him a salary, and give him nothing else. There should be no “stealings in”—no “copy right.” No partnerships with booksellers—nothing of the kind. The reporter then, instead of wire-drawing, and making six books where one was enough, would improve the quality, whilst he lessened the quantity of his reports. The legislature should also provide for printing them at the public expense—taking care to cover the cost by the price—and he ventured to say that the profession and all others could then purchase at \$2, what they have been in the habit of paying \$6 a volume for; it would stop this flood of books that were now rushing in upon us like an avalanche. We were already buried up in them. There were from five to seven volumes issued every year in this state, and many more in all the other states—and every lawyer must, if he would measure swords with his adversary in the multiplication of supposed authorities, possess himself of them. The first reports in this state commenced about 45 years ago. We had already here and in the U. S. courts about 150 volumes—and it had become an intolerable burthen to the profession, of

whom generally, it had been truly said. “They work hard, live well and die poor.” This business of book making had had something to do with such results—and he hoped never to see another law-book printed in this state, except such as came from the hands of the state reporter of the supreme court in law and equity. A young lawyer, just entering upon his career, is borne down with the oppressive weight of expense; he must plunk \$1000 for the reports of the state of New York and of the United States alone—without these at least, he could not get along, and ever expect a client to darken his door.—Three-fourths of the stuff latterly reported was unnecessary—and if the reporter had a salary and no copy right; instead of five or ten volumes a year, we should probably have one volume in two or three years, properly condensed and carefully made up. They would then probably be issued first in numbers, that the profession might be early accommodated, and he would tell the gentleman from N. York, (Mr. O’Connor) that these vagabond judges, these itinerant law pedlars he had referred to, would be just as likely as not to come across them in their wanderings; and he should not be at all surprized, if they should withal now and then read a few pages, and become acquainted with their contents—should it so happen it might seem in part to obviate one of his difficulties, that of conflicting decisions. But enough of this and of the court of appeals, which he did not hesitate to say, if we had the right kind of judges would be amply sufficient for all purposes. And he had no fears about electing judges; although he had his doubts about shortening their terms. Electing judges would, he believed, have a salutary effect; it would make them sensible of the source of their power. The misfortune now was that a man who was made a judge, was prone to forget who made him such, and to become indolent or insolent, if constitutionally disposed that way. If he was a good, conscientious and capable man, such as we had many now, he would be a valuable man—he would not forget that a judge ought to be a gentleman and that he sometimes had to deal with gentlemen in the members of the bar. If there was any thing in the idea of the independence of a judge as applicable to our institutions it depended on the length of his term and not the mode of his creation, on that head it was not his purpose now to remark. Mr. J. said he would next explain the supreme court, that great monster with eight heads, nearly as bad in the imagination of some gentlemen as Anti-Christ; differing principally in having more heads and fewer horns. The committee proposed 32 judges elected by districts—the state to be divided into eight parts, as compact as might be without dividing counties, for that purpose. The city and county of New York was made in some respects an exception to the general system—an increase being provided for there, as the exigencies of population and business might require. Four of these judges were to be residents of each district—to be classified as he had stated, any three of them to hold a supreme court any where in the state where their services in banc might be required. Supposing these judges to be the right kind of men, for he did not argue on the supposition that they were to be “loafers from Del

aware" or any other benighted part of the state, as had been supposed by the gentleman from New York (Mr. O'C.), such as did not know a ship from a coal barge—a Baltimore clipper from an Albany flat-bottom. He (Mr. J.) supposed they would be intelligent, good men, and he insisted we had those in each district, who *might* hold a supreme court in any part of the state without disparagement to our judiciary system—although three might hold a court in banc, this did not exclude more; and gentlemen were wrong in supposing that there never could be more than three. This article itself contained the elements of a provision for the sitting in banc of as many of these judges as was convenient or as chose; and Mr. J. could anticipate occasions when they would all or nearly all sit together.—There was nothing to prevent it. But he went further. They would be brought together once a year, not expressly under this report, but it was a part of the system which the legislature would no doubt carry out. They would meet to form their rules of practice and proceeding, which must be uniform throughout the state. If he had the framing of a judiciary act, he would provide that they should meet once a year, first for the purpose of establishing rules, and afterwards to revise them, if by so doing they could diminish costs or expedite proceedings. There was nothing in this article necessarily to keep them asunder at any other time. They might all meet together, or any number of them down to three, such was the structure of the system. There might be times when great constitutional questions—questions affecting the interests of the entire population of the state might arise.—Should such or any other case occur creating intense and general excitement, perhaps convulsing the state to her centre, and making the very battlements of your judiciary rock; what court on earth would be more likely to hush the disturbing elements and command a reverence for your laws? Thirty-two men selected by the people, of known integrity, profoundly versed in the principles of your constitution and learned in the law, sitting in judgment together, would present a moral spectacle of itself calculated to rebuke the spirit of discord. They might, and doubtless would, should occasion require it, convene and sit together from the highest sense of official duty.

Mr. O'CONOR asked the gentleman to show what part of the article provided for this.

Mr. JORDAN:—With a court of thirty-two judges, any three of them being allowed to hold a court, the implication at least was pretty strong that that was the least number, not the greatest.

Mr. CHATFIELD referred the gentleman to section four.

Mr. O'CONOR was replying, when

Mr. JORDAN interposed—submitting whether we had not had an abundance of this small stuff. [Mr. O'CONOR:—"small stuff!!"] Yes. (said Mr. J.) "*small stuff!!*" if the gentleman chooses to repeat my words. How easy was it, if there was any doubt about this, for the gentleman, instead of pulling the report to pieces, to amend by saying "three or more." And who of the committee had objected to any alteration of the

language of the report, if it could be improved? Which of them had objected to the modification of the third section already made on the motion of the gentleman from Otsego? Or who would object to any such alteration? He liked the proposition of the gentleman from Cattaraugus (Mr. CROOKER)—characterised as a "bull-frog court" by the gentleman from New York, and he thought it would receive his support. But more of this by and by. He would now suppose these judges elected and sworn, and the districts about to be arranged by the legislature. He thought he could show that this might be done, to the convenience of the whole state. Recollecting that the legislature was to direct how many terms in banc were to be held in each district and where they were to be held; he would suppose that they would require four terms in banc in each district—let us see then, how this could be carried out. Supposing the ratio for a district to be in round numbers 300,000,—it was about that:—First placing the city of New York by itself, the second district might be composed of Dutchess, Orange, Rockland, Putnam, Westchester, Richmond, Kings, Queens and Suffolk. Here he would have four places for holding banc terms—Newburgh, Poughkeepsie, White Plains and Brooklyn. The third district might be Rensselaer, Washington, Saratoga, Montgomery, Herkimer, Warren, Essex and Clinton—and the four places for holding banc terms Troy, Whitehall or Keeseville, Saratoga Springs and Herkimer or Little Falls.—The fourth, Oneida, Oswego, Jefferson, Lewis, St. Lawrence, Franklin—and the places for holding the terms, Utica, Oswego, Watertown and Ogdensburg. [A laugh from Mr. SIMMONS.] He had no doubt the gentleman from Essex could arrange that district better, and he should be happy to hear any suggestions from that quarter. He did not profess a knowledge of that portion of the state, as he had never been there, and there were some parts of it, if he had had a correct description of "Totten and Crossfield," where he never desired to be [Mr. SIMMONS:—Perhaps the desire might be mutual.] Not very likely (said Mr. J.) for it is the soil of which I speak, and not the animals who grow upon it. The fifth district he would compose of Delaware, Schoharie, Schenectady, Otsego, Greene, Columbia, Ulster, Sullivan and Albany—the places of holding the courts Delhi, Cooperstown, Kingston and Albany. The sixth, Tioga, Tompkins, Cayuga, Onondaga, Chenango, Broome, Madison and Cortland—the places of holding courts, Ithaca, Auburn, Syracuse and Oxford. The seventh, Monroe, Livingston, Wayne, Ontario, Yates, Steuben, Seneca and Chemung—the places of holding courts, Rochester, Geneva or Canandaigua, Bath and Waterloo or Pen Yan. The eighth, Chautauque, Cattaraugus, Erie, Niagara, Orleans, Genesee, Wyoming and Allegany—the places of holding the courts, Mayville, Buffalo, Batavia and Angelica.

Without concluding Mr. J. gave way to a motion to rise—which was done.

Adj. to 9 o'clock to-morrow morning

THURSDAY, AUGUST 20.

Prayer by the Rev. Mr. SELKIRK.

The PRESIDENT laid before the Convention a communication from the clerk in chancery for the 5th circuit in relation to infants' estates, in compliance with a resolution of the Convention. Referred to the select committee of 5, to prepare abstracts.

COMMON SCHOOLS.

Mr. TUTHILL from committee No. 12 on Education and Common Schools, made a minority report as follows, which was referred to the committee of the whole having Mr. NICOLL's report in charge:—

§ 1. The proceeds of lands belonging to this State, except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with all the funds denominated the Literature Fund and Common School Fund, and all moneys heretofore appropriated by law to the use of the said fund, and which may be hereafter added thereto, shall be and remain a perpetual fund, the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this State.

§ 2. The net annual income and proceeds of all the moneys deposited with this State by the United States pursuant to the provisions of the act of Congress of the United States, entitled "An act to regulate the deposits of the public moneys," approved June 23, 1836, except the sum of \$50,000, shall hereafter be inviolably annually appropriated and applied to the purposes of common school education in this State, and the aforesaid sum of \$50,000 shall in each year hereafter be set apart, transferred and added to the capital of the common school fund of the State.

§ 3. It shall be the duty of the Legislature to provide by law for the investment and security of all moneys at any time belonging to the capital of the common school fund paid into the treasury, and no part of such fund shall at any time be appropriated or applied to defray the ordinary or extraordinary expenses of the government, nor shall the same be loaned to the State, except upon the same terms and conditions, and upon the like guaranties and securities, as other moneys are loaned by the State, and not exceeding one-third in amount of the capital of the said funds shall at any one time be invested in securities issued or to be issued upon the faith and credit of this State, nor shall such moneys be loaned to any literary institution, association or corporation, or to any town or village corporation.

Mr. WILLARD, from the same committee, made the following minority report, which received the same reference.

§ 1. The proceeds of all lands belonging to this state, except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, and all moneys heretofore appropriated by law to the use of said fund and which may be hereafter added thereto, shall be and remain a perpetual fund the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this state.

§ 2. It shall be the duty of the legislature to provide by law for the investment and security of all moneys at any time belonging to the capital of the common school and literature funds paid into the treasury, and no part of such funds shall at any time be appropriated or applied to defray the ordinary or extraordinary expenses of the government, nor shall the same be loaned to the state except upon the same terms and conditions and upon the like guaranties and securities, as other moneys are loaned by the state; and not exceeding one-third in amount of the capital of the said fund shall at any one time be invested in securities issued or to be issued, upon the faith and credit of this state, nor shall such money be loaned to any literary institution, association or corporation, or to any town or village corporation.

§ 3. The nett annual income and proceeds of all the moneys deposited with this state by the United States, pursuant to the provisions of the act of Congress of the United States, entitled "an act to regulate the deposits of the public moneys," approved June 23, 1836, except the sum of \$50,000, shall hereafter be inviolably annually appropriated and applied to the purposes of common school education in this state, and the aforesaid sum of \$50,000 shall in each year hereafter, be set apart, transferred and added to the capital of the common school fund of this state.

THE JUDICIARY.

The committee of the whole resumed the consideration of the reports of the judiciary committee, Mr. CAMBRELENG in the chair.

Mr. JORDAN resumed his speech, commenced yesterday, and proceeded to show how the organization, which he had in part described, should be completed. He said he supposed some point would be designated by the legislature, where a clerk's office, for each judicial district, should be established; and that a clerk would be elected by the people, to hold his office for such term as might hereafter be thought proper, he giving bonds for the proper discharge of his duty, which would be highly responsible, as all moneys paid into the supreme court, on the law or equity side, of which there would be immense sums, would go into his hands to be distributed or invested according to law. In establishing the clerks' offices, of course, regard would be had to the geographical position of the district, and to the means of communication by railroad, steamboats, mails, &c., so as to locate in the best possible manner to suit the convenience of the bar, and of suitors whose business the bar had in charge. It would be necessary that each of the clerks should have a seal, both for law and equity. We have now four seals of the supreme court and four of the court of chancery, at the different clerks' offices of the state, and the additional number he had mentioned must be procured. Thus organized, he saw nothing to prevent this court going into active operation. As causes came up from inferior tribunals, they would be ready to hear argument and decide them. In case of reversal, they would send them back for a new trial: in case of affirmance, they would authorize the party to enter up judgment; when if either party should be dissatisfied, the cause would be in a situation to be passed on to the court of appeals. By the article under consideration they provided also that there should be as many circuit courts held in every county each year as the legislature should direct, which would be regulated by the amount of business to be done—there might be two or three or more if necessary, and the legislature would prescribe the place and length of time of holding them.—The judge would go down to the circuit and there remain until all the business was done. The system contemplated, and the wants of the community required, nothing less; and he desired to say, once for all, that it lay at the foundation of their plan to provide sufficiently that all the business in all the courts, from the lowest to the highest, should be done up as they went along. There was no time so favorable for deliberation and decision as immediately after argument, and thus only could

we avoid the harrassing expense and vexatious delays to which we had been subjected.—The circuit judge would preside as the judge both of law and equity. The clerk of the county, who was to be the clerk of the circuit the same as he hitherto had been, would have the law and equity calendars separately made up on notes of issue previously furnished by the attorney's and solicitors, and when the judge came, he would call his jury, try his causes on the law side, and the verdicts would be entered in the rough minutes by the clerk of the circuit as heretofore had been done. Having got through his law calendar, he would take up his calendar in equity and such causes as were to be tried by jury, he would try before the jurors were dismissed. On this subject he might remark it would be the duty of the supreme court at their annual meeting to which he referred yesterday, to provide by general rules how causes in equity should be designated for trial by a jury, and how the issues should be made up. And they would if either party desired a trial by jury authorize him to give his opponent notice; if they could agree on the issue to be tried well, if not he must apply to one of the judges who would decide whether the case was proper for a jury, and if so how the issue should be prepared. The judge at the circuit having disposed of all his trials at law, could next dispose of those in equity which have to be tried by jury, and the verdicts would be entered in the rough minutes of the clerk. He would then proceed to the trial of those causes in equity which are not to be tried by a jury. And when he comes to the end of trials of that description, he gives the heads of his decisions to the clerk just as the verdict of a jury would be. He settles the facts, which become in fact a verdict. He decides all the questions of evidence, and questions of law as he passes on through the trial; the same as in a trial at law. There is no difficulty in this in suits at law, and he could not see why there should be any in suits in equity. But he would suppose that one or other of the parties in these causes whether in law or in equity was dissatisfied with the verdict or decree—what was to be done? Why by the rules of practice as many days as ten might be given to the parties to appeal. If it were not done in that time the judgment should be entered up on the verdict at law, and a decree drawn out in form and entered in cases in equity, in the office of the clerk of the district. But if either party is dissatisfied he gives notice; and prepares his bill of exceptions, or makes out his case, to which his adversary may agree or the judge settles it, and they are sent up to the clerk of the supreme court to remain in that office for the use of that court. Now in all this he saw not the least difficulty. He might as well now present his views of the objections of the gentleman from Chautauque, (Mr. MARVIN) who presented his plan of a Judiciary a few days ago. The gentleman from Chautauque had objected that it might not be convenient to present all the evidence in equity suits at the time, and therefore that there ought to be power to adjourn. To this he might reply that it was not always convenient to parties to give all their evidence in law suits at the same time.

Many parties would deem it very convenient if they could postpone giving their evidence for a few days or weeks, or months; but that was an inconvenience which must be submitted to in courts of law and he thought it should be submitted to also in equity. It was no more burdensome in the one case than in the other. Witnesses generally were no more numerous in equity than in law. But there was another reason why parties ought to come prepared to go thro' the trial of their causes. True, if they could not be prepared, they might put off a cause on the usual terms, as is done in courts of law; but when they began a trial there was an additional and cogent reason for not suffering it to be postponed from time to time, for that prevents the despatch of justice—it creates those delays which, more than any thing else, have called for a reform of the judicial system. But again, the gentleman asks, if he wants to make a case when the judge from a distant county comes to hold the circuit, where should he find the judge? For when he breaks up he goes off and perambulates through the other counties of the state. Well, if the gentleman had a supreme court on his own system would he not be subjected to the same difficulties? It did not, he admitted, appear that that gentleman's own plan proposed to have judges of one side of the state to sit on the other side; but why he could not find a judge to make out his case by the plan of the majority of the committee as well as by his own, he (Mr. J.) could not distinctly perceive. By his own plan he would have to follow him from one end of his half the state to the other. There was about the same difficulty in each; but it was a very easy matter to transmit a letter and papers, in these days of reduced postage from one part of the state to the other—from New-York to Chautauque, or from Chautauque to Oswego.

Mr. MARVIN said he inferred that the gentleman from Columbia had fallen into an error in relation to the system he (Mr. M.) had had the honor to present. In his plan he left the court of common pleas on its present footing, simply providing that there shall be a president judge for several counties. Upon those president judges he conferred equity jurisdiction, and not on the judges of the supreme court. This common pleas judge for four or five counties would of course be local and it appeared to him that they must have local judges to do this equity business, inasmuch as all agreed to get rid of masters and examiners in chancery.—Hence it was that he had said they would have their equity judges to transact the business within a reasonable distance. He expected to try causes before these judges as the gentleman from Columbia intended before circuit judges; but he being in the neighborhood, there would be no difficulty in applying to him in the cases referred to.

Mr. JORDAN said he (Mr. M.) must be speaking of a plan in his own mind, but his (Mr. J.'s) remarks were applicable to both.—The president judge of his system would not be stationary, and he understood that his supreme judges were to hold circuits, he did not therefore get quite rid of the difficulty either in law or in equity. The equity judges would have a

large number of counties—the supreme judges still larger.

Mr. MANN interposed and explained that he proposed 12 or 13 judges, and it might be necessary to increase them.

Mr. JORDAN said, then the legislature could increase the twelve or thirteen to eighteen, or thirty, or even sixty, which would be an exceedingly objectionable feature. But he did not mean to find fault with the gentleman's plan, or the plan of any one, but he did desire to say that if, according to the gentleman's plan, the state was to be districted, and they must have travelling president judges, they must meet with more or less difficulty. The president judge could not live in the town of every lawyer, nor yet in every county. For those who lived near him, or within a convenient distance, he could do business; but for others, who were distant ten, twenty, or forty miles, the difficulty would remain. He did not now see any great inconvenience, of which the gentleman complained, that was cured by his own system. What mattered it to a lawyer, who wished to settle a case, if the judge was forty or one hundred and forty miles off? It was hardly to be supposed that the lawyer was to travel that distance merely to settle a case, unless he could unite some pleasure of his own with it. If a lawyer was dissatisfied with a verdict, he would draw up his case, and serve a copy on his adversary. If his adversary was dissatisfied with the draft, he would propose an amendment in writing—both, with explanatory remarks, if necessary, would be sent to the judge, who would settle the case, and send it back. Postage is cheap, and communication is safe and rapid, and but very little inconvenience would be felt. Now, one word as to the plan of the gentleman from Cattaraugus, (Mr. CROOKER.) It presented, in his judgment, a very favorable amendment to this report. He did not say this with any intention of relieving himself from any of the responsibility which the gentleman from New York cast on the committee, according to his idea of what they intend to do with the report, namely—to carry it through line by line and letter by letter. He was glad to see any gentleman propose amendments that would improve it. Indeed there were some things in the report which he should himself, upon more mature reflection, move to amend at the proper time. The gentleman from Cattaraugus had submitted an amendment which struck him very favorably; he saw nothing in it to conflict with the fundamental principles of the system they had presented. In a wise economy, the gentleman had avoided the multiplying of officers, and he had proposed no new office to be created.—There was the surrogate for each county—and there must be one. He has duties to perform of a local character; but they were not sufficient to ongross all his time. He ought to be a man of learning and discretion, and it was to be presumed he would be so. Now this plan proposes to make that surrogate the first judge of the county. He was to be elected, and would be chosen with reference to the entire duties of his station. The plan, as he understood it, proposed to have this county judge, with two justices of the peace selected by the board of su-

pervisors, hold the courts of general session, and try all offences the punishment of which does not exceed ten years imprisonment in a state prison. It was not intended to allow him to imprison for life, or to inflict the punishment of death; and all that was very well, for in those higher cases of offence it was proper that the trial should be by judges, if not of a higher grade of intellect yet of superior rank. This plan, therefore, in this respect was a favorable amendment. The plan of the majority of the committee had not provided any court of criminal jurisdiction but the oyer and terminer.—It had not specially provided that all crimes should be tried by the oyer and terminer, but it had left that to be inferred, and such was his idea. Now here were gentlemen who were declaring that the committee's plan would break down, while others on the contrary were complaining that it was too large, for himself he would say that the committee had laboured to produce some thing between the two extremes, making it neither too small that it would be inefficient, nor too large that it would provide securities and by its expense be burdensome to the people. The report as made was the conclusion to which the committee had come, and he still believed it would be sufficient. The plan of the gentleman from Cattaraugus however they could adopt without any additional expense or any new offices; they could thus relieve the supreme court of all general sessions duties and have those duties as well performed; it was calculated to allay the fears of those who thought the system had not sufficient strength. He knew that the ordinary run of justices of the peace were not capable wisely to discharge the duties of a criminal judge. Still there are respectable men among them; many that were capable—there must of course be preferences; they could always find two in the county that were competent to discharge such duties as well as those who have heretofore done them, and thus they would have a safe, convenient, and respectable court of sessions, made he might say out of nothing, by the inventive genius of his friend from Cattaraugus, for he has suggested a plan by which a county court can be created and a class of business taken from the supreme court judges, and yet cost us comparatively nothing. He was not aware how the gentlemen intended these judges should be paid, whether out of the county or the state treasury, but he presumed the Surrogate would receive a salary and the justices of the peace a per diem allowance. There was another thing about that amendment to be approved. Some gentlemen have complained because there was no place into which all the irregular or miscellaneous business of the county courts should be thrown—and that was some objection. It was not necessary to go into that question at this time. He hoped the gentleman's amendment would pass if the plan of the committee did. It should pass if his vote could pass it. He would give to it the miscellaneous power which the county courts have been in the habit of exercising, and that by a general law which might be drawn in three lines. This certainly would answer one class of objectors, who complain that the courts of the majority report would not be able to discharge all the duties that

would devolve upon them. Mr. J. thought those gentlemen were mistaken. He thought their system would provide for the despatch of all the business without the aid of the amendment of the gentleman from Cattaraugus, but with it, he felt entirely certain. He had now explained the working of this system, and would barely take up and run through consecutively and very briefly the march of a cause onward from the highest court, by way of recapitulation. He should say nothing about the justices of the peace, because they were to be regulated by the legislature. The committee intended to recognize them as existing, and that was all that was necessary. He believed the amendment of the gentleman from Cattaraugus contemplated an appellate jurisdiction from those courts to the county court, but it was not his design to say anything about that at present.

Mr. LOOMIS enquired if the gentleman designed to give to the surrogate an appellate jurisdiction.

Mr. JORDAN said he meant to give it to him as a judge of the county court to a limited extent—so he understood the proposition.

Mr. SIMMONS said the surrogates were not to be compared to the justices of the peace in point of talent.

Mr. JORDAN remarked, that was a matter of opinion.

Mr. SIMMONS:—Not at all.

Mr. JORDAN said the gentleman from Essex seemed to have made up his mind pretty positively, and he had no wish to disturb it if he could. He knew there were some surrogates that would not compare with some justices, but if the surrogates were not what they should be, he hoped we should make them what they ought to be.

Mr. CROOKER said that was his object in offering this amendment. He desired to make them what they ought to be.

Mr. JORDAN repeated that he should vote for that amendment. He thought such an organization would be better for those who get their law suits up in justices courts for small sums. It was better, if the decision was not so clearly and decidedly according to law, to have an end put to them, than to have them thrown by a succession of appeals, and at a ruinous expense into the court of last resort. He would give them exclusive appellate jurisdiction in cases not exceeding \$25; but over that amount he would allow the parties to go to the supreme court of the district, which would now become a domestic kind of court. But when a party is dissatisfied with a decision of fact in a justice's court, he would have him put his case in writing and go to the court consisting of the surrogate and justices, or the surrogate or justice alone, either of whom should be capable of determining, and if it was found that a mistake was made, or that injustice had been done, the case might be sent back for trial in the town from which it came, or to some other adjacent town. He would always have the facts settled in the town courts. He never would suffer an appeal from any of these courts to take twelve men of the county and occupy their time, and that of a county court in the trial of matters of facts from justice's courts; but if any

questions of law arose, then let the county court, if under \$25, or the supreme court if over, put an end to the matter. There were many cases in justice's courts not over \$10.

Mr. RICHMOND interposed and inquired if the gentleman from Columbia intended, when an appeal goes up to the Surrogate to make that final.

Mr. JORDAN said he was just endeavoring to tell the gentleman. For sums amounting to not more than \$25 he would have the case kept there. He would almost be willing to do as England does—have no justice under forty shillings, rather than suffer parties from angry feelings to run through all the courts with causes of mere trifling amount. But when they came up to \$100 or to a sum approaching the limits of the justices' jurisdiction he thought there should be a greater latitude. Thus then they had their justices' courts: they had their appeals to the county court, and in cases of sufficient magnitude to the supreme court. He had said much more on this subject than he had at first intended and he begged gentlemen would ask him no more questions lest he might never stop. The business of justice court making was out of the pale of constitution making. He had designed in his recapitulation merely to say that a suit could be commenced in the supreme court and put at issue as at present—circuits would be held often and long enough to try every cause when ready for trial—a review might be had in bank at the next term which would follow close upon the circuit, a prompt decision would be had there, and if unsatisfactory to either party, it was but a short step to the court of appeals, where it could be disposed of with equal promptitude—with so simple a practice and so great dispatch, justice could be done and cheaply done, and hundreds of dollars saved, many times in the prosecution of a single suit. He conceived it to be one of the acceptable features of this organization, that while it gave the counsel for the parties an opportunity for full discussion, it lessened the number of appeals. They had been too numerous, and produced too much delay and expense. This allowed of but one, and that from the Supreme court to the court of appeals. At the same time it gave an opportunity to the litigant to compel his adversary to show his hand, before the final argument in the court of appeals—a circumstance which would prevent surprise by any new points springing up, for which he had not had time fully to prepare. He would explain how this would be effected. The judge who tries the cause at nisi prius, does business rapidly, and is liable to err. The cause is transferred to the bench by a simple notice, for review; it is then fully argued; and this is done before judgment is entered—Here counsel are obliged to apprise their adversary of all their points; after that, if an appeal is brought to the court of appeals, each party being apprised of his adversary's ground, having had full time to prepare, may put forth his whole strength, and there is an end of the litigation. Mr. J. considered it not improbable that under this system, causes might be prosecuted through the supreme court, to final judgment in the court of appeals, in less than twelve months. The supreme court is the great fountain of original

jurisdiction in law and equity, and the court of appeals is the end of the law in both branches. Under such an organization, there would be few appeals:—first, because few suits of a frivolous or groundless character would be prosecuted, as there would be but little chance of success in a court of original jurisdiction of so high a character; and second, because that court would make but few mistakes. They would have ample time for examination; they would possess the confidence of the community; and he had no doubt the thirty-two judges, with the four additional judges of appeals, would be able to do all the business. He was fully satisfied that, with the aid proposed by the amendment of the gentleman from Cattaraugus (Mr. CROOKER), to relieve the supreme court of sessions business, they would be most amply able. If it proved to be otherwise he should be greatly disappointed. There had been, among others, a plan presented by the honorable delegate from Chautauque (Mr. MARVIN), which, for its matter, and the spirit with which it had been bro't forward, was entitled to great consideration.—But he did not intend to go into an examination of that now, or any other of the numerous plans on hand, any further than he should find it necessary to do so in vindicating that of the committee. The latter was now the basis of their action; and if acceptable to the Convention, with such amendments as it might receive from their hands, it would be unnecessary to spend time on the others. Should it prove otherwise, then it would be proper to take up some other distinct plan, and make that the basis of action, when he (Mr. J.) would give it his most thoughtful attention. He thought there might be faults pointed out in each of them, though that was not now his purpose. Of the whole number, however, he would now say, that of the gentleman from Chautauque (Mr. MARVIN) came nearest to his views. Its most objectionable feature was that of a court of common pleas, with coördinate, civil jurisdiction. Mr. J. could not conceive the necessity of having our courts complicated, when they might be simple. Why have two tribunals working upon excentric circles, when one upon a concentric circle, would perform all the duties required? Why have two organizations, two clerks, two clerk's offices, two sets of rules and systems of practice, two grand and petit juries, when one would answer in every respect as well? Why have a subordinate court, thereby adding one to the number of appeals, before reaching the court of dernier resort? Why have one court of greater, and another of lesser dignity, except to circumscribe the confidence of the public in the latter? The natural result of which must be to promote a spirit of litigation, and prolong it by multiplied appeals. Whatever of superior dignity was conferred on one, would proportionably be subtracted from the other, and impair its usefulness. He could not believe it wise to have two courts of exactly the same original jurisdiction, and yet the one subordinate and subject to the review of the other, so long as one could do all the business, and do it as near to the residence and convenience of the suitors as the other.—There seemed to be with some, a peculiar charm in the idea of a court of common pleas. It was

said to be an old friend and companion of the people—with whom they had become acquainted and familiarized, and would not therefore willingly relinquish it. He was not aware of any such feeling. He believed, with the exception of a few counties, it was considered a nuisance, and that we were called on to abate it. True it was, that in some of the counties, able men had presided; but they were rare exceptions to the general rule. There were few such men to be found among us, who would or could afford to forego all pecuniary considerations, and devote their time and talents to the public service. Whenever such could be found, the discernment of the people, he trusted, would be sure to place them upon the bench of the supreme court, under the new organization proposed by the committee. The idea of a court of common pleas was, in the early period of our political existence, drawn from the British constitution. He did not propose to discourse upon its origin; but every lawyer knew how it had sprung up in that country. In the council of wise men of her Saxon ancestors, and afterwards in the regal hall of her kings, was concentrated all judicial power, criminal, civil, and ecclesiastical. In the growth of that people, it became inconvenient to have all these powers blended, and the civil jurisdiction of pleas was allotted to a separate court, called the common pleas, which took cognizance of all matters arising from contracts. For the same reasons, at a later period, jurisdiction of trespasses and crimes was allotted to another separate court, called the king's bench. These jurisdictions for a long time remained separate; but, as a natural consequence of a mere arbitrary separation, without any natural or convenient necessity, the king's bench extended its jurisdiction over all matters arising on contract. The common pleas retaining its original jurisdiction, the two become coördinate; but both courts have been kept up, because both have been no more than was necessary to the discharge of the judicial duties of the realm.

In forming our constitution of 1777, when we had not yet emerged from the Revolution, our predecessors, who had been brought up under royal institutions, naturally framed their own, somewhat in analogy to those. They recognized the existence of the courts as they were; they had not time nor was it then necessary to consider how they could be improved; they were well enough. With the supreme court as it then was, we required some other court to do a portion of the business; but with it as we propose it shall be, there is no such necessity—we are in an age of improvement—we are engaged in the business of reform—our judiciary must be reorganized; let us, therefore, study its structure and make it a simple, efficient, rational system. We are not like England, wedded to her errors because they are ancient; we are a people of a different genius—stamped upon us by different institutions; we are, thank God, a self-governing democratic people, all occupying the same level, all having equal wants, equal privileges and equal rights. No class whose distinctive privileges beget a horror of reform, lest the lower orders should usurp. In England, all is stable; here all is changing. There a

man reveres, as sacred the ancient stone walls of the family mansion occupied by his ancestors a thousand years ago, however uncouth or inconvenient; here we would demolish them and build better. But even in England, while their courts remain the same, important steps in legal reform have lately taken place. Let us then look at the question before us with a single eye to the utility of this double organization, embracing a court of common pleas, and not content ourselves with saying it must be so because it has been so. I do insist, sir, with a supreme court that can do all, we want no common pleas to do a part; with large lights we have no need of small lights—with a court of high dignity we have no need of one of low dignity. He had now done with the particular features of that gentleman's (Mr. MARVIN's) plan, and all others but that of the committee. He had no design to notice them now, except so far as necessary to vindicate the report under consideration against the objection that it had no common pleas or county courts.

He (Mr. J.) would now examine the objections raised in other quarters. He judged from the standing of the honorable gentleman from Oneida, (M. KIRKLAND,) and from New York, (Mr. O'CONNOR,) and from Chataque, (Mr. MARVIN,) and from Ontario, (Mr. WORDEN,) that every objection had been raised that could be. If such minds could not find others, he for one was quite certain they did not exist in fact or in fancy. His friend from Oneida had objected that the supreme court was too large—with thirty-two judges, holding courts in banc in different places, it would not be as dignified, would not have as much of the confidence and respect of the people as a single tribunal of less numbers. He had already intimated that he thought there was not much in this idea of dignity. He would add, that dignity in this republican country consisted in merit alone; all that was required here was, that a man should be upright in his dealings, impartial in his judgments, gentlemanly in his conduct, and so far select in his associations as not to herd with scoundrels or black guards. He might and ought to treat every man as a gentleman who was correct in his morals, respectable in his attainments, and decent in his personal habits. Who would fall short of this would fall from the true dignity of our republican standard—who would go beyond it would be deemed an aristocrat, and he would advise him to emigrate; not that he would be unsafe, but that he would find himself uncomfortable; in some peculiar districts where semi-lynch law prevails he (Mr. J.) would not be answerable, but in this sober state, contempt for his weakness would limit his punishment.

Now, sir, (said Mr. J.) allow me to suggest that my friend from Oneida has not placed his notions of dignity upon the right foundation.—What could present a more sublime spectacle before the world, than thirty-two gentlemen of moral worth, high intellect, highly cultivated, deeply imbued with the spirit of our republican government, administering law and equity to three millions of people. One of them comes down to the gentleman's county (Oneida) to hold a circuit. Who that remembered the workings of our judicial system under the constitution of 1777, would not say that he would command

the respect and confidence of the people. Three of them come into the same county to sit in banc. What would detract from their dignity? Certainly not the smallness of their number, for but three judges have constituted our supreme court in banc for the last twenty-five years—certainly not that there were twenty-seven others of equal rank performing similar services in other parts of the state, and all having full employment.—He could not think his friend from Oneida had drawn his notions of dignity from a school suited to our political condition; nevertheless it was matter of opinion between them, and he hoped they might differ and yet not disagree!

Another objection to the majority report, was that the judges could not sit together, which was an unheard of anomaly, that they professed to be a unit, while they were in fact separate.—It was not the first time a Christian people had heard of unities which this might humbly imitate. There was nothing in the objection unless it was shewn as a consequence that the machine would work discordantly. Their inability to sit together he had already incidentally noticed. On great occasions they might convene; and they must meet at least as often as once a year; they should be required by law to do so, in order to establish and from time to time review and improve their rules of practice and procedure. At those meetings wisdom would be drawn from multiplied experience. They would be made acquainted with the general, practical operations of the system over the whole state, and they would apply such remedies as were left within their power. Three were sufficient to hold a banc court—that fact was established by long experience. Ten judges sitting together could do no more in hearing arguments and rendering judgments than three. It was only by multiplying their powers of despatch that the remedies called for could be applied. Almost every gentleman who had found fault with the majority report, had in one form or another advocated a court with these multiplied powers, or, as they had chosen to call it, a "Divided Court"—some in greater and some in smaller numbers. The gentleman from Oneida had six in the form of six district superior courts. The gentleman from New York had fifty-nine of them in the form of courts of common pleas.—The gentleman from Chataque had eight to twelve in the form of president courts, besides supreme courts in banc. The gentleman from Seneca (Mr. BASCOM) did not essentially disagree with the majority report. The *principle* was conceded—it must be conceded, or we had no relief; and he could see no evil in it so long as we had our court of last resort to hold a steady helm. Nor could he conceive it to be of much importance by what name they were called. In most matters there was but little in a name—in this, nothing.

But there was another objection, and it was one at which he would not say he was astonished, for there was nothing at which he should be astonished. The freedom of thought and debate proper in a body like this would justify it, and he had reason to rejoice rather than regret that it had been brought forward. "There will not," say gentlemen, "be any uniformity of decisions amongst your eight supreme courts

in banc." He would not say this might not be possible, nor could he say it was not possible the "sky might fall" and we "catch larks;" but he considered one about as probable as the other. That these thirty-two judges, all belonging to the same tribunal, all learned in the law, all familiar with the decisions of the appellate court, all desirous of doing their duty, all intermingling their labors, all in constant and familiar communication with each other, should willfully attempt to establish conflicting rules of law, was utterly out of the question; that they might fall into error was possible, but the evil would be temporary, so long as the court of appeals regulated all, and if temporary disagreements upon new and difficult questions should arise, they would at once correct them. And how, he would ask, could the objectors secure a uniformity of decision in their fifty-nine courts of common pleas, or in their district superior or president district courts, but by the same means? How had it been secured for the last twenty-five years, with our eight circuit judges and numerous county courts, but by the supervisory power of the higher tribunals. Among the weighty objections raised by the gentleman from Oneida, another is that it would be impracticable to keep a muster roll of this army of judges. He (Mr. J.) had not been aware that such a document would be required; if it were however, he had no doubt a competent person might be selected who would take upon himself that duty for a trifling compensation. He thought a serjeant of the Burgess Corps might be found whose education in that line of duty would be useful, and that a salary of ten dollars a year would secure his services to the extent required. He thought great numbers of objections of equal weight might be overcome without any ruinous consequences, as they did not go to the ground work of the system, however he considered it unnecessary to spend much time upon them, and it would not have occurred to him that they deserved any notice had they not come from so respectable a source. The arrangement of their business among themselves had been considered by gentlemen a matter of great difficulty. How so vast a company should alternate in holding their circuit and banc courts. In what orbits they could be made to move without producing confusion and running into chaos, seemed in their judgment to defy the powers of orderly combination, and present insurmountable difficulties. But he (Mr. J.) was of opinion that a little attention to the subject would make it quite apparent that it would be otherwise. The judges at their annual meetings, knowing how many and what courts were to be held for the year, and the places of holding them; could in the smoking of a cigar, between dinner and sunset, arrange the whole matter. They could construct for themselves a sort of judiciary planetarium by which they might operate with all the regularity of the solar system. Sickness and casualty might sometimes intervene, but the system embraced forces enough, to admit of calling in another judge, whenever they should occur. He had no doubt the judges would hold such annual meetings, for he considered it quite certain that the Legislature would so direct. It

was not in the least probable that so important a duty as that of forming rules of practice and procedure, and of revising them from time to time would be neglected.

Again, it was urged by the gentleman from Oneida (Mr. KIRKLAND) that after the terms in banc, the judges who might have come in from other districts would separate; and it would be difficult for them to meet again in consultation—with this the convention had nothing to do—It would be their duty to examine and decide their cases (like the supreme court at Washington) as they were argued; and if to the neglect of that duty, they would separate they must see to it that they convened again as best they might. The gentleman from New-York, (Mr. O'CONNOR,) had appeared to be staggered by some other objections, somewhat peculiar to himself. He had thrown around them much of the ornament and drapery of rhetoric, at the same time he had exhausted his powers of ridicule upon the report of the committee. In his judgment the court of appeals did not sufficiently resemble the old court of errors. He (Mr. J.) had heard that objection urged nowhere else either in or out of the convention, and for his own part he thought, the less resemblance it could bear the more acceptable it could be to the public. His Mr. O'C's only objection to the present court was that it was substantially a branch of the legislature and had never been known to pronounce a statute of the state unconstitutional. [Mr. SIMMONS—That cannot be so!!] with that exception he deemed it perfect. He (Mr. J.) would agree that the objection referred to was of great weight, and he thought there were others of equal weight. He considered its whole organization defective. It was too numerous and expensive. It was composed principally of men uneducated in the law. Their usual mode of hearing arguments was loose and inattentive. Members frequently voting on questions involving the highest interests who had heard but a small portion of the arguments and sometimes when they had heard no part; of late years "log rolling and lobbying" had been more or less extensively practiced, the whole matter had been too much a game of chance, in which the most adroit, and many times the least scrupulous player had all the advantage. He (Mr. J.) had always supposed that when counsel had argued their causes, and put forth their best efforts, their legitimate work was done, that no honorable counsel would approach a judge, and no right minded judge would suffer himself to be approached, after that. Private and personal solicitation after a cause had been submitted was a most dangerous and corrupting practice, and he Mr. J. was as well convinced, as of his own existence that such practices had been resorted to and that his clients had been made the victims. He desired no more of it.

The gentleman (Mr. O'C.) had further objected, that such a supreme court as proposed by the committee, could not wield the prerogative writs, such as *Mandamus*, *Quo Warranto*, *Habeas Corpus*, &c. a party would not know which of the several courts in banc to apply to. This objection was entirely unfounded. The writ of *mandamus* was a writ directed to some inferior officer or tribunal commanding it to proceed in

the performance of some public duty. The writ of *Quo Warranto* was directed to an individual or body corporate who had usurped some office or franchise &c. commanding it to *desist or shew cause*. The writ of *Habeas Corpus* was also addressed to individuals or bodies. Now the objection he could answer in a word. Tell me (said Mr. J.) In which judicial district the person or body resides or is located in to whom you wish to address your writ, and I will shew you in the same district, a supreme court held by three judges, (the same number we now have) to whom your application should be made.

Again, he objected on account of the difficulty in changing venues in cases where it was necessary. To which court or board should he apply? The answer is to the court in the district where the venue is laid—or, if the legislature should think fit, they might direct it to be made in the district where the defendant lived, or any other. The honorable gentleman (Mr. O'CONNOR) seems to apprehend that it would be very unsafe for a party residing in New-York, to be obliged to apply to country judges sitting in a country district, and *vice versa*. He seems to be horror stricken at the idea of being obliged to go, for example, to a judge in Delaware or Hamilton to argue a question of any kind; and, to avoid invidiousness supposes it would be equally unsafe for a country lawyer to be obliged to go before a judge in the city of New-York for like purposes. He (Mr. J.) could entertain no such fears. He could not consent to argue upon the supposition that a judge, either in city or country, was to be either ignorant or dishonest; and that he could not but perceive, was the whole basis of the opposing argument. He would trust to the learning and integrity of a Jones or an Oakly, come the party whence he might, whether from the country or city, from his own state, or from any foreign state. He would repose the same confidence in the same kind of men, sitting anywhere; whether in the city or country, an upright and enlightened judge would dispense even handed justice, be his location where it might, in New-York or in Delaware, in this state or in any other, in this country or abroad, in the civilized countries of Christendom or the Pagan Realms of the Calmuc Tartar—an honest man is an honest judge—an enlightened lawyer is an able judge, be he where he may—and he (Mr. J.) was sincere in the belief, that the most exquisitely perfumed dandy of the profession in the city of New-York, would be as safe in the hands of a Delaware judge, as in the 'halls of justice,' or the north-east room of the city hall. In the magnificent exclusiveness of city life and city practice, he might probably feel inclined to sneer at the 'clod hoppers' of these benighted regions; but he would be agreeably disappointed, when forced to go among them, at finding them a hospitable people, and withal somewhat civilized. The population of the city of New-York were generally an enlightened and enterprising population; but there were among them those who considered the city all the world—who had hardly dreamed of unexplored regions beyond the high lands. To such gentlemen, he thought it might be of benefit to extend their travels; and he could inform them that some of the ablest lawyers among them, were from this

very county of Delaware, which had been singled out as the extremest example, by which to enforce the argument on the other side, many of the present judges of the city, were lawyers educated and trained in the country, and although there were certain branches of commercial law with which city lawyers were more familiarized than those from the country, yet the manner in which those judges had discharged their duty served to show how readily an able and enlightened mind could accommodate itself to any exigency. There was yet another and the last objection which he had not answered. It had been originally stated by the gentleman from Genesee, (Mr. TAGGART,) and backed up by the gentleman from New-York, (Mr. O'CONNOR.) It was founded on the hypothesis, that learned counsel might under the eight district system have several causes standing ready for argument in the several district courts all noticed for argument at the same time. What should be done? He, (Mr. J.) had on a former occasion suggested the remedy which he could here repeat; let the learned gentlemen select the most important of his several cases, that which most required and best deserved the energies of his own mind, and hand over his other briefs to other counsel.—Although his clients might be subjected to some inconvenience and peril, yet those he submitted were such as could not under any system be avoided. The same learned gentleman was now and had always been liable to the same embarrassment. We had now eight circuit judges, all of whom might be engaged in holding a circuit at the same time in each of which the same counsel might have a client to defend. [Mr. O'CONNOR explained that he alluded to bar motions, and a variety of business of that description, and not the trial of cases at nisi prius.]

Mr. J. thought it made no difference. He had only endeavored to show that there were inconveniences which could not be obviated under any system. It was of quite as much importance in his judgment, to the suitor, to have his chosen counsel to try his cause at the circuit, as to argue it at bar. Thus, said Mr. J., I have endeavored, in a plain way, to show what our judiciary will be, if organized upon the plan contained in the majority report. How it would be organized—how operate—how answer public expectation; and, moreover, how their internal arrangements could be made. How this "band of vagrants," these "vagabondizing, itinerant pedlars of the law," this "analogy to a circulating paper medium," as the gentleman from New-York (Mr. O'C.) has, in the indulgence of his wit and merriment, so facetiously called them, could perform these duties. Acknowledging my profound gratitude for the patient attention with which the delegates have heard me, I cordially unite in the invocation of my respected friend from Erie (Mr. SROW), that our work may be blest of Heaven; and that this or any other plan which the Convention in their wisdom shall adopt, may prove satisfactory to our constituents, and remain as a monument of their wisdom, while the earth endures.

Mr. TALLMADGE then addressed the committee at some length. In reference to the bill produced a day or two since by the gentleman

from Chautauque (Mr. PATTERSON) showing how a county judge had charged \$78 for one days service, and upwards of \$140 for two or three days service, he said all that was legal. He had risen to say this to the Convention that he might show the necessity for more discreet legislation. He spoke of these charges as legal, and by that he meant that they were charges lawfully made according to existing laws, and there were many more that were worse cases than this which had been presented by the gentleman from Chautauque. Why, so late as the year 1845, an act was passed by the legislature of this state, entitled an act to reduce the number of town officers and to facilitate the auditing of their accounts, which had a 21st section, that takes from the prosecuting officer a discretion hitherto held, and makes it mandatory that whenever criminal cases are put off by either party, the public prosecutor shall recognize all the witnesses to appear at the ensuing court, by which there was at once a Pandora's box opened for the commission of wrong, amongst which might be the imprisonment of witnesses that could not give security. He alluded to this in charity to the legislature, which passed such a law with such a title, but he thought it afforded evidence that that legislature was busy with something else than thinking.—After some other observations on this subject, he referred to the discussion which had taken place on the judiciary article now before the committee, and commended it for the talent and spirit and assiduity by which it had been characterized. He expressed his regret that Mr. SHAW should have felt it necessary to offer his resolution to limit this debate, and gave his views as to the number of committees which should have been originally appointed, and the course which the Convention should have adopted in the outset. His judgment was that there should have been but three committees, the judiciary, the executive, and the financial. The Convention, in its wisdom, had spent six weeks in the reception and discussion of resolutions, not one of which would ever be brought to maturity; and this he disapproved. He however expressed his gratification with this debate, from which he had derived much information. He then proceeded to an examination of the justices courts which he said he desired to maintain. They were necessary for the convenience of the towns that were distant from the county seats. He defended at some length the county courts in which in his younger days he had practiced; and he expressed his desire that they should not only be preserved, but improved and elevated. He also gave his views respecting the supreme court, the court of errors, and the court of chancery. The latter court he would root out entirely, as a farmer would a Canada thistle.—In an allusion to the funds, an amount of which had been called for by Mr. MANN's resolution, he said that instead of three millions, he believed the amount in chancery was nearer nine, and even twelve millions. He did not believe, however, that they should be able to get the returns of it from the officers. If this Convention did nothing else than abolish that court, he thought they would deserve well of the community. He examined the practice both in law and in

equity, and condemned the pleadings as unnecessarily complicated and expensive. The court of appeals he desired to have an independent court. The judges of the court of appeals he would have isolated from executive influence, and he would make them ineligible to any office thereafter. He went into an examination of the causes of litigation, of which we have in this state with a population of three millions so much more than in England with a population of seventeen millions, and defended our people against the imputation of being of a litigious spirit. It was an incident of our position. In England property was classified, things were settled, commercial dealings were running in established channels, and there was very little reason to jostle with each other; and he believed with us that litigation would be progressively diminishing.

Mr. LOOMIS addressed the committee at some length, chiefly in reference to the county courts. He said that his proposition, presented when the majority report came in, was based on the idea that the plan proposed by the majority of that committee would be adopted, as he desired it should be; for the more he had heard that discussed, and the more he had reflected on it, the more was he satisfied with that plan. And Mr. L. went into some calculations and details, in reply to Mr. STERSON, to show that the judicial force provided in the majority report and the organization proposed, would be fully adequate to all the exigencies of the judicial business of the state, and to do all the duties imposed upon them. But that a county court was necessary to do the other business not devolved upon the supreme court, there could be no question. He disliked the idea of dividing this court into two parts—half of it called by one name, and half by another—half of it confined to one kind of causes, and half to another. The same kind of trial should be held by the same kind of judges. Every man who had a cause to be tried, had the right to have it tried in the best manner that it was capable of being tried. Nor was there any necessity for a county court for the trial of issues of fact. But some local court, exercising judicial functions, was necessary for other purposes; and there was a large class of this business in the country, requiring competent judicial officers on the spot. He repelled the idea that this court would be a small court—a little non-descript thing. He asked if that could be called a petty system, which contemplated local tribunals for the correction of the errors of four thousand justices of the peace, and dispensing with the enormous expenses of the present wretched and vexatious system of appeals and certioraris? He repelled also the intimation, so far as he was concerned, that the county court systems proposed here were extorted from the enemies of county courts, to save the plan of the judiciary committee from apprehended defeat. He proposed his plan of a county court simultaneously with the judiciary report—and when no such motive could have existed. As to what should be the jurisdiction of this county court, Mr. L. said he had a list of some twenty-five subjects of jurisdiction which should be vested in some local officers, and which could not be vested in the supreme court. He went

over this enumeration—saying that in addition to these, he would give his county court other powers, which should be exercised locally.—These powers he specified—and remarked that his plan only contemplated carrying out in the counties, what the judiciary committee proposed to carry out in the state—a local officer trying causes in every town, if necessary, as the supreme court judges were to traverse the counties. Mr. L. was proceeding to state his objections to the plan of Mr. CROOKER, when he gave way for a motion to rise and report.

The committee having risen,

Mr. HARRIS asked leave to offer a resolution, calling on the clerk of the court for the correction of errors to furnish a statement, showing the expense of the recent session of that court at Buffalo—specifying the amount paid to members thereof for their per diem and mileage, and the number of causes heard at said term.

Mr. LOOMIS preferred that it should lay on the table—which was done.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. LOOMIS having the floor, resumed. He objected to Mr. CROOKER's plan of a county court because it contemplated but one judge in a county. The number should be left to the legislature. Or we might say one at least for every county and additional ones for every member of assembly. He concurred, however, in giving the duties of surrogates to this court. And when there was more than one of them in a county, they might be authorized to hold a court to decide questions of law. Nor could he see any objection to authorizing this officer to set aside judgments taken by default in justices courts. They could also do the duties of supreme court commissioner. The class of petty offences with which we would charge this court was that class now tried at special sessions.—Perhaps there might be added to these, cases now tried before three justices of the peace.—But all this was matter of legislation, and there he proposed to leave it. Mr. L. went on to explain his system of county courts—saying that all perhaps agreed in having some local court, though they might differ as to what kind of a court it should be. The amendment, under these circumstances, establishing a county court, would settle nothing.

Mr. WATERBURY followed, urging the im-

portance of improving justices courts, where so much business was done, simplifying the pleadings in those courts, cutting off the intervening courts between these courts and the court of last resort, and thus rendering justice cheap, and bringing it home to the doors of parties litigant. He urged particularly a reform in the mode of selecting jurors in justices courts, which had grown into a mischievous evil.

Mr. RICHMOND now took the floor, saying that he hoped this matter would have been taken up in some kind of order—that we should have begun with the justices' courts and worked up to the higher courts. But instead of this the debate had ranged up and down, from one end of the system to the other—from the eight-wheeled court down to the justice—and he found himself compelled to follow somewhat the latitude of debate which others had indulged in. Mr. R. proceeded to certify Mr. CROOKER's plan of a county court—urging this main objection to it, that whilst it was to have all the machinery of a county court, it was to have no original jurisdiction in civil cases—and that it made the liberty of the citizen a matter of minor importance compared with dollars and cents. He urged also that the discontent growing out of our present system was not entirely owing to the delays of justice, or to the frequency of appeals, but in a great degree to the complexity of proceedings in the court, and the cost of obtaining justice. He believed that the expense of litigation might be reduced at least one half. His own plan of a county court was to have a first judge elected, who should be surrogate, and two side judges or two justices of the peace. He insisted that unless we had a county court, or increased the jurisdiction of justices, or both, the higher courts in five years would be clogged worse than they now were. And he urged the importance of increasing the jurisdictions of the justices' courts and of giving an appeal from them to three other justices of the same or of a neighboring town. He would have the jury taken from the list made up for the county—and drawn in the same manner. He would settle all controversies under \$100 finally, by one justice or by three as he had before stated. [But we cannot follow Mr. R. further to-day.]

Mr. PATTERSON replied to some allusions by Mr. RICHMOND to himself—when

The committee rose and the Convention Adj. to 9 o'clock to-morrow morning.

FRIDAY, AUGUST 21.

Prayer by the Rev. Mr. SELKIRK.

DEBATE ON THE JUDICIARY.

Mr. BAKER offered a resolution, directing the committee of the whole on the reports of the judiciary committee, to report to the Convention at 6 o'clock on Monday.

Mr. CHATFIELD moved to strike out Monday, and insert Wednesday.

Mr. BURR hoped the amendment would not prevail. The committee had had these reports under consideration for thirteen days—one day

for each member of the judiciary committee, and more than one of them had occupied his day. He thought by Monday next, they might be prepared to vote. He had no intention to debate this question, but he would venture the prediction, that, how long soever they might continue the debate, not one gentleman of the 123 constituting that Convention, would get a judiciary system to suit him in every respect. Whatever system they hit upon, it must be matter of concession and compromise. In the plan upon

which they might agree, he trusted they would authorize the legislature to establish courts of conciliation; and he would give the legislature power, after an experiment, if it should not work well, to abolish such courts. The next step would be the justices of the peace. According to the remarks of some gentlemen these justices are a shabby set of fellows. He thought however they could not do without them; and instead of having more, he thought they ought to authorize the election of from one to four in the various towns and wards throughout the state; and he would like to extend their capacities, so that they might take cognizance in matters of money, dollars and cents, to the amount of \$250. He would give them exclusive jurisdiction to the amount of \$100 and original and concurrent jurisdiction to the amount of \$250. He predicted next that we should have some kind of a county court. Perhaps it would be a "cormorant," or a "bull-frog" court according to the gentleman from New York (Mr. O'CONOR.)—Now he did not see why the "bull-frog" system might not answer, provided they would give it vitality to make it jump. He next predicted that they should have 32 "vagabond," "itinerant," "law pedlars," forming a "hydra headed monster," called a supreme court. And then he thought we should top off with an eight square court of appeals, as they had been called. He thought some of these plans would be adopted, and that by Monday evening next they should be ready to take these reports out of committee and finish the article in Convention.

The PRESIDENT put the question on the amendment, and 24 voted aye, and 39 no—being less than a quorum.

Mr. MURPHY called for the ayes and nays, and they were ordered.

Mr. CHATFIELD withdrew the amendment.

Mr. BROWN hoped the committee would not be coerced by this resolution, but that it would be allowed to remain as an invitation to the committee to take the reports out of committee on Monday. He would leave it to the good sense of the committee.

Mr. TALLMADGE said Saturday and Monday were not days, on which an important final vote should be taken on any question. But if this resolution were laid on the table, it would be an intimation to the absentees that would call them back, and they could proceed to vote on Tuesday morning. He moved to lay the resolution on the table.

Mr. WHITE called for the yeas and nays, and they were ordered.

Mr. MURPHY appealed to gentlemen to withdraw these motions to enable him to make a remark in relation to their business—and being withdrawn, he went on to say that this resolution would be ineffective without amendment, so as to make it compulsory on the Convention to go on and vote on the amendments pending when the committee should report. If such an amendment were not made, the debate would be continued in Convention, and nothing would be gained.

Mr. STRONG thought the resolution ought to be adopted. Nothing would be lost by that course. If, as they had before seen, the same speeches were to be delivered in Convention as

in committee, the sooner they commenced the repetition the better. If it were laid on the table simply as an "invitation," he was satisfied the invitation would be disregarded. He hoped it would be taken out of the committee on Monday, and then it would be under the control of the previous question, by means of which they could bring the Convention to a vote some time or other.

The resolution was then adopted.

THE JUDICIARY.

The committee of the whole resumed the consideration of the judicial reports, Mr. CAMBRELENG in the chair.

Mr. CHATFIELD expressed his views at length on the subject. [A sketch of his remarks is deferred.]

Mr. CROOKER said when he took his seat in this Convention he brought with himself only an ardent desire to aid with his humble powers in the great work of judicial and legal reform. He came wedded to no peculiar notions or preconceived opinions of his own. He came fully prepared for all the conciliation and concession that might be necessary to accomplish the changes required by the people. He had felt a high degree of reluctance to take any part in the debate upon the great subject of judicial reform. His reluctance arose from the fact that so many giant minds had been already employed upon the subject. He distrusted his own ability to give any view of that subject that could prove useful to the Convention. But from his position in relation to some portions of the questions before them, he felt constrained to ask the indulgence of gentlemen while in a few brief words he should give the result of his reflections. He should gratify some gentlemen by taking up as first in order the subject of justices courts.—Few members of this body could have had more experience in these humble courts than himself. These are emphatically the courts of the great body of the people. They are entitled in the main to much of the encomium bestowed so liberally upon them. He could not agree with gentlemen who desired to extend the jurisdiction of these courts to two hundred and fifty dollars. Their present jurisdiction is large enough. The popular voice has never demanded an increase of jurisdiction. Give to these courts only concurrent jurisdiction to any amount, and my word for it you will find but few plaintiffs who would seek the recovery of their demands in these courts. They would almost invariably go to a more stable and elevated tribunal.—They will go where they can find legal learning upon the bench to determine the questions of law that may arise in their causes. They will go where they can recover some costs, however small the amount, to repay their counsel for seeking redress for their opponent's wrong.—There could be no possible inducement for such plaintiffs to prosecute their claims in justices courts. While many of these courts had proved to be safe and useful depositories of power, others had too often been perverted into engines of injustice and oppression. Their position as well as their governing principle was too often locality. They are too often controlled by some sectional power and influence. The magistracy of his own neighborhood was equal to the ave-

rage in the state, but my honorably friend from Chautauque (Mr. MARVIN) will bear me witness that the opinion has long prevailed in his village that their citizens could not always find equal and exact justice when prosecuted before justices in the neighborhood of my residence.—The citizens of my own vicinage have an equal dread of prosecutions from the village which he inhabits. However free other older and more favored portions of the state may be from these sectional influences, the exemption has not been universally enjoyed. In many of the new settlements this influence is felt as an evil of fearful magnitude. He had known justices courts where the justice, constable, jury and counsel for the plaintiff were all bound together by kindred ties. The poor wretch who was prosecuted in a court so constituted, must necessarily feel the utter hopelessness of all defence. He might as well and often did abandon his defence after making his pleadings in form. The manner of selecting juries in justices courts was defective and opened the door for the most gross corruption. The constable if he was honest summoned those who were nearest at hand and who were generally unfit to be trusted with the decision of causes. He could not for the pittance paid him for the service, select the jury with care from competent, safe and intelligent men. The idlers and vagabonds who had no business of their own, hanging around the court, like vultures around a carcass, formed the great mass of its juries. In very many causes the evil was of a stronger character.—In strongly contested trials the people discussed the merits and took sides with the parties in the contest. A corrupt constable would summon a jury at the selection and dictation of the plaintiff, who always chooses his ground on which to prosecute as well as the officer to serve his process. These glaring evils could only be remedied by changing and improving the mode of selecting juries in these courts, and by giving the right of preemptory challenge to a limited number of the panel. He had long felt the necessity of the right of preemptory challenge in all civil and criminal causes. It would greatly aid in the due and pure administration of justice. Since he had taken his seat in this body he had been called home to re-try a civil cause in a court of record which a second time resulted in a disagreement of the jury. The cause must again go upon the calendar for trial. If he could have been allowed the right of preemptory challenge to two jurors on either trial he could have obtained a verdict. He commenced and went through this trial on both occasions with a full conviction of what would be the result, but could not avoid going through with the mockery and farce. Another great evil that disgraced our justices courts, and indeed all others, was the technical nicety required in its proceedings. The practice in that humble court was too much entangled by the nets and mazes of form. To understand correctly its practical forms required the study and the labor of years. It had all the ridiculous forms of our higher courts of record. It required more of tact and talent to practice successfully in that court than in the higher courts. An error in the supreme court in practice or pleading could

be amended on motion, while in a justices court the same error would be fatal to the cause of the client. The practice of all our courts ought to be simplified and rendered intelligible to all. The whole train of chicanery in legal practice ought to be brushed away as cobwebs by the broom of progress and legal reform. Above all things, in this humble court where all men are compelled to seek redress for petty wrongs, the road to right and justice should be plain and visible. Its forms and its practice should be so simple that "all who run may read, and all who read may understand." There were other evils of a minor character. But the remedy for these evils incident to justices courts, as well as the duty of limiting or extending their jurisdiction, belongs to legislation and not to this Convention. It is our duty to provide for its retention as a court. We set up the frame work of the tribunal, and leave the fitting and finishing of all its details of practice, jurisdiction and powers to the legislatures that shall come after us. There was in fact but little of propriety in discussing these questions in this body, and in what he had said on this subject he had only found his apology in the course of remark pursued by gentlemen who had preceded him in this debate. These remarks he hoped might not be wholly lost. They would serve to call the attention of succeeding legislatures to those works of reform that the people expected at their hands. He trusted it would not prove to be a "hope deferred." The report of the judiciary committee makes no intermediate court between the justices and the supreme court; and he would now pass to a consideration of that part of the report which related to the supreme court, and the duties imposed upon its judges. He felt a strong and anxious desire to approve everything that he could in that report. It was the result of the laborious investigation and study of a numerous and very learned committee. He felt but too sensibly his own inability to discuss successfully with them the merits or demerits of their report. He rejoiced to say that he highly approved of their general plan. But he felt constrained to differ with them in relation to the ability of their judges to perform the duties assigned them. To this topic and the remedy to be applied, he should principally confine his remarks. By this report the court of errors, the court of chancery and the courts of common pleas and general sessions, are abolished. Such, if not in terms, is the fair intendment of the report. The duties of all these tribunals, together with all the judicial duties of the state, are cast upon the thirty-six judges recommended by the committee. An appeal from a justices court must go up to the circuit for trial. A certiorari from the same court must go to one of the courts in banc or to the circuit judge for reversal or affirmance. In addition to all this, it is proposed to make the supreme court justices perform the duties of masters and examiners in chancery. He would now examine for a few moments the amount of business thus thrown upon that court, and see what time and labor would be required to perform it. Eight of your judges are set apart for a court of appeals. They are to perform the duties now assigned to the court of errors. The court of errors was usually in session a large portion

of the year, with a calendar constantly accumulating upon them. The judges of the court of appeals would be compelled to devote their whole time to the business of their own court. The remaining twenty-eight judges must then perform the duties now performed by

The Supreme Court in banc, 4 terms 4 weeks each,	16 weeks,
6 weeks of special motion terms,	6 "
Chancellor's general and special terms, say 24	"
8 Vice Chancellor's terms at least 4 weeks each,	32 "
Vice Chancellor's special motion terms 2 weeks each,	16 "
2 yearly circuits each, in 59 counties,	118 "
59 courts Common Pleas and General Sessions, 4 weeks to each county yearly,	236 "
The duties of 356 masters and examiners in chancery, say 4 weeks each,	1424 "
	1872 weeks

Thus we have 1872 weeks service to be performed by the 28 judges not occupied in the court of appeals. He felt confident that his computation of time was too small rather than too large. In holding the terms in banc the time is allowed for a single judge only, while three or four could hold the court. To perform this 1872 weeks labor, you have a judicial force of 28. If you divide the 1872 weeks labor by the 28 judges, you will find that more than sixty-six weeks of labor will be yearly required of every single individual judge of your court. In other words, you require them to perform yearly 416 weeks of labor more than their whole time united. No allowance is here made for time required to consider or digest cases or draw up opinions either in law or equity causes decided before them. The herculean labor thus thrown upon this court appeared to his judgment to be entirely beyond its capacity and powers. No set of judges could ever be found equal to the performance of their vast and varied duties. Their physical ability would very soon sink under the weight of the accumulated load. The little aid that the judges of the court of appeals could bring to their relief after performing the business of their own court, would be of no avail. There was not enough of judicial force. Some court must be devised that shall perform a large amount of their business. Some court that shall bring real aid, substantial relief, to the judges becomes imperatively necessary. This state of things seems to require at our hands the construction of some kind of a county court. Our county courts have become objects of much disfavor in most portions of the state. Why is it that these courts are in such bad repute? It is not because their jurisdiction is too large or too small. The reason is most obvious. It springs from the mode of appointment of the judges, their pitiful compensation, and the consequent want of talent and legal learning upon the bench. We cannot expect for the pittance of two dollars per diem for a few days in the year, to employ legal science in the judicial office. Professional men who are capable of fulfilling the high duties of the station, cannot afford to accept it. We are compelled to take men for the bench whose only recommendation is the profundity of their ignorance of the laws of the land and the practice of our courts. The office is too often given as a reward for political prostitution to those individuals upon whom the

party is unwilling to throw away a better office. But it seems to be now conceded that we are to have a county court that can discharge some of the duties that would otherwise devolve upon your supreme or circuit courts.—The more difficult question to decide is, how shall that court be constructed, and what its jurisdiction and powers? Various propositions are before us. His own plan for the construction of a county court had been submitted by him with great diffidence. He did not submit it without the approval of several intelligent members of this Convention. He had endeavored to construct a court that would render an essential service to the supreme and circuit courts, proposed by the committee—a court that would relieve those courts from a vast amount of petty and vexatious litigation, at the same time that it would cost the people comparatively nothing. It was agreed upon all hands that the duties of the surrogate must be performed by a local officer. By the plan he had the honor to submit, a single county judge was to be elected, who was to perform the duties of the surrogate and to hold the county court for the trial of causes brought up from justices courts. He would also require him to perform the special duties now imposed by law upon any county judge. He proposed to give that county judge a salary sufficient to insure a high degree of talent and legal attainment in the officer. The present fees of the surrogate and the ordinary fees of the county judge paid into the treasury, would form a fund sufficient for his salary. No new burthen would be cast upon the people by the operation. To form a court of general sessions, he added two justices of the peace to be annually selected by the boards of supervisors. This mode of selection he believed to be preferable to any other that could be devised. It would secure the best talent that the county afforded to associate with the county judge for the trial of criminal causes. It would secure a court of a high character at a trifling expense to the people. He proposed to give to the court of general sessions jurisdiction of all offences not punishable by imprisonment for ten years. Such is the plan, as the gentleman from Genesee said, "that the gentleman from Cattaraugus has seen fit to introduce." The learned gentleman from Columbia (Mr. JORDAN), while he in the main approves this plan, seems to think that appeals are an evil, and that to limited amounts justices' judgments should be final and conclusive upon the facts. That would be a very fruitful source of injustice and oppression. The strongest security that the people now have for the purity of these tribunals, is to be found in that very right of appeal that gives a new trial on the facts of the case. It gives two trials by jury, one of which may be had beyond the reach of passion, excitement and prejudice. He had often seen damages remitted to a sum under twenty-five dollars to avoid new trials upon the merits. Pettifoggers and those who riled up and perverted the pure streams of equity and law in justices' courts, disliked appeals. Injustice and oppression were more frequently wrought upon a small scale, and upon the poor. He was therefore disposed to save the right of appeal in all its force and strength.—The gentleman from Herkimer (Mr. Loomis)

thinks the *ex parte* allowance of appeals an evil. We allow parties to commence suits in all our courts without oaths or bonds. But in order to obtain an allowance of appeal, the party is obliged to set forth the facts of his case as proved by affidavit, and show under oath the grounds of his appeal. He is obliged to pay the costs before the justice as though he was really in the wrong, and also to give his opponent good and sufficient security to pay all damages and costs that may be recovered against him. So far from the facility afforded for appeals being an evil, in his judgment if we required the oath, the bond, and the payment of the costs, the appeal should be without ceremony, a matter of course and of right. If the appellant failed in his cause, the payment of all damages and costs was a sufficient punishment for his false clamor. The gentleman from Herkimer proposes to have the salary of the county judge fixed by the several boards of supervisors. This mode of fixing salaries is highly objectionable. You would have no uniformity of compensation. While some counties would pay him well and liberally, others would give him but a meagre pittance. Men of the proper qualifications would be unwilling to accept an office of that character, if its salary depended upon the supervisors. The supervisors were men generally ambitious of saving the money of the people. Political feeling and personal friendship or animosity would have too much to do in fixing the amount of salary. The salaries ought to be fixed, permanent and uniform, by the legislature. They ought to be paid from the state and not the county treasury. The state ought to furnish to the whole people a cheap and easy road to justice. The gentleman from Herkimer objects to the plan introduced by him (Mr. C.) because it gives too great criminal jurisdiction. His first objection is made in behalf of the accused, and secondly, because it will require a jury and all the paraphernalia of a court. To all this he would reply that his own mind had been in some doubt as to the extent of the powers to be given to it. When he drew up his plan he gave the court much less of criminal jurisdiction. He had changed it at the suggestion of a gentleman of great learning and experience. Our present courts of general sessions had jurisdiction when the punishment was less than imprisonment for life. Its jurisdiction was far less than our present county courts. The accused need not be tried in it if he chose to go into the oyer and terminer for trial. He could at any time sue out a writ of certiorari and remove his cause out of the court of general sessions if he pleased. He could do it without expense, as we are to abolish the fees of judicial officers. He had thus his choice of either court as suited his fancy. If it was intended to form a county court that should operate to aid the justices of the supreme court, a jury was indispensable. You might do without a grand jury by having all your indictments found in the oyer and terminer and sent into the general sessions for trial. But without a jury you could try no issue of fact. Your court would have but little power, and could render but very little service. The gentleman from Herkimer also objects to the plan because it fixed a limit to *one judge*.—

If his objection arises from the fact that the court is held by one judge, the same objection is equally good against the four thousand justices, who have original jurisdiction to as great an amount as the county judge has *merely appellate*. You will secure a far better officer by having but one to pay, than you will if you increase the number. The more you add to the number of judges upon the county bench, the more you dilute and weaken the strength, intelligence and efficiency of the court. You increase the expense and get no corresponding benefit secured. He was fully and deeply impressed with the conviction that some kind of a county court was necessary to perform the business of a minor kind and character. In some of the counties it would be necessary to have some court almost constantly in session. But he assured the Convention that he had no strong partialities for this "pet child" of his own. He had attempted only to construct a county court out of few and simple materials, that would cost the people but little. He had endeavored to make it respectable and to give it efficiency. If gentlemen offered substantial improvements, no member of the body would be more ready to adopt their amendments than himself. If any better or more simple or efficient plan was offered, he was ready to abandon his own and support the better proposition. He had no pride of opinion. If he knew his own soul, he was only anxious to perfect a judiciary system, that, freed from the subtleties and technical niceties of legal practice, should hereafter be the pride and glory of the state, and a lasting honor to this convention. Mr. BASCOM felt bound, in the remarks he was about to make, in consideration of the resolution adopted this morning, to confine himself to the question directly before the committee, upon the motion of the gentleman from New-York to amend the third section. He went on to state his objections to the erection of common pleas courts. In the first place the business which once made them necessary was gone; it did not exist in any court whatever. Again, the confidence of the people in those courts had been in a great degree lost. The influence of education and the promulgation of religious principles had not made the people more quarrelsome, but had rather tended to modify and moderate such elements in society. He replied to statements made by Mr. STETSON. It was very questionable whether, if these common pleas courts were continued, they would not, in the blunders and errors which they would commit, make more business for the supreme court, in correcting them; and it was the design of most of the gentlemen who had spoken to get rid of the great number of appeals and certioraris now existing, by the adoption of some other plan. He then went on to review the expenses of the county court, as set down in the returns made to the Convention, comparing them with the amount of judgments rendered. The great disparity in the two items conclusively proved that the business which formerly went into those courts was now gone; and they existed in no tribunal.—The arguments deduced from precedent were of no force under these circumstances. He could not consent to having thirty-two supreme court judges appointed, and then to go on and set up

59 courts of inferior jurisdiction in order that the latter might furnish business for the former in correcting the blunders made. He did not agree to the wisdom of establishing one great, overshadowing court, for the transaction of the greater matters of justice, and having some smaller courts in which the business of a less important character should be disposed of.—Such a plan might be illustrated. Gentlemen had urged precedents instead of argument—precedent was always appealed to against any change that might be proposed—he begged to furnish gentlemen with one precedent, immortalized by poetry, that had not been used:—

Southampton's wise folks found the river so large, ⁴ It would carry a ship but would not a barge;
But soon the defect their wise noddles supplied,
They dug a snug ditch to run close by its side.
Like the man with two cats, the one great t'other small,
For which he made holes to pass through the wall;
He made a large hole for great puss to pass through,
And he made a small hole for his little cat too.

He drew a parallel between the costs of the circuit court system and that of the common pleas, and found by actual computation that the people were obliged to pay \$39 for every civil cause tried by the circuit judges, while in the common pleas they had to pay \$176 for every such suit; and this was something like the comparative difference between the two systems. He believed that much of the power given to the common pleas judges over local matters, which were now thrown into that court as a common reservoir, might be given to the board of supervisors, or the surrogate, or the supreme court judge.—He then went on to speak of the expenses of these courts, and said that the people, having examined the subject, would not consent to its continuance. But if it was the intention of gentlemen to establish these inferior courts, he should give up his proposition to make thirty-two judges of the supreme court. It would not do to spread out this system to such an extent as it would be carried by making so large and extensive a supreme court, and then establish these numerous local tribunals. Nor would he leave it to the legislature, nor allow them privilege of establishing such inferior courts; because it would impose upon those who were in favor of few and inexpensive courts the necessity of constantly standing guard against their increase. So far as to the reorganization or improvement of the justices' courts, he did not believe that it came under the duties of this Convention to perform any such work. It would not do to double the force of the superior courts and continue the unnecessary and expensive county tribunals. The expenses paid by taxation were but a small portion of the costs of these courts to the community. The hundreds of men that as jurors and witnesses and suitors, that were compelled to wait their turn at these dilatory courts should be taken into the account. Provide for saving this to the people, and you will save enough to provide liberal salaries for your supreme court judges, and to endow two or three colleges, if that were desirable or proper.

Mr. STETSON corrected some of his statistics in regard to the number of appeals and certioraris from justices courts. He corrected also the calculations made by several gentlemen from

the returns before the Convention, as to the expenses of county courts—saying that no allowance was made for the fines received—which in the aggregate were sometimes large. He did not, however, oppose this transfer of jurisdiction from the common pleas to the supreme court—but there was a residuary power which could not be got rid of in this way, and which must be vested somewhere.

Mr. STOW urged briefly, in addition to what he said the other day, that we should be careful, whatever we did, to preserve the character of our courts, as compared with those of the United States. If we belittled ours in the public estimation, the consequence would be, as it was in some of the western states, and sometimes in our own state, that suitors would abandon ours and go into the court of the United States. But he rose mainly to correct a mistake into which the gentleman from Otsego, (Mr. CHATFIELD) had fallen, in charging him, among others, with being opposed to reform and progress in the proceedings and practice of our courts. And this too, after he had distinctly avowed the other day, and now re-iterated the remark, that under any organization that we might give to our courts, they would signally fail, unless we went into a thorough and radical reform in this respect.

Mr. CHATFIELD spoke of the effect of the gentleman's proposition, to keep these two jurisdictions separate, as now—not of any avowal the gentleman had made on this particular subject.

Mr. STOW replied that the effect of his proposition was of course a matter of opinion; and that he differed entirely with the gentleman as to the effect of it. He believed it would result in more wholesome reforms, than the counter proposition. He went on to say that one of the first resolutions of inquiry offered to this body was that offered by himself, for an enquiry into the expediency of a commission to simplify the proceedings of our courts. He was fully in favor of a reform of the miserable, degraded and degrading proceedings and practice of our courts.

Mr. SIMMONS preferred to leave this whole matter of organizing auxiliary county courts to the legislature, as proposed in the 13th section of this article, rather than to undertake to do it in the constitution. And he must say that he had been obliged to exercise a good deal of self control to avoid speaking with something like contempt of some of the various plans for county courts that had been proposed here. He characterized Mr. CROOKER's plan as a little one-man-power court of errors for the popular or lay branch of our judicial system—the justices of the peace—by way of analogy to the court of errors proposed to be established for the professional branch—the supreme court. In a word, it amounted to an appeal system, from one man to another man—the latter perhaps having less practical experience and knowledge than he whose decisions he was to supervise. He repeated, the whole popular branch of the system should be left to the legislature. Again, if this little court of errors was to be conclusive, it would leave us with two distinct systems of jurisprudence—the one of common sense, or the layman's system, and the other the professional

or learned system,—and no communication between them. If there was to be a passage open between the two, it should be free. There should be a provision by which the poor man could have the true law, and the end of the law for righteousness, and have it cheap. He should at least have the right to correct an error, which perhaps the magistrate might not have committed, if he knew that it could be carried up. And cases without number arose in justices' courts, involving small amounts, but great principles.—Mr. S. expressed a preference for another arrangement of county courts, confining local judges with the supreme court judges—but he had a strong impression that the plan of the judiciary committee, which left this whole matter to the legislature, would work well. Mr. S. closed with a brief explanation in reply to Mr. CROOKER, who he said seemed to have taken offence at a remark which he (Mr. S.) intended as a joke—and vindicated his former references to the philosophical writers of ancient free states, where he said, the true principles of jurisprudence originated, and which now existed even in monarchies, not in consequence, but in spite of them.

Mr. MARVIN said, that having the other day given his views on this general subject, and having discovered since an inclination on the part of the Convention to adopt substantially the plan of the judiciary committee, he had made up his mind to take no further part in the debate until we came to the business of perfecting it, when he did intend to render what aid he could in making it as perfect as possible, to carry out the views of the committee. But as he and those who were with him had been constantly referred to, and particularly by the gentleman from Otsego, (Mr. CHATFIELD,) as opposed to all reform, he begged leave to say to him that if he (Mr. M.) understood the various plans before us, his own was capable of being made the basis of more thorough and radical reforms than any of them. Mr. M. repelled with warmth the idea that he, who was brought up at the tail of the plough, who had swung the cradle for years, who had always lived in the country, remote from cities and their influences, who during seventeen years of practice had settled more suits among his neighbors than he ever brought, who never brought a writ of error in his life—that he should be charged with desiring to foster litigation and opposing reform, because he had stood up against leaving the rights of citizens in the hands of any one man, without the right of appeal.

Mr. CHATFIELD had the same explanation to make that he had before made—that he spoke of the effect of the gentleman's plan and of what he regarded as inseparable from it—not of any sentiment the gentleman had avowed here.

Mr. MARVIN supposed the gentleman would make that explanation. And it was after all a matter of opinion which plan was most conducive to reform. And to this point he desired to call attention. The plan of the judiciary committee struck him at first, as now, as a complicated plan—difficult in practice and necessarily involving a continuance of the evils which all desired to get rid of. He laid it down as a first principle, in a country of law as our was, that

the citizen should be furnished with convenient and proper tribunals for the redress of grievances—that there must be judicial force enough provided for the speedy administration of justice, and he believed it to be wise and proper to keep equity and law separate, expressly on the ground that it would result in a saving of time and expense, and require a less judicial force to do all the business. But he did not suppose that one mind was incapable of administering both systems well. His position was that three-fourths of the business now done in chancery should never have gone there—and that had it been transferred, as it should have been, to the courts of law, the court of chancery never would have been overwhelmed as it was—that equity forms were too long and cumbrous, and should be curtailed. But he apprehended that if all this equity business was to be brought into this single court, it would be broke down and overwhelmed in less than eighteen months, not for want of numerical force, but on account of the organization of the court, and the manner in which the business was to be done. And Mr. M. went into the details of the working of this plan, insisting that it would not work well, especially in the equity business of the court. He urged further, that the system would invite a constant series of appeals, which would overwhelm the court of last resort. He urged also that there would be conflicting decisions in these courts; and to illustrate this position, supposed the case of his having tried three causes in Chautauque—all of them standing on the same principle—one of them only reached at Buffalo and decided one way; another decided the other way at Rochester, by a court of two new judges and one of the former ones, and the third decided as the first was at Ithaca by an entire new court.

Mr. BROWN remarked that such a case was within the range of possibility—but were it to occur, the gentleman at Rochester would very naturally suggest to the court the fact of the decision at Buffalo, and the judges at Rochester, if any new question should arise, would not honest and intelligent men, reserve the case for consultation.

Mr. MARVIN still insisted that in the case supposed, the two judges who decided the case in Buffalo would decide the same way at Rochester—unless overruled by a higher court—and that if the decision then was wrong the cases would go up. If it was objected to his plan that there would be too many appeals, the same objection applied to the plan of the committee, which would give rise to as many appeals as the present circuit system. But to come to his plan of a county court. The wonder was, he said, that the present county court had done as much good and as much business as it had—under the practice which had so long prevailed of filling up its bench with mere political hacks. He proposed to put there, as president judge, a man of as high a grade of talent as your supreme court judges—to give him the business of four or five counties—to keep him constantly at work, and pay him a liberal salary. He would give him no equity duty, but make him do the duty of four counties, and pay him \$2,000. The gentleman

from Otsego would give a single county judge, such as Mr. CROOKER proposed, \$1000.

Mr. JORDAN enquired if the gentleman would make his president judge surrogate!

Mr. MARVIN would not; but he would have the Surrogate associated with him, and a third judge in criminal cases, who should receive a per diem allowance. He would however have the common pleas held by the President judge alone. If gentlemen preferred it, associate two justices with the President judge in criminal cases—but he preferred a surrogate and a supreme court commissioner. His court would have original jurisdiction—its clerk's office—could correct its own errors, and grant a new trial on the spot. Again the committees' plan contemplated eight clerk's offices. His proposed to use the county clerks of each county for that purpose.

Mr. LOOMIS said it was no part of the plan of the committee to have the clerk's offices.

Mr. MARVIN said the gentleman from Columbia, (Mr. JORDAN,) contemplated eight supreme court clerk's offices—and every body could see that. Mr. M. insisted that the supreme court clerk's offices could be dispensed with and should be—and that the county clerks and their offices could be substituted. But the hour for a recess being near, Mr. M. said he would waive any further remarks now, except that he should, at the proper time move to engraft his plan of county courts on that of the committees, and to reduce the number of their judges.

The committee then rose, and the Convention took a recess.

AFTERNOON SESSION.

Mr. MARVIN resumed—urging the expediency and necessity of abolishing these supreme court clerk's offices, which were an enormous expense to parties and to counsel. He then proceeded to show how his plan would operate in New York city, where he proposed there should be a president, judge of common pleas, and as many associate justices as might be necessary, any one of whom might hold a court for the trial of issues of fact. He would have but one clerk, with deputies, and one clerk's office. He would have three of them form a court in banc, &c., &c. His plan contemplated a separation of equity and law jurisdiction—but if they were united in one tribunal, there must be an equity and a law side of the calendar—and he had made provision for transferring from one to the other as much as could be transferred, and he believed that much, very much, could be thus transferred. Mr. M. cited several cases in which this might be done to the expediting of decisions and the cheapening of litigation, under his system. After going into some details in regard to the operation of his plan, as regards the supreme court, Mr. M. said he hoped

he had succeeded in satisfying gentlemen that he was in favor of reform. At the same time it was to be borne in mind that change was not always reform, and that gentlemen might honestly differ in opinion, as to what was mere change and what reform. He then went on to show how his system of county courts could be engrafted in the system of the committee, and instead of embarrassing would add strength to it. He thought that it would enable us to reduce the number of supreme court judges to sixteen. As to Mr. CROOKER's plan, he remarked that if we were going to have a county court, we had better have one that would do the business of such a court, and such an one as the people would have confidence in. If we were to have a little one, better make it a sort of commissioner's court, without the paraphernalia of grand and petit jurors, or the right to try causes by jury. As to justices' courts, he had always been one of their warmest advocates. He believed they had accomplished the great object of their institution, and given satisfaction to the people. But a good thing might be destroyed, and since their jurisdiction had been extended he had heard the complaint that there were too many law-suits—and it would be well before proceeding to increase it further, to consider whether change in this direction would be reform. Mr. M. closed with some remarks in vindication of the legal profession against the attacks upon it, in and out of the Convention.

Mr. WATERBURY, in reply to this portion of Mr. M.'s remarks, explained the part he had taken, and his object, in relation to the legal profession.

Mr. PERKINS thought the fact that so many of the legal profess on had been honored with seats in the Convention, was a sufficient commentary on what had been said in disparagement of them, and significant of the estimation in which they were generally held. He then proceeded to give his views in relation to the county court, and repelled the imputations which had been thrown upon the institution, so far as his own county was concerned. He had never heard a complaint against the common pleas of that county; and he could say for it that, notwithstanding its business exceeded greatly the business of the circuit court, the appeals from its decisions were rare compared with those from the circuit. But he was content, if the Convention were disposed to abolish these courts, that they should do it, provided the 13th section was retained, which gave the legislature power to establish local and inferior tribunals. He ventured to say that his county would be the first to come in under this 13th section, and petition the legislature to restore their county court.

The committee here rose and reported progress, and the Convention

Adjourned to 9 o'clock to-morrow morning.

SATURDAY, AUGUST 22.

Prayer by the Rev. Mr. STEELE.

Mr. YAWGER presented a communication from the trustees of Cayuga Academy, on the subject of the literature fund, which was referred to the committee of the whole having in charge the report of the committee of which Mr. NICOLL is chairman.

EVENING SESSIONS.

Mr. PATTERSON offered the following:

Resolved, That on and after Monday next, the Convention will hold evening sessions, except on Saturdays, commencing at 7 o'clock.

Mr. P. said the time was arriving when the constitution which the Convention would adopt must be submitted to the people, who had ought to have a month for its consideration: he therefore thought they should begin to hold evening sessions in which much business might be done.

Mr. CROOKER moved to amend so as to limit the evening sessions to debates in committee of the whole. Some infirm members might be unable to attend the evening sessions, and he for one should find it difficult to attend and he should be unwilling to have any important question taken in his absence.

Mr. PATTERSON defended his resolution, and it was supported by Messrs. W. TAYLOR, CLYDE, NICOL and STRONG.

The amendment was then negatived.

Mr. CHATFIELD opposed the adoption of the resolution.

Mr. CROOKER thought if they had less talk on some subjects—for instance on striking the word "native" from the article on the Executive Department, they might have done all their business within a reasonable time, without resorting to sessions which must be destructive of health. Even now, if gentlemen would confine themselves to short explanations,—if they would discuss the point at issue—rather than ramble all round creation—they would get along well enough. But if gentlemen must make seven speeches a day and talk on everything but the question for the purpose of making shows of themselves, he knew not when they would get to voting.

Mr. PATTERSON replied and contended that the time had come when it was necessary that the Convention should sit longer, if they intended to complete their labors by the 1st of October.

Mr. CROOKER and Mr. STETSON entered into some personal explanations.

Mr. HOFFMAN opposed the resolution. He said his health would not permit him to remain here in the evenings, nor would it be unattended with injury to the health of members to be here at night after sitting all day, with gas lights, consuming all that was vital of the atmosphere.

Mr. NICHOLAS also thought that evening sessions were out of the question. It would be much better to meet earlier in the morning, and to accomplish that object he moved to amend so as to make the hour of meeting 8 A. M.

Mr. CONELY moved to lay the resolution on the table.

Mr. SHEPARD called for the ayes and nays, and there were yeas 39, nays 44.

Mr. RICHMOND was desirous to accommodate the gentleman from Chautauque, by fixing the time of meeting so that there could be some work done, and therefore he would move, if in order, that the hour of meeting should be 7 A. M. [A voice—"That's half an hour before we breakfast."]

Mr. PENNIMAN said he was unwilling by his vote to compel gentlemen to do what he was unable to do himself. He should vote against the resolution.

Some further conversation ensued between Messrs. MANN, RICHMOND, PATTERSON, BROWN, F. F. BACKUS, BASCOM, STETSON, CROOKER, DANFORTH, and others, who occupied the time until 10 o'clock, when the special order was announced, and the resolution was laid over.

THE JUDICIARY.

The committee of the whole again took up the reports of the judiciary committee, Mr. CAMBRELENG in the chair.

Mr. BROWN rose to make some reply to remarks which had been made by gentlemen in the course of this debate. He spoke of special pleadings as a barbarous practice and a miserable jargon. He illustrated this, by stating the nature of pleadings in various cases, both in law and equity, and said they were unworthy of the age in which we live. It had been called a beautiful system, and so it was, to those who were acquainted with it as lawyers, but not to the client. It was like the magnificence of war, destructive to the people on whom it was made to operate, while it was glorious to others on paper. He then adverted to some remarks by Mr. MARVIN, in relation to practice at the bar. The gentleman was opposed to the creation of eight supreme court clerks, believing that the county clerks would answer every purpose; but Mr. B. went on to shew by an examination of the duties to be discharged, that that plan would not answer, while by the plan proposed, there would be no increase of offices or salaries, there being a reduction of one set of clerks. Then as to the separate and distinct courts.—He said no judiciary system could be adopted that would be entirely above objections. How was it in chancery now? The vice chancellors were all holding distinct courts, but it was the same chancery: and did they never differ in their decisions? Certainly they did, though the instances might be rare. As to the number of judges and their ability to discharge their duties, he went through an examination of a great variety of facts to shew that the court would be sufficient with an improved practice, which they hoped to provide. Common Pleas courts he thought would be necessary, but provision should be made to give them able judges. He would have forty supreme court judges, eight of whom should be employed in the court of appeals, and eight in the several districts to preside in the common pleas; thus giving efficiency and character to the court, and command for it the respect and confidence of the people. He

next went into an examination of the expenses of legal proceedings, in answer to some of the miserable slang which was sometimes heard on that subject. He arraigned the members of the legislature as the cause of the existing evils by its legislation. By allowing ten cents a folio for examinations in chancery, a temptation was held out to swell the examinations unnecessarily. He mentioned other instances of remuneration, provided by the legislature, which necessarily made the system odious. Register's fees were greater in some cases than the fees of the lawyer who foreclosed a mortgage. Surrogate's fees, he said, were three times higher than they ought to be. In one county, the surrogate's fees were \$1,500 in one year, while the salaries and profits of laborious judges and lawyers were greatly below that amount. The extension of the justices' court, he said, would be the infliction of a curse on the people. All cases, for sums exceeding \$50, should go originally into the supreme court, and thus they would diminish appeals and lessen the cost of litigation. He urged the necessity of members sacrificing some of their opinions for the purpose of producing unanimity, or they would never be able to agree on any judicial system.

Mr. RHOADES defended the court of errors and the judiciary system generally, against some objections which had been made to them, and attributed the delays of which complaints had been made to an increase of litigation as consequent on an increase of population and commerce. He argued for some improvement which would be productive of dispatch. The union of law and equity he thought would tend to the simplification of practice, and hence it was desirable. He expressed himself to be favorably disposed towards the report of the majority of the judiciary committee, if it could be carried out; but he thought the court of appeals should be constituted of a greater number than was proposed.

Mr. J. J. TAYLOR said it was his fortune or misfortune the other day to make a few remarks without premeditation on the subject before them. He did not intend to have said a word, but he felt it due to himself to say something in reply to the gentleman from Otsego, (Mr. CHATFIELD,) who yesterday classed him, with others, among the opponents of legal and judicial reform. He had heard the explanation the gentleman had given of his allusions to others, and though his charge sounded broader to his ears, as explained, than it did when it fell from the gentleman's lips, he nevertheless accepted the explanation. But he rose now to say, and to show, that if he was to be classed among the opponents of reform, so was the gentleman himself, for on almost every point, the gentleman's views and his own were identically the same. He understood that gentleman to be opposed to an amalgamation of equity and law powers—though in favor of having them united in one court, he (Mr. C.) would have them kept distinct. The gentleman's modification of this third section, as Mr. T. understood it, would perpetuate the distinction in this one court—at all events it was susceptible of that construction, whilst Mr. T.'s modification of the section would have enabled the legislature to amalgamate the

two jurisdictions. That Mr. T. desired to see done, as far as it could be done safely, and if there was any difference between the gentleman and himself, Mr. T. was the reformer, and the gentleman from Otsego was not. Again, the gentleman had avowed himself in favor of the report of the majority of the committee. So had he. The gentleman desired to see the court of appeals all holding by the same tenure. That was precisely Mr. T.'s position. The gentleman went for the election of the judges. So did Mr. T., and the only difference between them was, that the gentleman preferred to elect them by general ticket, and he by districts. Mr. T. was willing to leave it to the convention to say which was most democratic. The gentleman had no objection to the judges being ambulatory. He had none. The gentleman went for some kind of county court, but against them as at present organized. Precisely Mr. T.'s position the other day. Mr. T. expressed himself favorable to the proposition to make surrogates salaried officers. So did the gentleman. Mr. T. opposed an extension of the jurisdiction of justices of the peace. So did the gentleman. And the gentleman indulged in the same train of remarks in relation to justices courts that Mr. T. did. In fact throughout, the gentleman's positions and his own were precisely the same. Mr. T. confessed to his astonishment to find himself concurring in opinion so entirely with the gentleman from Otsego—and much more astonished to find himself classed by that gentleman with those who were opposed to reform. Indeed so entirely coincident were their views, that had Mr. T. made his remarks after the gentleman had made his, he should not have presented them without giving the gentleman credit for them. Mr. T. was in favor of legal reform, and had he ever been a member of the legislature, as the gentleman had, he should have made at least an effort to carry out his views. The legislature had done much in this way, but they might and should have done more. They had done much by the non-imprisonment act—and there gentlemen would find the long looked for substitute for a creditor's bill in chancery. He went, in a word, for the largest reform, and as a lawyer, he was as much interested in having them made, as any layman could be. As to the proposition more immediately before the house in regard to county courts, there were several projects here that would work well. There was good in almost all of them. The proposition of the gentleman from Cattaraugus (Mr. CROOKER) would answer very well with some modifications. The proposition of the gentleman from Orange struck him, however, more favorably.

Mr. CHATFIELD, in reply to Mr. TAYLOR, said that in his remarks yesterday, he intended to speak rather of the effect of propositions than of those who advocated them. He went on to repel certain insinuations in reference to his course, and to point to the reforms which he advocated, asking if there was nothing in these reforms themselves which was calculated to stimulate zeal in their favor, without supposing that there were sinister views at the bottom.—He adverted to the absurdities in pleadings in courts of law—to their prolixity and technicalities, as calling loudly for reform. To show to

what an extent reform might be carried, he read four forms of declarations which he had drawn off on a half sheet of paper, in actions on a note, on an account, for assault and battery, and for slander—which he said contained every thing that was necessary; and he contrasted them with the usual form of a declaration in slander—characterizing the latter as an infamous, dirty barbarism. Mr. C. then proceeded to examine Mr. MARVIN's judiciary plan; and to show that it was open to the very objections urged by the gentleman himself to the plan of the majority of the judiciary committee. The objection to the amount of judicial force, in the latter, he said applied with infinitely greater force to the former, which contemplated in all a retinue of one hundred and fifty-six judges. Mr. C. proceeded to answer Mr. MARVIN's suggestions in regard to the clerk's offices, insisting that the plan of the judiciary committee did not contemplate necessarily the employment of eight clerks; but that all the duties supposed to devolve on them could be discharged by county clerks, under legislative regulation. As to the county court, Mr. C. indicated an opinion that it was not necessary to give it a jury trial, under the plan of the committee; but that an officer, acting as surrogate, hearing appeals from justices' courts, and performing certain chamber duties, would be all that would be requisite.

Mr. STEPHENS remarked that the plan of a county court once agreed on by the judiciary committee, had been frequently referred to; but had not been before us in a distinct shape. It contemplated a county court with original jurisdiction. He was understood to say, that under the instructions of the judiciary committee he would present that plan, or the outlines of it, as it contemplated a great improvement of the present county court, and could be adopted without impairing the harmony of the plan of the judiciary committee; and if that was adopted, should be engrafted on it, if any plan of a county court was incorporated in the constitution. Mr. S. sent up the following:

§ 1 There shall be established in each of the counties of this state a court of common pleas, with the same powers and jurisdiction which now belong to the court of common pleas in the several counties of this state.

§ 2 There shall be elected in each of the judicial districts of this state, by the electors thereof, at such time and in such manner as the legislature may direct, a judge who shall be known as the president judge of the court of common pleas, for the district in which he shall be elected, who may hold courts of common pleas in any of the counties of the state, and who shall hold his office for eight years.

Mr. LOOMIS confessed that he was taken a little by surprise by this quasi report from the judiciary committee; and he desired to express his entire dissent from any such proposition.—He was surprised also at the idea advanced by the gentleman from Orange this morning, that we might cut up the courts the committee had proposed, for it looked like not sticking to that report. His own plan of a county court was in strict accordance with the main principles of that report—which was to have one general court of original jurisdiction for the trial of issues of fact in all cases. That was the feature which distinguished it from all other plans.

Mr. BROWN said neither he nor the gentleman from New-York meant to depart at all from the principle of the report of the judiciary committee—but having discovered indications of a disposition to have a county court, they desired to present a plan which they preferred to the propositions both of the gentleman from Herkimer and Cattaraugus.

Mr. LOOMIS said the gentleman mistook his plan if he supposed it contemplated the slightest departure from the plan of committee—and had mistaken this also, if he supposed it did not interfere with it. Mr. L. went on at some length to explain his plan of a county court, showing how it differed from the one now proposed, and how it might be engrafted on this report without interfering at all with it—except so far as it indicated to the legislature what sort of a county court we preferred, instead of leaving it entirely to them to organize.

Mr. MARVIN insisted that the version of his plan by the gentleman from Otsego, was not exactly fair in regard to the number of judicial officers that he proposed. Leaving out his associate judges, and substituting for them justices of the peace, or the surrogate and a justice, which could be done, and his judicial force would be less than that proposed by the judiciary committee.

Mr. NICHOLAS expressed a desire to have the deliberate opinion of the judiciary committee as to the number of circuits which would be held under their system, in each county. If four, as had been said, it would materially affect the question of a county court with original jurisdiction.

Mr. JORDAN replied that the number of circuits a year in each county would be entirely under the control and regulation of the legislature—and the ability of these judges to do all the business of the state, civil and criminal, he thought was sufficiently clear from the calculations of the chairman (Mr. RUGGLES) when this report was presented, and from the statistics before us of the judicial force provided compared with population. As to these plans of a county court, Mr. J. said if the Convention should be of opinion that we had not judicial force enough here, it might be advisable to adopt either the plans of the gentleman from Orange or New-York, or that of Mr. CROOKER; but that of Mr. MARVIN would unhringe the entire report, and make it necessary to remodel it entirely. But he did not understand Mr. BROWN or Mr. STEPHENS as intimating an opinion that we had not force enough in this plan, but that if any plan of a county court was adopted, their plan could be adopted without interfering with the frame work of the report. In this respect, he thought the gentleman from Herkimer had misapprehended these gentlemen and their plans. As to the clerks' offices, that was a matter of detail that could be settled here or left to the legislature, as should be deemed advisable when we came to details.

Mr. KIRKLAND here obtained the floor, and moved that the committee rise—which was done. Adjourned to 9 o'clock on Monday morning.

MONDAY, AUGUST 24.

Prayer by the Rev. Mr. STEELE.

Mr. KIRKLAND presented a memorial from the trustees of Clinton grammar school, Oneida county, on the subject of the literature fund.—Also, memorials from citizens of Oneida county in relation to the rate of interest, and the form of deeds and mortgages. They were severally referred to appropriate committees.

Mr. BASCOM presented a petition from Chenango county respecting the organization of county courts—which, on his motion, was read and referred to the judiciary committee.

MUNICIPAL CORPORATIONS.

Mr. ALLEN submitted the following minority report, he having been absent when the majority of committee number fourteen reported:

§ 1. No special act for incorporating any city or village shall be granted; but the legislature shall pass general laws for incorporating, organizing and defining the duties and powers of cities and villages, including the following provisions:—

§ 2. For the opening, widening or altering streets and avenues in incorporated cities and villages, the consent of a majority of the persons to be assessed for each opening, widening or altering, shall be necessary; and the assessment for such improvement shall be confined to the street or avenue to be opened, widened or altered; and no such assessment shall exceed fifty per cent of the value of the land assessed.

§ 3. No city or village corporation shall borrow money on the credit or liability of such city or village, or lend their credit to others, except to repel invasion or suppress insurrection, and for other purposes, except by the unanimous consent of every member elected to the common council of cities, or of every member elected to the board of trustees of villages; and also, unless by an act of the legislature, or proof of such unanimous consent, which act shall specify the object of such law; and shall provide the ways and means, by directing a pro rata amount of the principal of such debt to be annually assessed on and collected from the estates, real and personal, in such city or village, as a sinking fund for the redemption of such debt or liability; but such corporations may nevertheless make temporary loans in anticipation of their annual revenue, not exceeding, in any one year, twenty-five per cent of such revenue, or for a longer period than six months.

It was read and referred to the appropriate committee of the whole.

HOURS OF MEETING.

Mr. BROWN offered the following resolution:—

Resolved, That on and after to-morrow, the afternoon sessions shall commence at 3 o'clock P. M.

Mr. NICOLL moved to amend so as to commence the morning session at half-past eight.

Mr. RICHMOND, further to amend, so as to commence the afternoon sessions at half-past three.

The amendments were carried, and the resolution as amended was adopted; so the hours of meeting now are half-past eight A. M. and half-past three P. M.

SIMPLIFICATION OF PLEADINGS.

Mr. SHEPARD offered the following, to be added to the judiciary report; and it was referred to the committee of the whole, having in charge the judiciary reports:—

§ The legislature shall, at as early a period as practicable after the adoption of the constitution, provide by law for the simplification of the pleadings and practice at law and in equity.

Mr. J. J. TAYLOR offered the following additional sections:—

§ It shall be the duty of the first legislature that shall assemble under this constitution, to revise the practice, pleadings and proceedings in all the courts of justice, with the view to reject from them every thing useless, to promote brevity, clearness and simplicity, to lessen delays and expenses, to provide for the amendment of pleadings and proceedings so as to save costs, and the rights of parties, and in all ways to further justice. It shall also be the duty of the legislature, as often as once in five years thereafter, again to revise such practice, pleadings and proceedings with a like view.

§ The legislature may provide for the election of three commissioners, to revise the practice, pleadings and proceedings, in all courts of justice, and to report to the legislature such reforms therein as shall be calculated to promote brevity, clearness and simplicity in such practice, pleadings and proceedings, to lessen the expense and delays of litigation, and in every way to further the administration of justice to the best advantage, and least expense to the public and individuals.

Mr. W. TAYLOR offered the following:—

§ The legislature shall have discretionary power to provide by law for abolishing the distinction between suits at common law and equity; and shall, from time to time, as may be necessary, revise the forms of proceedings in all courts of justice, with the view to reject from them all useless matter, to promote simplicity and further justice.

§ No party, in any civil suit or proceeding, shall fail of relief from having misconceived his action, or the form of his remedy; but it shall be the duty of the legislature to provide for the amendment of proceedings in cases where it may be necessary to save the rights of parties.

Some explanations were made by Messrs. SHEPARD, W. TAYLOR, J. J. TAYLOR, CHATFIELD, TAGGART, NICOLL, HOFFMAN, MANN, and MURPHY.

Mr. TAGGART then moved to amend Mr. W. TAYLOR's resolution so as to make it mandatory on the legislature instead of permissive.

The amendment was agreed to, and the propositions were all referred to the committee of the whole having in charge the judiciary reports.

Mr. WATERBURY offered the following, which had the same reference:—

Resolved, That there shall be elected by the people one supreme judge, chosen by the people, whose duty it shall be to simplify the pleadings of law and equity, and bring in unison the proceedings through all the courts; said judge to be elected once in three years.

INCORPORATIONS.

Mr. MURPHY offered the following, which he consented should lay on the table:—

Resolved, That the reports of the several committees on incorporations other than banking and municipal, on currency and banking, and on the organization and powers of cities and incorporated villages, be consecutively considered in committee of the whole, immediately after the report of the committee on canals, internal improvements and public revenues, &c. shall be disposed of.

EXPENSES OF GOVERNMENT.

Mr. STOW offered the following:—

Resolved, That the Comptroller be requested to report the annual expenditures of the government, (other than for the purposes of canals and rail roads and works connected therewith,) from and including the year 1817 up to and including the year 1845; and also a statement, showing from what sources the money thus expended was derived; specifying the amounts received and expended in each year; and generally the objects or purposes for which such expenditures were made.

The hour of 10 o'clock having arrived,

Mr. BROWN called for the order of the day the judiciary report.

Mr. STOW hoped the gentleman would allow the resolution to be adopted.

Mr. BROWN was afraid it would lead to discussion.

Mr. STOW could not conceive that it could possibly lead to debate.

The PRESIDENT said it could only be considered by unanimous consent.

Mr. HUFFMAN objected, and the resolution was passed over.

THE JUDICIARY.

The Convention then went into committee of the whole on the judiciary reports, Mr. CAMBRELENG in the chair.

Mr. STRONG sent up the following amendment to the 15th section, which he desired to have read:—

"They shall have exclusive jurisdiction of all civil actions on contracts to the amount of one hundred dollars, and concurrent jurisdiction to the amount of two hundred and fifty dollars. Laws shall be passed to abolish appeals, as now authorized, from courts of justices of the peace, and for further trial and final decision in such cases in the same town where the first trial was had or in an adjoining town."

The amendment pending when the committee rose on Saturday was then announced.

Mr. NICHOLAS said the importance of this question had been presented in a very strong light by several gentlemen who have taken a part in this discussion, and he would only say, that he fully concurred in all that had been said on this subject. The importance of that system cannot be overrated, upon which is to depend the security and protection of the rights of reputation, person and property, and all intelligent men know that this security cannot exist without an impartial and efficient administration of justice.—He (Mr. N.) had listened with great interest to this discussion, which had been continued for two weeks, and he thought all present would concur in the opinion that it had been conducted with great ability and fairness, and considering the various reports and plans submitted by members of the committee, and other professional gentleman of the Convention, in a spirit of courtesy and kindness. Mr. N. said he had hoped from the outset that the principle of the common law would be made the basis of our new judiciary system, and he was glad to learn that this, with a few exceptions, is the prevailing sentiment of the Convention. And he would take this opportunity to say that the learned gentleman from Essex (Mr. SIMMONS), had riveted his attention by his most interesting history of the rise and progress of the Roman or civil law, and the advances and influence of the common law, and the advantages of the latter over the former, and he most fully concurred in the opinion of that gentleman, that the common law had exerted a powerful agency in elevating the character and promoting the happiness of every people whose jurisprudence has been conformed to its principles. Believing, as he did, that the community were strongly attached to our former supreme court system as it existed prior to 1821, in which the same judges sat in banc and *hoid nisi prius* or circuit courts, he was gratified at learning that in all of the various plans submitted to this Convention, this system had been adopted and enlarged upon. He (Mr. N.) first thought it unfortunate for the Convention that

the protracted deliberations of the judiciary committee should have resulted in such a diversity of views on the important subject committed to them, believing that the Convention would more readily adopt a system which had the united support of this able committee, but upon reflection he had changed his opinion on this question. Had the committee been unanimous in their report, the Convention might have adopted it with too great facility. The report would not probably have received the thorough examination which we have now been constrained to give the whole subject, in consequence of the many conflicting plans submitted by different members of the committee and other professional gentlemen. These dissenting views and various plans do the committee no discredit; on the contrary, they give the best evidence that the committee has no drones in it, that it consists of men who think and judge for themselves, the result having been, that besides the report made by the honorable chairman of the committee, we have five minority reports from members of that committee, and several plans for a judiciary from legal gentlemen of the Convention. He, (Mr. N.) after examining these various plans, was disposed to adopt, with some modifications, that reported by the chairman of the committee, and he would follow the example of other gentlemen in noticing, though it should be briefly, the several parts of the report as well as the question now before the committee, whether or not there shall be county courts. The committee having decided that the court of chancery as it now exists shall be abolished, and that the supreme court shall have general jurisdiction in equity as well as law, he would only remark that he had entire confidence in the expediency of this change; it was no untried experiment; the system has worked well in other states, and in the U. S. court. He apprehended no danger of the confusion in the courts predicted by gentlemen; the proceedings on the two sides of the court being different, and the rules distinct and well defined. Others are fearful that judges will in the exercise of these new powers be exposed to the temptation of making by a forced construction of rules in equity, their individual will their rule of conduct, when the remedy at law may not have been exhausted. As to this supposed danger he would only say, that if judges are disposed to abuse power, there are always opportunities in both law and equity courts, but like every other violation of duty it is at the peril of the judge who yields to the temptation. His decisions being public and his reasons made known, if he is not in all cases controlled by a sense of duty, a regard for his professional standing and public opinion will serve as the necessary constraint upon his conduct. In regard to the jurisdiction of the supreme court, we all think that the judges should do circuit duty, and instead of impairing their dignity by commingling with the people, they will be more practical men, and consequently more competent judges. He believed that after setting apart four of the thirty-two judges proposed by this report as members of the court of appeals, the remaining twenty-eight judges will be able to discharge with facility and despatch the general duties of the supreme court, and have ample time to hold

if necessary four circuits annually in each county. The various statements made here, and an estimate which he (Mr. N.) had made after hearing a discussion of a fortnight's continuance, had convinced him that these judges will be fully competent to discharge this amount of professional labor, and if so, that there will be no occasion to form any other court with original civil or criminal jurisdiction above the justices court. If the prompt, efficient and economical administration of justice required a second court or a county court, it should not be dispensed with only from a consideration of economy, but if the present business of the county courts can be as cheaply and more satisfactorily done by the circuit courts, it is certainly desirable to avoid the current expenses of a second court. He (Mr. N.) believed that this arrangement will lessen litigation by reducing the number of appeals; you will no longer have courts of different grades; defeated parties will be less disposed to appeal from the decisions of the circuit courts, whose judges should be as competent as even those of the court of appeals, than they would be from our present county courts or any other court considered of an inferior grade. The county courts, with a few exceptions, have lost the confidence of the people; the causes of this change having been fully explained, he would not reiterate them, except to say, that he believed the original and principal cause of the declension of the courts had been the mean and inadequate compensation of the judges, which has caused men of ability to leave this bench, to be occupied by men, in many instances, not qualified for the station. But it is unnecessary to dwell upon this subject, as it appears to be generally understood that the county courts, as now organized, will be abolished.—He could not discover any reason for having several courts in the same county, of co-ordinate jurisdiction, when every citizen may go into the circuit court and obtain justice as cheaply and conveniently, and with as much despatch, as in an inferior court. This change in the courts will probably be of service to the legal profession. In future young men of inferior qualifications for a learned profession, but who might excel in some other occupation, and who have heretofore lived along in the inferior courts, will hereafter be more disposed to turn their attention to other pursuits for which they are better qualified. Should it be deemed necessary to have a court in the counties to attend to certioraris from justices courts, and to attend to such local business as is now done by the court of common pleas, he thought favorably of the proposition of the gentleman from Cattaraugus to make a judge of the surrogate, to hold a court for these purposes, but it should not have original jurisdiction, either civil or criminal. As to the justices' courts which number more than three thousand, and in which originates a large proportion of the litigation of the state, no change in their organization can be made by this Convention, but he Mr. N. did not doubt that the legislature will soon be called upon to, lessen the number of justices in many towns in the interior of the state, the present number of four in each town being more than the business of many towns require. He thought there

should be a different mode of forming juries in these courts, to secure an impartial administration of justice; but these being fit subjects of legislation, he would not discuss them here. He would say in conclusion, that he had no doubt that the judiciary system recommended by a majority of the committee with some modifications, will, if adopted, insure to the state what we all desire, an economical, efficient and prompt administration of justice.

Mr. W. TAYLOR addressed the committee. He presumed very long and tedious speeches would not be tolerated from laymen, especially as he saw that a majority of the seats were empty. He then proceeded to express his approval of the union of law and equity, which he saw had been satisfactorily tried in several states of the Union. He knew something of the popular will on this subject of judicial reform, and he knew the people desired plainness and simplicity in pleadings, the abolition of all legal fictions, dispatch in legal business, and reductions to a reasonable amount of legal fees. He desired to see the golden rule more operative—"do unto others as ye would that others should do unto you"—and litigation would be less frequent. And for necessary litigation he was willing to pay lawyers a reasonable compensation, the day not being likely to arrive very soon, when men can be either their own lawyers or their own physicians. In reference to the proposition offered by him this morning for the simplification of pleadings, he made some explanations. He next proceeded to speak of the judicial plans submitted. He approved of some things in the nature of county courts, but he thought nothing should be left to the legislature, but that the courts should be here defined. He approved of much of the plan of the gentleman from Cattaraugus, (Mr. CROOKER). He desired also to see surrogates learned men, and to see them paid by a salary. And if they were made parts of the county courts, efficiency would be given to them without much cost. He approved of the system of a supreme court as reported by the committee, with some modifications. Courts of conciliation too he thought might be resorted to by the less litigious class of the community, and popularity might be given to such courts which would bring them into general use.

Mr. MANN thought it would be necessary to amend the section under consideration, to give the legislature the control of these courts, for the purpose of keeping them under a necessary restraint. When in order, he should move the addition of the words, "subject to such restrictions from time to time, as shall be prescribed by the legislature." Without such an amendment, for one monster this Convention would create thirty-two, and the laymen would regret it hereafter. In relation to the pleadings, special pleadings, and tom-foolery of our courts, he said, he hoped to see them abolished. To accomplish this reform, when he had an opportunity, he should offer an amendment to the second section, so as to provide for the election of a chief justice of the supreme court for four years, and to prescribe as part of his duty the simplification of pleadings, so that they shall be plain, concise, and intelligible, containing only that which is requisite.

The amendment was in these words :—

"A chief justice shall be elected by the electors of the State, who shall hold his office for four years, and shall preside over the judiciary of the State. It shall be his duty to prescribe forms and rules of practice in the supreme and all subordinate courts, and such forms and rules shall be simple, plain and concise, express the subject matter, or simple facts requisite, and nothing more."

He believed there would be county courts provided, and he doubted not they would take so much of the business as to render some of the thirty-two judges unnecessary. His impression was however that the county courts were not necessary, and that the business would be done better without them by the supreme court. After some explanations between him and Mr. SHEPARD respecting the number of judges to be given to New York, he continued his remarks, stating his object to be to provide an expeditious, cheap and efficient system of jurisprudence. He said he had other amendments prepared which he should offer hereafter. One of these was to the 13th section, which provided under certain circumstances that the legislature should create courts without limit—he desired to define here the civil courts, and not give to the legislature power to establish them. He proposed also to amend the 15th section in relation to justices courts. He would give them exclusive jurisdiction to the amount of \$50, and original and concurrent jurisdiction to the amount of \$250; and he would allow parties to carry suits for such amounts to higher courts, but he would not allow them more costs than would be required in justices courts. The amendment was in these terms:—

"The electors of the several towns and wards shall, at their annual town meetings and municipal elections, and in such manner as the legislature may direct, elect their justices of the peace. Their term of office shall be four years. The number and classification may be regulated by law. Their exclusive civil jurisdiction shall be \$50. Their concurrent civil jurisdiction shall be \$25; but in all civil suits and actions brought in a court of record the plaintiff bringing any such suit for the sum of \$50 or less, shall not be entitled to recover any greater amount of costs from the defendant than could have been recovered in a trial of the same cause before a justice of the peace; and in cases of appeals in such cases, by either party, from a justices court to a court of record, or from one court of record to a higher one, no greater amount of costs shall be allowed than would have occurred in a justices court on such trial of appeal."

Mr. BRUNDAGE addressed the committee at some length. After some prefatory remarks, he said we were about to establish a tribunal which was to sit in judgment on the constitution itself—making thus a creature to sit in judgment on the creator, and hence he argued the importance and delicacy of the duty in which they were engaged. The subject was one of those important questions which had led to the calling of this Convention, its evils being beyond the reach of the legislature. That there were evils attendant on the administration of justice was not to be denied. When they called in a physician to cure a sick person, he first sought to ascertain the nature of the disease, as necessary before he could apply a remedy. The Convention, too, should first ascertain what were the defects in the administration of justice, and then they could proceed understandingly to reform the evils. In his judgment, the evils were three-

fold—first, a delay of justice; secondly, the expense of obtaining justice; and thirdly, the uncertainty of getting justice. The first two were within the reach of the Convention, and they might and ought to apply a remedy. But the remedy for the uncertainty of obtaining justice was not so effectually within their reach. If it were attainable at all—and it was at best but doubtful—it was the work of legislation. The union of legislative and judicial functions, in the court of errors, he viewed as absurd. He also examined the proposed organization of the courts of law and equity. He said he had been rather inclined to favor a separate organization of equity courts—not from any apprehension of inconsistency in the practice of law and equity in the same courts, but from an apprehension that the equity duties might so burden the courts of common law, as to delay the administration of justice, and thereby continue the evil for which a remedy was now demanded. But if the force proposed to be employed was sufficient, this objection was removed, and he should be favorable to the blending of the two. As to the blending of the pleadings, he was not competent to judge. He had looked over the different reports which had been made by the majority and by several members of the judiciary committee, and perhaps he ought to be satisfied with the majority report, embracing as it did so many of his views; but he confessed nevertheless, that the report of the gentleman from Seneca (Mr. BASCOM) so far as respects the organization of the courts, met his approbation as more simple than the rest. Still, there were some things in it which he could not accede to. The mode of electing the judges, he could not approve—nor for the shortness of the term for which they were to be elected. He wished the judiciary to have the character of permanence, and not to be subject to fluctuations and political excitements, which were not consistent with the due administration of justice. So far as the organization of the higher courts was concerned, he was inclined to doubt whether the majority of the committee had provided sufficient strength to discharge all the duties which would devolve upon those judges. Nor was he altogether satisfied with the organization of the court of appeals. Instead of the proposed organization, he would elect five judges in each district, and he would make their term of office ten years. He would classify them so that one should go out every two years; and he would have any one of these judges authorized to hold the county courts, for all the purposes of the present county and circuit courts. He would then authorize a certain number of these judges, having the shortest term to serve, to hold the general sessions of the court, and to do such duties as are now done by the supreme court. And then a certain number, perhaps three, having the next shortest time to serve, should hold banc terms in the districts. This would give the judges six years' service in the county courts, then two years in the capacity of district judges, and for the two last years of their term, they would serve in the court of last resort—thus securing experience, ability, and competency, in the discharge of these important duties. So far as county courts were concern-

ed, no system similar to the existing organization could obtain his vote. He wished the judges of the supreme court to hold the county courts. A gentleman said the other day, that a man should not be put on trial for murder, before a judge of less standing than a supreme court judge; and he would add, that he would not put a man's character in the hands of an inferior tribunal; for what was life worth, if character were lost? One evil in the organization of our county courts was, that we select the judges from the body of our citizens, amongst whom we have popular and political excitements, with which the men elected to be judges are mixed up. These judges then sit four times a year—and they sit in judgment on those very men with whom they had participated in these political excitements. Could they then expect strict impartiality? And would not prejudice, arising out of political partisanship, lead to suspicion of their candor and uprightness, when they not deserve it? He knew a man who resigned his judgeship because he had been accused of partiality, when he was acting to the best of his judgment. Now he would not allow a judge to sit in a county in which he resided. It had been said that local knowledge was necessary in judges—knowledge of the community and of facts in relation to it—but these were the very things that he would keep from the bench. A judge should know nothing of the parties or of the cause, but what was given to him in evidence. There was always danger of bias where a judge was acquainted with the facts, circumstances, and parties; but this would be obviated by bringing the judge from a different county. There was cause of complaint too under the present system of taking testimony in equity by examiners in chancery. This had always appeared to him to be a great evil, and it should be remedied by requiring the judge to take the testimony of facts. But he would not take up further time with this subject; what he more particularly wished to express himself upon was the subject of the courts of justices of the peace. There appeared to be a disposition to extend their jurisdiction, but to this he could not consent. On this subject he had had some experience, it having been his fortune to act in that capacity for a number of years except the three last. He had had greater facilities for acquiring a knowledge of his duties than many others, and he had free access to the profession—he purchased books too and studied them—and yet he often found himself placed in situations of great perplexity. There were several other gentlemen here who had also been placed in such situations, and he appealed to them if the jurisdiction was not sufficiently extensive. There were many cases in which errors grew up in the justices court for which remedies were not found in the constitution. There was danger of the magistrate being biased and prejudiced in the cause. There was, however, one remedy that he thought they might provide here, which would tend to elevate the character of the justices' courts—that is by making the justices of the peace a part of the court of record, associating them with the judges to hold the county courts in rotation. It might, perhaps, not be very bene-

ficial to them, though possibly they would get some knowledge by being on the bench. Advantage, however, could be found elsewhere; for when the people knew that the men they were to elect would be placed on the bench by the side of the judge, their pride would induce them to select men that would do no discredit to the county. There was another remedy which was with the legislature. He alluded to it to show that it did not rest here. He alluded to the manner of getting up juries in justices' courts. Now, if the town officers were required to make a list of the men capable of serving on juries, and file it with the town clerk; and if it were made obligatory to draw the juries from that list, better juries would be obtained. On the subject of appeals from justices courts to higher tribunals, he said he would be glad to see the legislature provide a rule by which an appeal should not be carried up except on testimony improperly rejected by the magistrate. If appeals could be carried up on additional testimony being found, there were many who would keep back a part of their testimony as groundwork for an appeal. In respect to the jurisdiction of justices, he said he would rather reduce than increase it. Suppose a case got before a justice involving the law of endorsements, assignments, or some intricate offset—he had seen cases of this kind that were very perplexing—and they do not arise on small but on large demands—on such generally as should be kept out of the jurisdiction of justices of the peace as far as possible—and he need scarcely ask if they should not have gone to another tribunal? As to increasing their jurisdiction, he would not object to parties appearing in court and making affidavits to guard against fraudulent judgments, but in other respects the jurisdiction was large enough. There had been some propositions here as to courts of conciliation. This was certainly a new subject with us, and how far it would succeed it was as yet difficult to determine. It might be well enough to try the experiment in some location, but he had very little confidence in it. There was another subject on which he desired to say a word—and that was on the disposition of funds in chancery. It struck him the funds were not now prudently disposed of. They are not in the hands of the proper persons. He approved of the suggestion which had been made to deposit them in the treasury of the state. In the decline of life if anything would give consolation to a man, it would be the assurance that the means he left behind him would be secured by the state for his widow and orphans. He concluded with the expression of his hope that a judicial system would be provided that would place the judges above and away from the excitements of local strife, and that hereafter we may have a speedy and satisfactory administration of justice.

Mr. KIRKLAND addressed the committee.—He contended that although no one thought of retaining the county courts as now organized, yet that such an intermediate court, properly and efficiently organized, was indispensable. He alluded to the vast amount of business that would devolve on the supreme court from the proposed changes; and urged that as an aid and relief to that court, a well arranged county

court system was virtually essential. As a member of the judiciary committee, said Mr. K, I devoted no little time and attention to a consideration of the mode, in which these courts could be organized, as to remedy existing evils and objections, and to render them an efficient, useful, and valuable part of our judicial system. The result of my deliberations was presented to the committee in the following section of the article which I had the honor to lay before them on the first of the present month:

§ 9 There shall in each county, be a county court, which shall have the jurisdiction now existing in the county courts, subject to modification and alteration by law, and also such equity and other jurisdiction as may be conferred by law.

In the first judicial district, there shall be four district judges of the county court: each of them shall alone hold county courts in said district for the trial and disposition of civil cases. In criminal cases two of the aldermen of the city of New York shall be associated with any one of said district judges.

In each of the other judicial districts there shall be a district judge of the county court: he shall alone hold courts for the trial and disposition of civil cases in each county in his district. In criminal cases, the two county judges shall be associated with him. The term of office of said district judges shall be eight years: they shall be appointed by the joint ballot of the members of the Senate and Assembly.—Any district judge appointed to fill a vacancy shall hold his office for eight years.

The district judges of one district may hold courts in any other district, and shall do so, when required by law; and said district judges may be authorized by law to hold circuit courts.

There shall in each county be a first judge and an associate judge: they shall be elected by the qualified electors of such county, and shall hold their offices for four years.

The first judge shall have and exercise the powers and duties of surrogate in his county. Each of said county judges shall also have and exercise such other powers and jurisdiction as may be conferred by law.

Provison shall be made by law for cases of vacancy in the office of said first and associate judge, or either of them, and for the case of the absence or inability of them, or either of them, to perform any of their official duties.

Mr. K. proceeded to explain the provisions of this section, and to state some of the advantages which in his judgment would result from such a system.

Mr. WARD said it was his intention to have submitted his views on this subject somewhat at length—but so much time having been occupied by members of the judiciary committee and others, that he should content himself with a very brief statement of some of the reasons for the vote he was about to give on this important subject. And before doing this, he must be permitted to congratulate the chairman of the committee on the near termination of his arduous duty, and the convention on having reached a point where we could see our way clear through this important report. This discussion, if it had done little good, as some thought, had certainly done no harm; and he trusted that we should soon come to a vote upon the great question before us. We had already disposed of the legislative and executive departments of the government; and this question of the judiciary being settled, the labors of this body, he trusted, would soon be brought to a close. He confessed that he came here fully impressed with the belief that no other changes would be necessary in our judiciary system than to make some further provision in regard to our court of errors, and perhaps to add somewhat to the force in our supreme court and court of chancery, keeping them as now separate and distinct tribunals. But after the overwhelming vote in favor of uniting

these two jurisdictions, he felt constrained to yield his opinions and to acquiesce in that of the convention. He did this cheerfully, and he believed his constituents would warrant that course. Nor could he doubt from the almost entire unanimity here on that point, that the great mass of the people were prepared for this change. And having made this concession, he would say further, that being compelled to make his choice between the several systems before us, and after having duly reflected on the subject, he had come to the conclusion to sustain the plan of the judiciary committee, as the next best plan to that which he had had in view. He should sustain it by his vote, as the best plan under all the circumstances, that could be had, with such modifications in its details as would probably be made, and with the entire assent, he had no doubt, of the judiciary committee, if in harmony with the main features of it. How stood our present judiciary system, and what the force now on the bench? We had a court of errors, consisting of 32 senators, and a Lieut. Governor—a court of chancery with a chancellor at its head, two vice chancellors and an assistant—a supreme court of three judges—and the common pleas consisting of five judges in each county. The plan of the judiciary committee proposed a court of appeals of eight members—and a supreme court of thirty-two judges—in all (as four of the latter were to be taken to make up the court of appeals) but 36. There were differences of opinion as to the ability of such a court to discharge the duties that would devolve upon it—some being confident that it would be quite adequate, and others that it would not. And in connection with this question, we had heard much in respect to the practice in the courts of law and equity—as if this convention could stop to arrange the practice in these courts, or undertake to assimilate them. The truth was we could do nothing ourselves beyond instituting a commission, or enjoining upon the legislature some such reforms—and indeed it was scarcely necessary to do that, as the legislature would no doubt see to it, if demanded by the public voice, that provision was made for all needed reforms in this particular, and especially if it should be found necessary to carry out successfully the plan here laid down. Our attention should be turned in another direction. The Convention had virtually settled the question that our present judiciary system should be demolished, and we must make up our minds what system we would substitute in its place. There could be no doubt that we were to have one court, in which the two jurisdictions of law and equity were to be blended. We had agreed to abolish the court of errors as now organized, and to substitute in its place a new court of appeals. That was not the recommendation of the majority of the committee alone. All the minority reports recommended the same thing—though they differed somewhat as to the mode in which this appeal court should be organized. And he felt warranted in saying further that the sense of this body was decidedly adverse to the common pleas as now organized. This ancient institution, of which we had heard so much, was gone and gone forever. And the question which would probably occasion the most difficulty, was

whether we should establish such a court in this constitution, and if so, what kind of court it should be—or whether the whole subject should be left to the legislature. Mr. WARD glanced at the various substitutes for the county court that had been proposed—showing that they all contemplated an entirely different thing from the present county court, and in fact an entire extinction of the county court to which we had been accustomed, and with which some insisted the people were well satisfied. This might be said of the plan of the gentleman from New York (Mr. O'CONOR). The plan of the gentleman from Oneida (Mr. KIRKLAND), contemplated a circuit court to all intents and purposes—the very court, as some say proposed by the majority of the judiciary committee. So with the plan of the gentleman from Herkimer (Mr. LOOMIS). That too proposed a court of a higher grade than the present county court—having in fact all the attributes of a circuit court. The plan of the gentlemen from Ontario (Mr. WORDEN,) from N. York (Mr. STEPHENS,) and from Chautauque (Mr. MARVIN,) also contemplated very much the same plan—all these contemplating a presiding judge, with associates in the counties—this presiding judge being scarcely inferior in qualifications and learning to a judge of the supreme court. Certainly neither of these was the inferior court which gentlemen professed to desire and to erect.—Again the gentleman from Otsego (Mr. ST. JOHN), would have one of the judges of the supreme court preside in the general sessions or common pleas—and in other respects would make a circuit not a county court of it. It did not differ materially from the plan of the gentleman from Cattaraugus (Mr. CROOKER). This plan, though in many respects a good one, did not meet with favor. Others had suggested plans for a county court, and we must select between them all. That we could not have the first judge and four associates, was definitively settled—and the question was whether we would retain it in any shape. It was a fact within the knowledge of all, that our county expenses had increased, were increasing and would increase, unless we adopted some remedy. Mr. W. said he had read with attention the report of Mr. J. J. TAYLOR from the select committee on this subject, and he proposed to make a slight reference to the results which had been brought out in regard to the expenses of this court compared with the circuit. And he desired, in connection with this, to impress upon the Convention the importance of looking to the interests of the people as well as the suitor, in this matter—and to urge that whilst we provided good courts for litigants, it was our duty also to save to the people as much as possible of the expense to which they were now subjected. It appeared that the amount allowed county judges, for attending county courts and courts of oyer and terminer, during the year 1845, in forty-three counties from which returns had been received, was \$14,663. The remaining sixteen counties, would, at the same ratio, increase the amount beyond \$20,000, which would be some \$8,000 more than the salaries of all the circuit judges, or the salaries of the justices of the supreme court and the chancellor. The whole

number of causes tried in the common pleas court in the same counties, with the exception of the city and county of New-York, was 610, while the whole number of causes tried at the circuits, with the same exception of the city and county of New-York, was 716. The verdicts at the circuits, with the like exception, amount to \$232,316 60; in common pleas to \$37,764 85; being \$196,601 71 less than the verdicts rendered at the circuits. The common pleas courts were in session, to discharge the small amount of business in the counties mentioned, one thousand six hundred and fifty-six days: the circuits four hundred and eighty days. Making a difference of one thousand one hundred and sixty-eight. There was allowed as chargeable to counties, for fees during that year in these counties, for grand jurors

For petit jurors	\$11,231 98
Of Sheriffs and Constables	19,219 54
Criers	9,993 67
County clerks	1,672 05
Add the amount paid county judges already named	4,169 93
	14,663 00

60,915 22

Gentlemen could calculate for themselves to what extent the remaining sixteen counties would swell the aggregate expenses, to which must be added the heavy expense of sustaining poor witnesses, while attending court.

Mr. WARD here gave way for a motion to rise, which prevailed, and

The Convention took a recess.

AFTERNOON SESSION.

Mr. KEMBLE submitted the following, with a view to have it printed, and to move it at a proper time, as an amendment.

§ 1. The legislature shall provide against frivolous, and vexatious appeals and writs of error, by requiring that a judgment or decree rendered by the Supreme Court, shall be executed, notwithstanding an appeal or writ of error, upon adequate security being given to make full restitution in the event of a reversal or modification of such judgment or decree, or appeal.

THE JUDICIARY.

Mr. MANN submitted the amendments in form, he had indicated in his remarks this morning.

Mr. WARD resumed. When the committee rose this morning, he had shown from the report of the gentleman from Tioga (Mr. J. J. TAYLOR) that one-half of the expense, if not more, of our county court system, might be saved if we could have a court that would dispatch business with the rapidity and ease with which it had been dispatched by the circuit judges. But in the remarks he had submitted, he had had reference simply to county expenses. But there was still another consideration that would not be without weight with those whom he had the honor of addressing—for they were all probably familiar with the evil to which he should advert. It was well known, at least to the profession, that by reason of the delays in our courts—to the circumstance that the court found itself unable to get through its calendar—the jurors and witnesses whose compensation was any thing but adequate to their expenses, to say nothing of the loss of time in attending upon the court, were often compelled to return again, and term after term to attend the

trial of the deferred causes. If, then, in the reorganization of our system, it was possible for us to establish such a court as should be able to dispatch business, civil and criminal, with facility, and to the satisfaction of parties and the public, so that the calendar at each term should be cleared, we should not only secure a vast saving to the counties, but a vast saving in the aggregate, in time and money, to those who received no remuneration in fact, but who were obliged, under severe penalties, to attend these courts. But having said thus much in regard to the reorganization of the common pleas, he proposed to advert a moment to the disposition proposed to be made of this subject by the majority of the judiciary committee. They proposed to leave this whole matter of the organization of inferior courts to the legislature, as the U. S. constitution left it to Congress to create courts inferior to the supreme court of the U. S. His own impression was the public interest would be better subserved by leaving it there. He was not, however, so wedded to his opinion that he could not yield it, if the majority here should think otherwise. But if left, as the majority of the judiciary committee advised, to the good sense of the legislature, under a full view of the operation of the system, he must be permitted to say that this power could scarcely be more wisely vested; and we should save ourselves a great deal of time and trouble in endeavoring to reconcile views on this difficult subject. How did this matter stand? Probably one of the best courts in the state was the creature of legislation. He alluded to the superior court in the city of New-York. There could be no doubt that there should be special provision made for the large cities—as requiring a greater judicial force than the rural districts of the state. It was important especially for such large cities as New-York and Brooklyn, that the power of establishing inferior courts there, or of regulating such as might be established by this constitution, should be left to the legislature. Brooklyn probably now required a superior court. This would doubtless be the case with Buffalo, Rochester, Utica, Troy and Albany, and that too at no distant day. If the power to establish these inferior tribunals was left with the legislature, there could be no doubt, from what had been done, that they would provide such tribunals as the public exigencies from time to time might demand; and more satisfactorily meet these requisitions than we could hope to do in advance. Mr. W. remarked here that it was gratifying to him, that in the course of this whole discussion, not a word had fallen from any gentleman, in disparagement of the integrity, ability and learning of our present judges. And the fact could not but be gratifying to the incumbents of these high stations, the results of whose arduous labors had been more or less passed in review before us. For himself, he regarded them with pride, as a citizen of New-York, as men who had contributed much to the fame of this great state. Their decisions were not merely regarded as high authority here and throughout the union, but they were sought for and read abroad; and had been read as authority in the English courts. There was no feeling, he was sure, either here or in the public mind, against these

able functionaries; and if this reorganization of the courts should take place, and the constitution ratified by the people, he should feel particularly gratified to see the gentlemen now holding judicial stations under the present system, provided for under the new. No doubt that would be so, if they had a desire to continue in this arduous and responsible field of duty. Mr. W. here glanced at the proposition to pay the surrogates a salary from the county treasury. If called upon to vote on such a proposition, he should vote against it. He thought the fee system decidedly preferable. It was a system under which we had long lived, and which the legislature could at any time adjust, to meet any complaints that might exist against it. Already had the legislature acted in reference to the fees of these officers; and he believed that since that time, there had been no complaints against the system. At all events, he should very much regret to see the counties burthened with the additional expense of a salary for the surrogate. Better leave that where it is.

Mr. W. next proceeded to a brief review of the several plans of a judiciary system that had been proposed—remarking that the plan of the majority of the judiciary committee, in his opinion, was not only in all respects adequate to the business of the state, but in the main the plan which best comported with his views of a judiciary system. The plan of the hon. gentleman from New-York, (Mr. O'Connor,) one of the judiciary committee, provided for a supreme court to consist of a chief justice and twelve justices; any of whom may hold the court—civil causes at issue to be tried before any of the judges—any three, or any one of them with one or more county judges, to hold county courts, and courts of oyer and terminer and general jail delivery—all causes and matters depending in the court of chancery to be transferred to the supreme court. This plan, as far as regarded the organization of the supreme court, was the same, in every respect, as the present system, with the addition of ten judges, which seemed to meet with no favor in this Convention. The terms of the court would no doubt, alternate between the cities of New-York, Albany, Utica and Rochester, as now. If there was any weight in the objection urged to the committees plan that the number of judges would not be adequate to discharge all the business which might come before them, the same objection applied with much greater force against this. For these thirteen judges are required to perform all the equity, civil and criminal business in the state, and to hold the circuits and courts of oyer and terminer in the several counties. The plan of the hon. gentleman from Oneida, (Mr. KIRKLAND,) another of the judiciary committee, provided for dividing the state into six districts, with a superior court in each district, to have jurisdiction in all matters of law and equity within the state, and such supervisory and other power, over inferior tribunals and officers within each district, as now existed in the supreme court—subject to the appellate jurisdiction of the supreme court of appeals. The city of New-York to be the first district, and to have six judges; each of the other districts, four; numbering in all

twenty-six judges of the superior court, besides the judges of the court of appeals—the latter as well as the judges of the superior court to hold circuits and courts of oyer and terminer, with whom were to be associated two judges of the common pleas; the judges to be elected and to hold their offices for ten years. The gentleman had made no provision for a supreme court with general jurisdiction, but there was to be an appeal from the superior court directly to the court of appeals—the latter to have appellate jurisdiction only. The numerical force of the court of appeals and supreme court in this plan exceeded the number recommended by the committee. It did not present the advantage of its being a less expensive judiciary system than the present one. Mr. W. confessed that he could not view it as possessing the merits which the author seemed to think it did, and which he had maintained with much eloquence. The plan of the honorable gentleman from Seneca, (Mr. BASCOM,) another member of the judiciary committee, provided for the election of thirty-two judges—the state to be divided into four judicial districts—circuit sessions to be held by one of the judges of the supreme court in each of the counties of the judicial district, for the trial of all issues civil or criminal—the surrogate and one of the justices of the peace to be associated with the circuit judge—banc sessions to be held in each county by not less than three, nor more than four judges of the superior court, to review the decisions and proceedings of the circuit sessions, and to transact such other duties in relation to the administration and the establishment of rights, as shall be prescribed by law—appeal sessions composed of the judges whose term of office shall be within one year of its expiration, to be held in the several judicial districts. The honorable gentleman seemed to think that the supreme court could transact all the legal business in the state, and therefore dispensed with the court of errors or appeals, and the court of common pleas, which the gentleman thought worse than useless. Mr. W. said he would not detain the committee with any further remark on this plan than this: that the people of this state had been so long accustomed to a court of last resort to pass upon proceedings in these inferior courts that they were not yet prepared to dispense with it. The plan of the honorable gentleman from Ontario (Mr. WORDEN) provided for a court for the correction of errors, a court of equity, a supreme court, county courts and courts of oyer and terminer, and such inferior courts as may be prescribed by law—the court of last resort to consist of a chief justice and nine associate justices—the court of equity of a chief justice, and not less than four associate justices—the supreme court of a chief justice and twelve associates, any four of them to hold the court—the state to be divided into not less than five districts—terms of the supreme court and of the court of equity to be held in each judicial district—the legislature to have power to confer equity powers on the supreme court. This plan in its main feature—the separation of the equity and law jurisdiction—having been in effect rejected by the Convention—it might be regarded as wholly out of the question, and he should not remark further on it. The plan of

the honorable gentleman from Otsego, (Mr. ST. JOHN,) vested all the judicial power in a supreme court, to consist of a chief justice and sixteen associates, the former to be elected by the people—the state to be divided into eight judicial districts, and courts to be held in each justices' courts to have original jurisdiction in all cases where the actual balance between the parties does not exceed \$250. There was no special provision here conferring equity powers on the supreme court, nor for a court of appeals, and the plan was, it seemed to him, in other respects imperfect. And it must be manifest that if the present judicial force in our court of chancery, supreme and circuit courts was not adequate to transact the present business, that the force proposed in this plan would be equally inadequate. The plan of the honorable gentleman from Genesee (Mr. TAGGART) vested the judicial power in a supreme court, and in district, circuit, surrogate and justices courts—the supreme court to have appellate jurisdiction, and to consist of eight justices—the state to be divided into four districts—a district court to be held in each with such equity powers as the legislature might confer—five judges to be elected in each district, in all twenty-eight—the supreme court to hold one term in each and every year by not less than three nor more than four judges—circuit courts to be held in each county by a district judge or a justice of the supreme court—the surrogate and one justice of the peace to be associated with a supreme court judge in criminal cases—the legislature to have power to establish inferior courts in counties having more than 60,000 inhabitants, and to confer equity powers on them. Mr. W.'s objection to this plan was the entire change which it proposed in our judicial system, and the absence in it of any feature answering to our present court of errors. So great a change he could scarcely expect would be well received by the people. The plan of the honorable gentleman from Chautauque (Mr. MARVIN) vested the judicial power in a court for the trial of impeachments, a court of appeals, chancery, supreme court, common pleas, surrogates' and justices' courts, and courts of oyer and terminer—the state to be divided into common pleas districts—each of them to choose a president judge of the common pleas, to preside in those courts and hold general sessions of the peace in each county. This plan was in fact the present system, revised and enlarged upon—and from the votes already taken, it was manifest that it could not find favor here or elsewhere. The author of this plan resided near Pennsylvania, and no doubt from having attended the courts of that state, had become somewhat wedded to that system. The judicial power of that state was vested in a supreme court, common pleas, oyer and terminer, an orphan's and a register's courts, a court of quarter sessions for each county, and in justices of the peace. The judges of the courts of record were appointed by the Governor and Senate—the supreme court judges holding for fifteen, and the president judges of the common pleas for ten years—the associate common pleas judges for five. The jurisdiction of the supreme court judges is coextensive with the state, and they

held courts of oyer and terminer; so did the president judges and one associate. The plan of the judiciary committee had decided advantages over the Pennsylvania system. The supreme court and common pleas of that state were the only courts of common law jurisdiction, and the supreme court the only court of appeal. This plan allowed an appeal from the circuit court to the supreme court, and thence to the court of appeals, and the duties required of the circuit judge were the same as those performed by the presiding judge in Pennsylvania. And if two judges were to be elected in each county to sit with the presiding judges in the common pleas, then it was obvious that we could dispense with a part of the judicial force provided for in the committee's report—for we should then have a force more than adequate to transact all the equity and civil business at circuit and in banc.

Mr. WARD continued: Other gentlemen had spoken of the immense business of their districts, and especially at the west. He could speak for his own district—and his impression was, from his knowledge of it, that there was not a district in the state where there was so much litigation in law and equity, as in that district. The chairman of the judiciary committee (Mr. RUGGLES,) had been for years the judge of that circuit—and to his (Mr. W.'s) knowledge, he had transacted not only all the equity business—which was there very large owing to the fact that it had been long settled, and had a great amount of equity cases growing out of the settlement of estates—but had, with perfect ease and facility, transacted all the business of the circuit—all the civil and criminal business at every term—leaving nothing to go over, when the cases were ready. And if our circuit judges could perform all that duty, with ease and facility, and with such benefit to suitors and the public, with how much more ease could this business be done under the system proposed by the majority of the judiciary committee? This fact he regarded as conclusive and as worth more in arriving at a correct result than any mere arithmetical calculations that could be made. Mr. W. submitted some remarks in regard to the details of the plan of the judiciary committee, expressing a preference for an election of judges of the court of appeals by general ticket, rather than to have part of them elected by the whole state and part by districts. At the same time, he should vote on all these matters of detail with a view to harmonize opinions and to procure for the state the very best system that could, under the circumstances be agreed on.

Mr. W. would say in conclusion that it was not to be presumed that the judiciary commit-

tee, in presenting their report for the consideration of the Convention, entertained the opinion that it was in every respect perfect, but they presented it after having devoted much time to its consideration, as the best plan they could devise, leaving it to the combined wisdom of this Convention to alter, modify or confirm the same as in its judgment it should seem meet; and from his acquaintance with the members of this Convention individually, he had no hesitation in stating as his firm belief, that they would meet the subject in a spirit of mutual concession and compromise, and if they should err in coming to a result, it would not be owing to a wish to gratify personal considerations nor a desire to promote personal aggrandizement, but to an error of judgment. We must therefore meet the question promptly, directly and honestly, and if the provisions in this article were not in exact accordance with our own desires, let us nevertheless, yield to the wishes of the majority of this Convention, and be trusted when the people came to act upon it, they would be actuated by the same spirit and would approve and ratify our doings.

Mr. VAN SCHOONHOVEN followed, speaking until 6 o'clock in explanation of his views of a judiciary system.

The question then recurring on Mr. STEPHENS's proposition, as follows:—

§ 1. There shall be established in each of the counties of this state, a court of common pleas, with the same powers and jurisdiction which now belong to the court of common pleas in the several counties of this state

§ 2. There shall be in each of the judicial districts of this state, a judge who shall be known as the president judge of the court of common pleas, for the district in which he shall be elected, who may hold courts of common pleas in any of the counties of the state, and who shall hold his office for eight years

Mr. STEPHENS modified his proposition so as to present the question of a president judge elected in each judicial district, to hold the county courts, &c.

Mr. O'CONOR accepted this in place of his own amendment to the third section—which declared merely that there shall be a county court, having original jurisdiction, in each county.

Mr. CHATFIELD moved to amend by striking out of Mr. STEPHENS's amendment all that part of it which related to the nature of the county court to be established.

Mr. STEPHENS objected that this would bring us back to the original proposition of Mr. O'CONOR.

After some conversation, the hour of six having arrived, the CHAIRMAN reported to the Convention, under the resolution to that effect heretofore adopted.

On motion of Mr. BROWN, the Convention, Adj. to half-past 8 o'clock to-morrow morning.

TUESDAY, AUGUST 25.

The hour of meeting this morning was half past 8, but at that hour only 25 members were present.

No clergyman attended.

Mr. BERGEN presented a petition from citi-

zens of Kings county in favor of electing judges by the people, and on his motion it was read and laid on the table.

Mr. DODD presented a remonstrance of citizens of Washington county against depriving

Academies of the literature fund. Referred to the appropriate committee of the whole.

The President laid before the Convention a communication from the Clerk of 4th equity district pursuant to a resolution of the Convention adopted on the 13th inst.

Mr. MANN suggested that it should be laid on the table until the other returns were received, which was agreed to.

CANALS.

Mr. ANGEL from committee No. 3 presented the following plan for paying the debt of the State, which he offered as a substitute for the plan of Mr. HOFFMAN. It was read and referred to the appropriate committee of the whole.

§ 1 The distinction between the general fund and the canal fund is abolished. All the revenues of the state from whatever source derived, shall constitute a fund which shall be deemed the state fund. All debts owing by the state, and all liabilities incurred by the state, shall in the aggregate be denominated the state debt.

§ 2 After paying the expenses of the collection, superintendence and ordinary repairs, one million, six hundred thousand dollars, of the revenues of the state canals shall in each fiscal year, and at that rate for a shorter period, commencing 1st June, 1846, be set apart as a sinking fund to pay the interest and redeem the principal of the state debt until the same shall be wholly paid, and the principal and income of the said sinking fund shall be sacredly applied to that purpose and no other.

§ 3 The surplus revenues of the said canals after paying the said expenses of said canals and the sum appropriated by the preceding section as a sinking fund, shall be applied in such manner as may be directed by law, to the payment of the expenses requisite to complete the Erie canal enlargement, and the expenses requisite to complete all such other canals as have been commenced and partially completed, under and by virtue of any of the laws of the state.

§ 4 After completing the aforesaid enlargement and unfinished canals, the entire net revenue of all the canals of the state shall be inviolably applied to the payment of the interest and the redemption of the principal of the state debt, until the same be fully paid and extinguished.

§ 5 The legislature shall not sell, lease or otherwise dispose of any of the canals of the state, but they shall remain the property of the state and under its management for ever.

Mr. STOW'S resolution offered yesterday was taken up and passed as follows:

Resolved, That the Comptroller be requested to furnish a statement showing from what sources the sums paid from the treasury, for the support of the government from and including the year 1817, up to and including the year 1845, were derived in each year, and the aggregate amounts received into the treasury each year from those sources.

THE JUDICIARY.

The PRESIDENT announced the unfinished business, being the article on the judiciary as reported from the committee of the whole.

Mr. CHATFIELD moved that the committee have leave to sit again on the report of Mr. WHITE on the codification of laws, which had been referred to the committee of the whole having in charge the judiciary report. A long conversation ensued.

The PRESIDENT suggested that the gentleman from Otsego would accomplish his object by moving to refer that report to a committee of the whole.

Mr. CHATFIELD made that motion, which was agreed to.

The PRESIDENT then stated the question to be on agreeing to the report of the committee of the whole on the 1st section.

After a few words between Mr. HUNT and Mr. TAGGART on the propriety of a verbal amendment, the section was agreed to.

The second section, creating a court of appeals, was then read.

Mr. TILDEN suggested the propriety of passing over this section until the committee had determined how the supreme court shall be organized.

Mr. HART moved to strike out all after the word judges in the 1st line, and insert, as follows:

"Elected by the electors of the state, by general ticket; and provision shall be made by law so to classify the judges first elected that one-half thereof shall hold their offices four years, and the other half eight; and the judges of the said court shall thereafter be elected in like manner and hold their offices eight years."

Mr. MANN moved the following as an amendment to the amendment:

A chief justice shall be elected by the electors of this state, who shall hold his office for four years, and shall preside over the judiciary of the state. It shall be his duty to prescribe forms and rules of practice in the supreme and all subordinate courts; and such powers, forms, and rules, shall be simple, plain, and concise—express the subject, matter, or simple facts requisite, and nothing more.

Mr. CHATFIELD supported the amendment of Mr. HART.

Mr. TALLMADGE hoped the section would be considered and decided by itself. It was not only necessary to administer justice, but to satisfy the people that it is justice. They had been told that the court of errors had never pronounced a law unconstitutional in which its members had participated in passing; and hence he argued the propriety of making the court of appeals separate from any legislative functions.

Mr. MANN thought there was but little difference in the intent of the amendment of Mr. HART and his own. He was not sure that the former would not effect the object desired, which was to have the whole court elected by the people, independently of the other courts, better than that which he had presented.

Mr. JORDAN rose to call attention to a principle which it appeared to him it was necessary to reflect upon before they adopted any of these amendments. For years we had been complaining that our judges were excluded from the circuits, and that they have not an opportunity of mingling with the business affairs of the people, to see their operations and their circumstances as they exist, and which it was important for them to know in order to secure an enlightened administration of justice in the state. Now the majority of the judiciary committee had endeavored to guard against this objection to the court of appeals; but nevertheless several amendments had been here offered which would go to establish such a court, and to seclude the judges from the circuits and from the general, practical law business of the state—a court entirely aloof from the administration of justice in any form except in the court of *dernier resort* where they were to be cloistered, to decide on abstract questions. If, however, it were necessary that these judges should be acquainted with the practical operation of the judiciary establishment, then the system of the majority of the committee was the best; for they proposed

to elect four judges for the court of appeals, and add to them four others from the supreme bench. They had a class of eight judges of the supreme court out of which the four were to be selected; as he observed the other day, taking their terms in rotation in holding the terms of the court. There were to be eight of them, but four only were to sit at the same time, and they were to serve for the two last years of their term as judges, one half at one term and the other half at the next; and those not on duty there could be performing duty on circuit or in banc, the same as the other classes of judges. Here then they would have four judges who had been six years on circuits and engaged in banc duty throughout the state; and four judges to be elected. But the plan which had been suggested this morning steered clear of this, and he desired to call attention to the principle that they might deliberate and pronounce their best judgment upon it, and that was all he desired. In regard to the objection which had been stated against the court of appeals that no judge who decides cases at *nisi prius*, or in *banc* should be a member of the court of appeals, when the cases decided by them came in review, he observed that it was not necessary that it should be so. He presumed that in reducing this system to practice it never could be so. But if it were necessary to guard against it in the constitution it would be easy to bring in an amendment to prohibit the judge from pronouncing an opinion in court who had sat at the trial below. There would be no difficulty about that. Was it then desirable to make the court of appeals a secluded court, and to keep the judges from practical experience on circuits? That question being decided, he should be prepared to act on the proposition.

Mr. HARRIS, as regards the various plans proposed to constitute the court of appeals, gave the preference to that which proposed to constitute it of the senior class of judges of the supreme court. To preserve uniformity in decisions in all the courts of the state, this court of last resort should be composed of judges who held seats in the courts below. The greatest benefit derived from the system proposed, he thought to be that a representative from every district in the state was obtained in the court of appeals. He was most in favor of the proposition of Mr. MARVIN for the organization of this court. He was also in favor of the appointment of a chief justice, but would provide for his election in a separate section.

Mr. NICOLL indicated his intention to move an amendment to prohibit a judge from voting in the court of appeals upon the decision of any cause in the trial of which he may have previously participated.

Mr. SHEPARD desired to separate the question of simplifying the pleadings and practice from the other part of his colleague's (Mr. MANN) amendment. He called for a division of the question inasmuch as there was no necessary connection between the two parts of the amendment.

Mr. MANN assented to the suggestion of Mr. S.

Mr. LOOMIS was desirous so to constitute the judicial system as to have as few officers at

first as possible. Otherwise, he feared, the legislature would not pay them sufficiently. — Another desirable thing was to mingle the tribunals as much as possible, as had been done in the court for the correction of errors, where the chancellor and the judges of the supreme court had seats. He should dislike too to see this court entirely separate from the circuits.

Mr. VAN SCHOONHOVEN differed from the gentleman from Albany, (Mr. HARRIS,) in relation to the election of judges for this court, because to take its members from the judges of the supreme court was to confine the people in their selection to a class of men who might not be the best men. He thought there were many gentlemen practicing on the circuits who were as well qualified to constitute the court of appeals as the judges. But again, he saw no necessity of limiting the choice to gentlemen of the legal profession. The objection that there would be a pride of opinion in the judges, who would seek to obtain the affirmance of a decision or a principle advocated on circuit, he thought was a weighty objection to the selection of the judges. He hoped to see the court of appeals made independent of every other court, so that there should be no sympathy or fraternal feeling between them. He desired the matter to be left in the hands of the people to select where they pleased.

Mr. MANN withdrew the first part of his amendment that he might have the question taken on the latter part.

Mr. WHITE desired to call the attention of the Convention to an amendment which he intended to offer as follows:—

“At the first election in pursuance of this section no elector shall vote for more than five persons; and at every ensuing election under this section, no elector shall vote for more than three persons.”

Mr. O'CONOR advocated the formation of a court of appeal to consist of sixteen members, each one to be elected by two Senate districts, with a term of four years.

Mr. BASCOM said the question of how the judges of the court of last resort shall be elected was one of great importance. The proposition of the gentleman from Oswego (Mr. HART) in effect was that the party that happens to be in the ascendant when the first election takes place shall secure the whole bench, and go far to secure a preponderance in perpetuity, whatever party changes may afterwards take place. Would gentlemen for a moment think of the prize offered to stimulate the activity of parties. Four judges to hold eight years, eight to hold for four years—in the aggregate forty-eight years of official term to be secured by one or the other of the contending parties by a single contest! We elected a Governor and Lieut. Governor for two years each, and such contests produced activity and bitterness enough in party contests, but by this proposition we offer forty-eight years of official term, and if the salary be \$2,500—\$116,000 of salary, to stimulate an unhealthy, unsafe activity in our great political parties. The proposition of the committee to elect a part of the judges of this court and to take a part from the supreme court was liable to the same objection. He hoped that neither proposition would be adopted, but that we should consider

which of the two other propositions before the house was the safest and best. The one was the proposition of the gentleman from New York (Mr. O'CONOR) to elect the judges of this court in the several judicial districts, so that each would be represented in that tribunal. And the other was the proposition in the report he (Mr. B.) had submitted that the judges of the supreme court should sit the last year of their term in the court of last resort. He hoped that one or the other of these propositions would be adopted; and although he had a preference for his own, he would not deny that there were strong reasons in favor of the proposition of the gentleman from New York. It would permit other than lawyers and law-bred judges to sit in that court. The time had been when there was an almost indispensable necessity to have judges in that court who were not so much bound by technical rules or influenced by precedents as mere lawyers would be. If we come to elect the whole judiciary and reform proceedings and practice, as all here seem to agree they should be, the necessity of providing for the election of laymen to the court of errors will not exist to the extent that it has done. It is assumed that the people will elect to the judgeship none but lawyers. In general perhaps this will be so, though no proposition yet proposes to limit the selection to this class, and if the good sense of laymen was really so important in one court, the people might suppose it to be so in others; and if the time should come when judges would not have to expend their whole energies in considering the technical modes of proceeding in order to obtain justice, instead of what justice and right really is, the good sense of laymen might be employed to some advantage upon your circuit bench and in your banc courts, as well as in your court of appeals. He apprehended the strongest objection that existed to making your circuit judges of lawyers and your error judges of laymen, was that it would promote appeals. The defeated suitor would be ever tempted to appeal from the decision of the lawyer judges to the lay judges of the court of appeals. And that court might be filled with appeals beyond its capacity to hear and decide. He hoped that one or the other of the latter propositions would be adopted, and we should not be thrown upon the state ticket system proposed by the gentleman from Oswego. The gentleman from New-York (Mr. WHITE) proposed to avoid the objection that one party would have all the judges of this court by an election like that we have adopted in regard to inspectors of elections in towns. The other gentleman from New-York (Mr. O'CONOR) had shown that this result would induce parties to make war upon a part of their own ticket, and make the contest somewhat like a Canada race, where the hindermost horse is declared the winner, and where the jockey quickens the speed of his neighbor's pony instead of his own. By the proposition to elect by general ticket there was no security for any thing like a proper representation of the different districts of the state; and by the proposition of the committee, it would be seen that while some districts might have two or three members in the court other

districts might have none, and he hoped that neither would be adopted.

Mr. NICHOLAS said in settling this question, we should avoid extremes. He desired to retain for the court of appeals to some extent its present practical character and influence. He would give it what has been called an infusion of a popular spirit by continuing it somewhat larger in numbers than the other courts, and let a large proportion of its members be elected by the people, as in the case at present with our court of last resort, and give the people an opportunity, as now, to select their judges by districts, men they know personally. And this view of the subject accords, he believed, with the opinions of every gentleman who has expressed a wish to exclude the supreme court judges from this court of appeals. In giving to the court this important practical element, he designed to prevent the court being extremely technical. He could not think it wise to deprive the court of the beneficial influence of great legal learning and judicial experience for which the report made by the chairman provides, by requiring four of the members of this court to be selected from the oldest judges of the supreme court. These four judges would certainly be valuable members of the court of appeals, and the only objection he had heard to the court being thus constituted, arose from an apprehension that they may act upon appeals from their own decisions when made in the supreme court. He would obviate this objection by an amendment to the report, requiring that no judge of this court who participated as a judge of the supreme court in a trial of a cause appealed from or brought to this court by a writ of error, shall have a voice on its final adjudication. It had been urged here to-day that these oldest judges might be the least competent members of the supreme court, and so they might be the most able men in that court, and should these judges elected prove to be inferior men, then you are fortunate in having the services of four able and experienced men to counteract the effects of the deficiencies of those elected. As to electing these judges by a general ticket, he should prefer the district system proposed by the report, because the judiciary will, in his opinion, be much less exposed to undue political or party influences, than it would be, should the election be by a general ticket. He should vote against the amendment, and hoped the provision with such a restriction as he suggested, might be adopted.

Mr. WATERBURY doubted some of the provisions of the majority report, and went on to show wherein he objected to the organization of the court of appeals as proposed in the second section.

Mr. HOFFMAN compared the original proposition of the committee with the various projects to amend it. Centuries ago, he said, before the civilization of the present day, it might have been well to give to the highest court some portion of legislative power, and make their decisions stand as laws; but now he regarded it as unnecessary, and it should be the duty of this court of last resort to find what the law was at the time the circumstances took place.—

He did not agree with the gentleman who contended for the infusion of the popular element in this court, or that these judges should be representatives of the people. It was proper that representatives should in the first place make the law, but it was the solemn duty of the judge and the court to find out the law which society had before established. He desired that the judges of this court should not represent localities. The bench should rather be entirely free from local feelings, local passions and local judgments of any kind. The judges upon the bench should be the representatives of the state, to decide upon the rules settled and fixed by the state, and stand unshaken by any local influences. Where this court was made thus free from trammels of local feelings and passions, the judicial system was a benefit to society, and when otherwise it proved a failure. In giving his vote on these various propositions, he should vote for the plan of the majority of the committee, because, though not unobjectionable, it appeared to be the best plan submitted. He had no friendship for the district system, and therefore the manner of appointment of these judges of the court of appeals suited him entirely. But he was at a loss how to employ them the year through, for he trusted the business of the court of appeals would not occupy them more than one-fourth of the year. He also examined the probable influence of a desire for a re-election on those judges who sit in this court during the two last years of their term of service, and found in the plan much to condemn; but as some plan must now be agreed upon, and as he could not get the plan he desired, he should take the best he could get.

Mr. TALLMADGE followed at some length concurring mainly in the view taken by Mr. HOFFMAN, [but no mere sketch can do justice to his remarks].

The question was, after some conversation, taken on Mr. MANN's amendment to Mr. HART's—the former proposing the election of a chief justice of the court of appeals, and it was lost.

Mr. WHITE then moved his amendment, as follows:

"At the first election in pursuance of this section no elector shall vote for more than five persons; and at every ensuing election under this section, no elector shall vote for more than three persons."

This amendment was lost.

Mr. MORRIS stated that he expressed the opinion the other day, that it would be better to elect the supreme court judges by general ticket—lest the judge elected in a district might be unconsciously perhaps, swayed by the local feelings under which he was elected, and have his prejudices, political and otherwise, towards those in the district, who have taken an active part for or against him in the canvass. But he was opposed to electing this court of last resort by general ticket, and because the result would be that all of them would be of the same political cast or complexion—and the electors would have to vote for men of whom they knew little, if any thing, but to take them on the strength of a party nomination. Nor was there any danger to be apprehended from electing them by districts—as a judge elected under any particular excitement in such district, however much he

might partake of this excitement, could scarcely carry with him all the rest, or perhaps any of them. But a judge sitting at nisi prius, was there alone, and his opinions and feelings would control the case. He should therefore vote against the proposition to elect all these judges by general ticket.

Mr. WARD asked for such a division of the question as would test the sense of the Convention directly on the election of these judges by general ticket.

There was a good deal of conversation here as to the effect of the amendment, when

Mr. HARRIS proposed to amend so as to provide that the court of appeals should be composed entirely of the class of justices of the supreme court having the shortest time to serve.

Mr. JORDAN remarked that the two propositions were antipodes—and that the judiciary committee had been fortunate enough to steer mid-way between them. He had heard nothing to convince him that this half and half arrangement of the court, proposed by the committee, was not exactly right—taking a moiety of it from the people at large and the other moiety from the most experienced class of judges.

Mr. STOW urged the importance of having the court of appeals composed in part of legal talent and bearing and of common sense, as it was called, and to guard against having too great a preponderance of the one, in a court where three might decide a case, he would at the proper time move to amend so as to increase this court to twelve—electing eight and taking four from the supreme court.

Mr. CHATFIELD here obtained the floor and moved a recess—which was agreed to.

AFTERNOON SESSION.

The attendance being thin, scarcely twenty being present, Mr. PATTERSON moved an adjournment, and called for the ayes and noes—saying that he desired to see those who were here recorded. He should however, vote against his own motion.

Upon the calling of the roll, members came in, in sufficient number to form a quorum. The vote on adjourning stood, ayes 5, noes 64.

The judiciary report was then resumed, and Mr. CHATFIELD spoke at length in favor of the principle of electing all these judges of the court of appeals by general ticket. He would be willing to increase the number of this court to twelve. But he thought the force here recommended, was as large (with the addition that would be made to it by this amendment,) as the people would justify. And one reason why he favored this amendment was, that it would increase the judicial force—adding force to the court of appeals, and leaving the 32 supreme court judges. As to the mode of selection, he preferred the general ticket system. It was the only general court in this system—for the supreme court, instead of one court, practically became one court. The court of appeals was the court of the people at large, and should be elected by the people at large. He was willing, as a party man, to take his chance in electing them. If the party opposed to him elected them all, he should say amen to it. If his

own party succeeded, he should be gratified. He was not one of those who would throw every thing valuable to his party out of the hands of that party. He wished it to be understood, that in desiring a general ticket system, he had an eye to the men to be elected. He had no concealments on the subject. He was not willing to concede that if the democratic party should carry all these judges, that therefore they would be the worst men in the state. He put himself on the open and manly ground in this matter. He avowed that in voting for this amendment, he acted on party considerations, and so did every body else, disguise it as they might. But there were other reasons which induced him to go for it in preference to an election by districts. He wanted the whole people represented in this court of appeals, and not mere sections and localities. If elected by the people at large, the judge would know no constituency but the people of the state. He repudiated the idea of having this court of appeals a sort of combination of bench and jury. To place four laymen and four lawyers there, would either make it a bench of lawyers—the laymen deferring to the opinion of their associates—or the court would be divided equally, and no decision would be made, except on the principle, that as neither side had a majority, the proceedings fell. But how were you to begin the system on this hypothesis? How were you to have the four experienced judges to begin with? For the people might elect just such men in the districts as they elected by general ticket. Why entrust the people in districts with the selection of judges, and not the people at large with the election of the entire court of appeals? The objections to this, were in essence the old doctrine revamped, that the people could not be safely entrusted with their own affairs. No man complained of the capacity of the present chancellor and judges of the supreme court. And yet they were party men. They owed their position to the action of a party. In regard to Mr. HOFFMAN's idea of the qualifications for a judge of a court who had only to decide law questions, Mr. C. differed with that gentleman. He did not think it necessary that these judges should go down to the circuit—for the elective principle would secure fidelity to the people as effectually as any thing else. Mr. C. closed with a reply to Mr. HOFFMAN's allusions to the judicial force in England, compared with that of this state—insisting that there were reasons growing out of the general diffusion of property here, to account for the increased amount of litigation among us.

The question was here taken on Mr. HART's proposition, providing for the election of all the judges of the court of appeals by general ticket, and it was lost, ayes 24, noes 71, as follows:—

AYES—Messrs. Allen, Bergen, Bowditch, Chamberlain, Chatfield, Clark, Corneil, Danforth, Forsyth, Hart, Hotchkiss, Mann, McNitt, O'Connor, Perkins, President, Sanford, Shaw, Tallmadge, Vache, Van Schoonhoven, Ward, White, Witbeck—74

NOES—Messrs. Angel, Archer, F. F. Backus, H. Backus, Basecom, Brown, Bruce, Brundage, Bull, Burr, D. D. Campbell, K. Campbell, Jr., Candee, Clyd., Conely, Cook, Crooker, Dana, Dodd, Dorlon, Flanders, Gardner, Gebhard, Greene, Harris, Harrison, Hawley, Hoffman, Hunter, A. Huntington, E. Huntington, Hyde, Jordan, Kernan, Kingsley, Kirkland, Loomis, McNeil,

Miller, Morris, Nellis, Nicholas, Parish, Patterson, Penniman, Porter, Powers, Richmond, Riker, Salisbury, Shaver, Sheldon, Shepard, W. H. Spencer, Stanton, Stetson, Trow, Strong, Swackhamer, Taft, Traggart, J. J. Taylor, W. Taylor, Tuthill, Warren, Waterbury, Wood, Worden, A. Wright, W. B. Wright, Yawger, Young, Youngs—71.

Mr. HARRIS' amendment now coming up—

Mr. HARRIS hoped the Convention would pardon him if in this case he violated a rule which he had laid down for himself, not to speak more than once to the same question. It was with some regret that he heard the remarks which had just fallen from the gentleman from Otsego (Mr. CHATFIELD.) Mr. H. knew nothing which he admired more than to see a body of men like this, whose situation entitle them to influence, and to take the lead in public affairs, rising superior to party influences, casting off party connections, forgetting party interests, and devoting themselves to the public good, rendering party objects subservient to the public welfare. He had, therefore, with some pride seen the course which had hitherto been taken by this Convention. From all quarters were heard congratulations that party lines had been disregarded, and that party interests had been forgotten, in our deliberations. It was with pain then, that he had witnessed the attempt of the gentleman from Otsego to bring party interests to bear upon the question which had just been decided. The result of that vote had however re-assured his faith in the favorable result of the deliberations of this body. That gentleman had sprung his party rattle here, but it was to little effect; and he was glad to see that his appeal had failed to secure a party vote upon the question. But enough of this. In regard to the court of appeals, he regarded it as a matter of immense importance in settling the organization of the judiciary of the state. He had little faith in the proposition to elect four judges of this court by general ticket, as they must be, if the report of the committee was adopted. He had no faith that it would be adding much to the efficiency or ability of the court to pursue that course. If we would have an efficient court, which would maintain the credit of the state, and secure the confidence of the people, the judges should be selected from the most experienced men to be found in the state. It was his desire therefore, that they should be taken from among the senior judges of the supreme court. This was the only way in which we should be able to maintain the character of the court, and secure uniformity in judicial decisions. He would have them chosen from the different districts in the state, so that we should have each district represented upon that bench, and by a judge who was familiar with the course of judicial decisions. As to the position of the gentleman from Herkimer (Mr. HOFFMAN.) that the judges of this court of last resort should eminently be the representatives of the whole state. Mr. HARRIS asked if they would not be the representatives of the state just as much as though elected by general ticket? How was it now in reference to the court of appeals—the court for the correction of errors? The judges were elected from eight separate districts; and yet who had ever heard it objected to that court that it did not represent the entire state, al-

though each one was elected by only one-eighth of the people of the state? We found this principle running through all our popular elections. Suppose these judges were elected by general ticket, and were nominated by a convention for the whole state, would not one judge be selected from each of the several districts of the state? This course was taken in regard to all officers elected by the state at large; they were always distributed throughout the different parts of the state. He had some pride in the composition of this highest court, and desired that it should be made up of the most able judges. To them would deference be paid by all other tribunals, and their adjudications would be referred to as examples by all the legal men in the state. Their decisions would alone find their way into our books, and stand as models for future judicial proceedings. These were his reasons for desiring to give to the court of appeals a dignified and stable character.

Mr. CHATFIELD replied that the remarks he made were drawn out by the frequent allusions here to parties, and by the position taken by some that these judges, if elected by general ticket, would be party judges. He said, and he repeated, that he was willing to declare the grounds of his action here. He would not act the hypocritical part of deprecating party feeling, and yet aiming all the while to accomplish party purposes. He made no charge upon any body, but he had had reason to believe that there was a party who were exceedingly gratified to see no party lines here, and because they were getting all the benefit of this state of things. The gentleman from Albany was happy to see no party here. Very well. It might increase his chances for the office of governor. For himself whilst he had a place here, and whilst he believed that as good men could be selected from his party as from the other, he should act on the principle that duty required that he should make that selection. He had yet to learn that the judges in districts would not be nominated and elected by parties, as much as if elected by general ticket, or that the people at large could not elect as good judges as the people of a district. In going for the general ticket system, he did avow what every other man would perhaps disavow, and yet act upon. If he did start his party rattle here, its effect had been to drive one party with two exceptions in phalanx against the amendment—whilst his own party divided. On another occasion, the same party went en masse one way here. These facts showed on what principle certain gentlemen acted here, whatever might be their professions.

Mr. BROWN insisted that the only question raised by the proposition which had just been voted down, was simply whether this court of appeals should be composed in part of justices of the supreme court—and if gentlemen supposed any question of party politics was involved in that, they were mistaken. He did not understand it so—nor did he, in voting as he did, commit himself on the great question whether these judges were to be elected by the people of a district or by the state at large. He thought gentlemen on all sides had seen enough to know that there was nobody here to follow a party

leader. There might be a great many party leaders here, but he doubted whether there were any party followers. He hoped to lead nobody but himself, and should follow nobody but himself. He trusted his party politics were as well settled and understood as any man's here. And he trusted his continued devotion to the principles of his whole life, were not compromised by any vote he had given here. He repeated that no question was involved here but the question whether these judges should be selected from the supreme court bench. The manner of their selection or appointment was a question that was still to come up. When that question did come up, he avowed that if it could be so arranged that these judges should be selected in part from one party, and in part from another, he should not be unwilling to see it done. Nor could he object to any amendment which he thought would improve the article, and not wholly derange its structure. He would say before he sat down, that the report of the majority of the committee was the result of great labor, and he might be allowed to say that it was produced by an honest and sincere effort on the part of those who framed it, and without any reference to the organization of parties. He hoped, therefore, that in all efforts to amend it, gentlemen who submitted propositions would have reference in so doing to the fact that by disarranging one portion of the system the whole would be affected; and he desired that no amendment would be offered without a previous examination by the mover of the effect which his proposition would have upon other portions of the report.

Mr. PATTERSON said the original plan of the judiciary committee contemplated taking eight of the supreme court judges having the shortest time to serve, to form the court of appeals. But the section was afterwards put in the shape in which it was, he however voting against it. He then anticipated the objections that had been raised to it as well as the objections that there was no supreme court here, or rather no head to the system, and he proposed amendments in committee to obviate these objections. He should vote for the amendment, as comporting more nearly with his views, than the section as it stood.

Mr. RICHMOND expressed himself entirely opposed to any system which contemplated a court of appeals, any of whom was to sit in review of his own decisions.

Mr. W. TAYLOR advocated a proposition suggested by Mr. NICHOLAS, contemplating the election of eight judges by the people at large, and selecting four others from the supreme court judges. As to party influences, Mr. T. said he did not believe the time had come when old scores were to be wiped out, and when we were to begin anew as if no party divisions or feelings had existed. Adopt what plan we would, however much gentlemen might desire to avoid party influences in the selection of these high functionaries, it would not be done. Mr. T. expressed himself in favor of the plan of the judiciary committee, with the exception he had indicated of an increase of the court of appeals.

Mr. NICHOLAS said it was not his intention or desire, in the suggestion he made, that these judges should be elected by general ticket. If

they were to be chosen in that way, the fewer there were of them the better. Of all the curses that could befall us, a political judiciary would be the greatest; and the result of a general ticket system might be to inflict upon us a political judiciary. An election by districts would not only give us a judiciary made up of both parties, but would tend to break up centralization—an object of no small importance, as he regarded it.

Mr. KIRKLAND followed at length in support of Mr. HARRIS' proposition—saying that it was all-important that this court of last resort should be composed of men of the highest legal talent and learning in the state.

Mr. HOFFMAN, in reference to the party allusions that had been made here, said that whilst he would make no secret of being a party man, he would say that he believed that he could promote the interest of his party most effectually when he did what was entirely right, and only then; and that he should not, here or elsewhere, attempt to aid his party by doing what he believed would do them the greatest injury—and that was to yield to any thing wrong. Mr. H. went on at some length to oppose the amendment, and in reply to Mr. KIRKLAND—urging that it proposed to strike out of this court all that was permanent and enduring,

and to make it even less so than the present court of errors—and to lead to vacillation and instability in its decisions.

The question was here taken on Mr. HARRIS' amendment and it was rejected, ayes 21, noes 76, as follows:

AYES—Messrs. Archer, F. F. Backus, H. Backus, Baker, Bascom, Bruce, Burr, Candee, Chatfield, Cook, Dodd, Flanders, Gardner, Harris, E. Huntington, Kirkland, Patterson, Penniman, Porter, Salisbury, Shaver, J. J. Taylor, A. Wright, W. B. Wright—24.

NOES—Messrs. Allen, Angel, Ayrault, Bergen, Bowditch, Brown, Bull, D. D. Campbell, Clark, Clyde, Conely, Cornell, Crooker, Dana, Danforth, Dorlon, Forryth, Gebhard, Graham, Greene, Harrison, Hart, Hawley, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kennedy, Kingsley, Loomis, Mann, McNitt, Marvin, Miller, Morris, Nellis, Nicholas, O'Connor, Perkins, Powers, President, Richmond, Riker, Ruggles, Shaw, Sheldon, Shepard, W. H. Spencer, Stanton, Stephens, Stetson, Stow, Strong, Swackhamer, Taft, Taggart, Tallmadge, W. Taylor, Tilden, Townsend, Tutill, Van Schoonhoven, Ward, Warren, Waterbury, White, Witbeck, Wood, Worden, Yawger, Young, Youngs—76.

Mr. STETSON moved to amend by inserting after "serve" in the 4th line, "and at whose election all the electors of the state shall have a right to vote."

Mr. SHEPARD moved to adjourn. Agreed to. Adjourned to 8 1-2 o'clock to-morrow morning.

WEDNESDAY, AUGUST 26.

Prayer by the Rev. Mr. STOVER.

Mr. TAGGART moved that certain returns heretofore made by the chancery clerk of the eighth circuit be taken from the files and returned to him to assist him in making other returns called for by the Convention. Agreed to.

THE JUDICIARY.

The Convention resumed the consideration of the report of the committee of the whole on the judiciary article.

Mr. STETSON withdrew his amendment to the second section, which was pending on the adjournment yesterday.

Mr. CHATFIELD moved to strike out the second section down to and including the word "serve," in the fourth line, and insert—"There shall be eight judges of the court of appeals, elected by the electors of this state, who shall hold their offices for eight years."

Mr. A. W. YOUNG opposed this amendment, unless he knew how the judges were to be elected. He wished an amendment to provide for their election by single districts.

Mr. PATTERSON made such a motion, by striking out all after "appeals," and inserting, "who shall be elected by districts."

Mr. BURR knew not how these judges were to be employed. He should be unwilling to pay them large salaries unless there was employment for them; and he could not conceive that they would have employment for all parts of the year. Nor was he able to discover why one of these should be a "chief justice." He was democratic enough to desire the judges to be placed on a common level.

Mr. TAGGART went into some explanation on that point.

Mr. CHATFIELD called for the yeas and nays on the amendment to the amendment, and they were ordered.

Mr. STOW desired the election to be by four double instead of eight single districts, and that the judges should be so classified that the judges shall go out in classes. He, therefore, should vote against this motion for the present, with the hope that he should get a proper amendment hereafter.

Mr. STETSON contended that the judges of the court of appeals should represent the entire people and not be merely the representatives of districts. He enumerated many local prejudices which might tincture a local judge—such as anti-masonry—as an objection to the single district system.

Mr. STRONG replied and defended the single district elections. But if the amendment to the amendment was adopted he knew not if he could vote for the amendment; because if eight judges were to be elected by the people, it had been intimated that four more must be selected from among the judges of the supreme court, and he thought twelve would be more than the necessities of the case required.

Mr. WATERBURY also opposed the general ticket system, for by it he might be called upon to vote for a judge of whom he knew nothing. The people were more honest than those who assumed to lead them. Sometimes a man disappointed in obtaining a nomination for another office was provided for by his friends by being nominated for an office for which he had no

qualification, and it might so happen that the people by a general ticket would know nothing of his fitness. He was for bringing them to the people by whom they were known.

The yeas and nays were then taken on the amendment to the amendment, and they were yeas 43, nays 61, as follows :

AYES—Messrs Allen, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bruce, Brundage, Burr, Candee, Chamberlain, Cook, Crooker, Dana, Dodd, Dorlon, Flanders, Gebhard, Graham, Harris, Harrison, Hawley, E. Huntington, Marvin, Miller, Morris, Nicholas, Parish, Patterson, Pennington, Porter, Rhoades, Richmond, Salisbury, Shaver, Shepard, W. H. Spencer, Strong, Taggart, Townsend, Warren, Waterbury, Worden, A. Wright, W. B. Wright, Young, Youngs—43.

NOES—Messrs Angel, Bergen, Bowditch, Brown, Bull, D. D. Campbell, R. Campbell, Jr., Chatfield, Clark, Clyde, Conely, Cornell, Danforth, Gardner, Greene, Hart, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kennedy, Kernan, Kingsley, Kirkland, Loomis, Mann, McNeill, McNitt, Nellis, Nicoll, O'Connor, Perkins, Powers, President, Riker, Ruggles, St. John, Sanford, Shaw, Sheldon, Stanton, Stephens, Steinson, Swackhamer, Taf, J. J. Taylor, W. Taylor, Tilden, Tuthill, Vache, Van-choonhoven, Ward, White, Witbeck, Wood, Yawger—61.

So the amendment to the amendment was rejected.

Mr. BROWN desired some provision to require four of these eight judges to be taken from the supreme court, and without that, he should vote against the amendment. But if there were to be eight elected by the people and four to be selected from the supreme court, the number would be too large.

Mr. HARRISON desired to offer a substitute for the two first sections, which however was not in order.

Mr. W. TAYLOR, to test the sense of the Convention as to the number of which the court shall consist, and whether any of them shall be selected from among the supreme court judges, offered the following amendment :

"There shall be a court of appeals composed of twelve judges, of whom four shall be selected from the class of judges of the supreme court having the shortest time to serve, and eight shall be elected by the electors of the State," &c.

Mr. MARVIN said if the court of appeals was to be kept in session the year round, twelve judges would not be too many; but if the system was to be so adjusted as to enable the court to dispose of all its business in two or three months, he thought twelve would be too many.

Mr. PERKINS did not wish to provide a sinecure for worn out politicians by putting eight of them on this bench by the side of four judges by whom the business would be done. The court of appeals would not be ornamented or aided by such supernumeraries. He was opposed to the amendment. He could not conceive that twelve judges were required, unless to perform circuit duties, which would tend to elevate the circuit courts. He examined the constitution of this court of appeals in various aspects, and said he preferred a court to consist of nine judges to be elected by general ticket, no person voting for more than six persons.

Mr. HARRISON thought the court of appeals should not be a numerous body. It should consist of a few only. He could see some propriety in having a popular infusion of which gentleman had spoken in the supreme court; but not in the court of appeals whose duties would be to de-

cide on questions of law to come up from the courts below. Besides the expense would be greater than prudence would dictate. With these views he was opposed to the increase of the members of this court from eight to twelve. He thought the term "supreme court" should be applied to the court of last resort, and in this he differed from the judiciary committee who had applied other terms, and given that designation to another court.

The yeas and nays were demanded and ordered on the amendment to the amendment, and being taken, resulted thus : yeas 12, nays 95.

Mr. CONELY moved to strike out a portion of the amendment and insert as follows : "At their first meeting they shall determine by lot the time each member respectively shall serve, which shall be from one to eight years inclusive, and annually thereafter one shall be elected every eight years." Lost, only 23 voting in the affirmative.

Mr. MORRIS was in favor of the proposition to elect eight judges, to be part of this court but not the court. He was opposed to the plan of the committee because the number of supreme court judges was too large in comparison with the other members of the court.

The yeas and nays on the amendment were then taken and there were yeas 29, nays 81, as follows :—

AYES—Messrs. Allen, Bergen, Bowditch, Cambreleng, D. D. Campbell, Chatfield, Clark, Conely, Cook, Cornell, Danforth, Hart, Hotchkiss, Kennedy, Mann, McNitt, Morris, O'Connor, Porter, President, Sanford, Shaw, Tallmadge, Vache, Vanschoonhoven, Ward, Waterbury, White, Witbeck—29.

NOES—Messrs Angel, Archer, Ayrault, F. F. Backus, H. Backus, Bascom, Brown, Bruce, Brundage, Bull, Burr, R. Campbell, Jr., Candee, Clyde, Crooker, Dana, Dodd, Dorlon, Flanders, Forsyth, Gardner, Gebhard, Graham, Greene, Harris, Harrison, Hawley, Hoffman, Hunt, Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kernan, Kingsley, Kirkland, Loomis, McNeill, Marvin, Miller, Nellis, Nicholas, Nicoll, Parish, Patterson, Pennington, Perkins, Powers, Richmond, Riker, Ruggles, St. John, Salisbury, Shaver, Shepard, Shepard, Simmons, W. H. Spencer, Stanton, Stephens, Steinson, Stow, Strong, Swackhamer, Taft, Taggart, Tallmadge, J. J. Taylor, Townsend, Tuthill, Warren, Wood, Worden, A. Wright, W. B. Wright, Yawger, Young, Youngs—81.

Mr. STOW offered the following amendment to the second section :—

There shall be a court of appeals, composed of twelve judges, of whom eight shall be elected, and four shall be selected from justices of the supreme court. The said eight judges shall be chosen in districts, for which purpose the State shall be divided into four districts, and two judges shall be elected from each district. One of the judges thus chosen from each district at the first election shall hold his office for three years, and one for six years, as shall be determined by lot, at the first assembling of the said court. After the first election, the judge elected shall hold his office for six years, except when chosen to fill a vacancy occasioned otherwise than by the expiration of the term of the judge; but when elected to fill a vacancy thus occasioned, the term of such judge shall only be for the unexpired term of the judge whose place he shall have been chosen to supply. Provision shall be made by law for designating one of the number elected as chief judge, and for selecting justices of the supreme court from time to time. No justice shall be entitled to a vote in the court of appeals in any case which was tried or decided by him. He may, however, assign the reasons for his opinion.

He said it would be seen, that he proposed to increase the number of judges of the court of appeals, that the judges shall be elected in five

districts instead of eight, which would serve to diminish the excitement of an election. It would enable them to elect half at the same time, and thus give something like permanency to the bench, avoid the excesses of party, and deprive the judges of a partizan character. He thought it unsafe to refer a case to men who have heard the case in the court below. It was necessary to guard against pre-conceived opinions, and he believed his amendment would correct these evils.

Mr. BROWN said a juror was objected to and set aside, if he had expressed an opinion on a question of fact which he was called upon to try; but it was no objection to a judge that he had heard a question of law below. The cases were not analogous, and the objection was not well taken.

Mr. STOW explained, and replied.

The yeas and nays were then demanded, and ordered.

Mr. RUGGLES asked if he could now offer an amendment, to provide that judges who have expressed an opinion in the court below, shall take no part in the decision the court of appeals?

Mr. STOW said that could not with propriety be done in the court of appeals, composed of eight members, inasmuch as our of them may have acted on the case below.

The yeas and nays were then taken on the amendment, and there were yeas 23, nays 77, as follows:—

AYES—Messrs Allen, Archer, Ayrault, Bergen, Candee, Chatfield, Cornell, Dorton, Harris, Marvin, Miller, Morris, Nicholas, O'Connor, Parish, Patterson, Penniman, Richmond, W H Spencer, Stow, Waterbury, Worden, W. B. Wright—23.

NAYS—Messrs. F. F. Backus, H. Backus, Baker, Bascom, Brown, Bruce, Brundage, Hull, Burr, Cambreleng, D. D. Campbell, R. Campbell jr., Clyde, Conely, Cook, Crook-r, Dana, Danforth, Dodd, Flanders, Forsyth, Gardner, Graham, Greene, Harrison, Hart, Haw cy, Hoffman, Hotchkiss Hunt, Hunter, A. Hunt-inton, Hutchinson, Hyde, Jordan, Kemble, Kennedy, Kernan, Kingsley, Kirkland Loomis, Mann, McNitt, Nellis, Perkins, Porter, Powers, President, Riker, Ruggles, St John, Salisbury, Sanford, Shaver, Shaw, Sheldon, Shepard, Stanton, Stephens, Stetson, Strong, Swackhamer, Taft, Taggart, Tallmadge, J. J. Taylor, Townsend, Tutthill, Van Schoonhoven, Ward, Warren, White, Witbeck, Wood, A. Wright, Yawger, Young, Youngs—77.

Mr. RUGGLES controverted the position that there would be such a pertinacity of opinion in the judges who had made decisions on circuit, as to incapacitate them from reviewing their opinions. He however moved to amend so as to provide that "no member of the court of appeals shall have a vote in the decision of any question on which he may have given a written opinion in the court below."

Mr. STOW moved to strike out the word "written."

Mr. PERKINS suggested that the words "in a court at banc" should be substituted for the word "written."

Mr. SIMMONS thought there was nothing in the objections that the judges had heard the case below.

Mr. KIRKLAND also thought that any judge would be willing to hear the re-argument of a case, and to frame his judgment according to any new light that might be thrown upon it.

Mr. RUGGLES took the same view, but said, as some minds were so constituted as not to be able to throw off the impressions given in a written opinion, he had offered this amendment.

Mr. RICHMOND could not discover any difference in effect between a written opinion by a judge and an opinion pronounced and published in the newspapers. Both the known opinions of the judge and a pride of opinion would induce him to sustain previous views in either case.

Mr. HARRIS opposed the amendment.

Mr. TAGGART opposed both the amendment and the amendment to the amendment.

Mr. HOFFMAN also opposed the amendment. The case of a juror which had been put, was not analogous but the opposite. The juror was to determine a fact and the judge to apply the law, and a judge was no worse a judge because his attention had been called to a case and he had been required to study it. The amendment which proposed to strike out "written," would invite indolence and cause appeals.

The yeas and nays were then taken on striking out the word "written," there were yeas 23 nays 76.

My. CHATFIELD moved to strike out the words "in the court below" after the word "opinion."

Mr. BASCOM said that would pretty effectually cure the giving of long opinions. (laughter.) The amendment was lost.

The yeas and nays were then taken on the amendment and there were yeas 23, nays 83.

Mr. HARRIS moved to amend by inserting after the word "serve," in the fourth line the words "the judges to be elected shall be chosen by districts for which purpose the state shall be divided into four districts." He said four of these judges, it appeared, were to be elected, and he was averse to an election by general ticket.

Mr. MORRIS hoped the gentleman would withdraw his amendment to allow the Convention to settle the number of which the court shall consist.

Mr. HARRIS withdrew his amendment.

Mr. MORRIS then moved to strike out of the first line the word "eight" and insert "ten," and to strike out from the second line the word "four" and insert "six." He said his object was to constitute the court of ten members, and to make a majority (six) elective by the people, to give them a preponderance over the judges from the supreme court; for if it were not so, it would be very difficult to get a reversal of an opinion pronounced in the supreme court notwithstanding the compliments which had been paid to the judges, he and other lawyers knew that there were judges who changed an opinion with great difficulty, and though the constitution which this Convention would form, would doubtless prove of great benefit to the community, it would not change the nature of man.

Mr. NICOLL thought the eight enough to dispatch business.

Mr. SALISBURY would oppose any proposition which would increase the number of salaried judges. He could not suppose that more than one-fourth of the year would be required for the business of that court, and he thought

the necessary judges might be taken from the other courts.

Mr. CHATFIELD desired an inequality to give the elective judges a preponderance.

Mr. TILDEN would be in favor of electing a portion of the court of appeals if they were elected by districts, and if other judges to represent the entire state and not a mere locality, were elected in some other way. It ought not to be entirely separated from *nisi prius* business, and hence some judges should be taken from the circuits.

Mr. MORRIS modified his amendment so as to propose to strike out eight and insert seven, and strike out four and insert three.

Mr. BROWN opposed the amendment unless it were made obligatory on all the judges to be present. Again the number of judges was fixed in reference to the proposed number of circuits, and therefore the amendment would occasion derangement.

The yeas and nays were taken, and there were yeas 29, nays 76—so the amendment was lost.

Mr. NICOLL moved to amend by striking out "the shortest time to serve" in the fourth line, and insert "four years to serve." His object was to obviate the objection that if these judges were to sit in this court during the two last years of their term, they might be influenced by a desire for a re-election; but if the judges were selected from the class with four years to serve the objection would be obviated and a great good would be accomplished, inasmuch as for the two last years of their term they would return to the circuits and benefit the bar by the experience they had acquired in the court of last resort.

The amendment was lost.

Mr. HARRIS then renewed his amendment, previously withdrawn, on which the yeas and nays were taken, and there were yeas 38, nays 70.

Mr. BROWN moved to amend by striking out "one" in the seventh line and insert "two;" and to strike out "second" in the eighth line and insert "four." He said as it now stood, one judge would go out at the end of two years, another at the end of four, another at the end of six, and another at the end of eight, and his object was to make it so that half should go out at the end of four years and the other half at the end of eight years. There might be a difficulty in getting a good lawyer to give up his business and become a judge when he might only serve two years.—This would only operate on those first elected.

Mr. SIMMONS supported the amendment.

Mr. STEPHENS thought they should get such a good start as would enable the system to work well; but two years was not an inducement to good men to go on the bench.

Mr. MORRIS thought a patriot could be found to take the office with the chance of drawing two years for the benefit of the community, and the chance of drawing eight years for the benefit of himself. He thought it would make no difference.

Mr. PATTERSON thought the plan reported by the committee better than the amendment.—If it would only affect the first election, he would not so much care, but it would affect all future

elections, as it provided for a change of half the body at one time.

The amendment was lost.

Mr. TAGGART offered the following to come in at the end: "and no judgment, clause, order or decision of the supreme court, shall be reversed without the concurrence of at least five judges of the court of appeals." Lost.

Mr. TAGGART then moved to add—"The said court of appeals shall have a general superintending control over inferior jurisdictions. It shall have power to issue writs of error and supersedeas, certiorari, habeas corpus, mandamus, quo warranto, and other remedial writs, and to hear and determine the same." Mr. T. supported his amendment. He said it was a provision which existed in many other constitutions of the states of the union, and it was necessary to reverse difficulties which would otherwise be found to exist. The amendment was lost.

Mr. BASCOM moved the following amendment:—

"A session of said court shall be held as often as once in two years in each of the judicial districts of the state."

He said this was designed to obviate the objection which had been made to the centralization of the courts at Albany.

He called for the yeas and nays on the amendment, and they were ordered, and there were yeas 34, nays 68—so the amendment lost.

Mr. HARRIS moved to strike out the word elected in the fifth line, so as to place all the judges of the court of appeals, whether elected or selected, on a par as respects eligibility to the station of chief justice.

Mr. MANN said he proposed yesterday to elect a chief justice, having certain specific duties; This seemed to be a provision made for a distinction merely between these judges, without assigning to the chief justice any duty.

Mr. HARRIS supposed there must be a chief justice in whose name process was to be tested. But that was not the point. This court of appeals could as well select one of their number to preside as we could to preside here, and there was no constitutional provision necessary to direct them in their selection. Indeed, this was too small a matter to be here at all, and he should prefer to strike out the whole clause.

Mr. SIMMONS suggested a provision that the Lieut. Governor for the time being, should be chief justice. That would be what our people were accustomed to, and would make the court an odd number as it should be.

Mr. HARRIS desired to see a section providing for a chief justice. If such an one should be adopted, we could then return to this and modify it accordingly.

Mr. CHATFIELD remarked that the present constitution and every other in the union made provision for designating a chief justice, and he would do it here; but not with a view to have a judge in whose name process should be tested. That was a mere fiction or form now, and he trusted we should adopt no provision here contemplating a perpetuation of these senseless and useless forms of practice—forms which if you happened to omit or make a mistake, you could only amend by paying costs. He wanted

to get rid of this shaving machine. He wanted no chief justice in whose name to test process, but it was very proper that there should be a head to the court, and he would designate the man in the constitution. He preferred to take him from those elected by the people, than from those who were to sit there two years only.

Mr. PATTERSON suggested that it would not do to have the Lieut. Governor chief justice, as he was to be president of the senate, and could not reside in both at once.

Mr. HARRIS' amendment was negatived—ayes 50, noes 55, as follows :

AYES—Messrs. Allen, Archer, F. F. Backus, H. Backus, Baker, Bascom, Bowdish, Brown, Bruce, Bull, Burr, Canoe, Crooker, Dana, Dodd, Dorlon, Flanders, Gardner, Harris, Harrison, Hawley, A Huntington, E Huntington, Kemble, Kennedy, Kirkland, Loomis, Mann, Marvin, Miller, Nelis, Parish, Patterson, Peniman, Porter, Ruggles, Salisbury, Sanford, Simmons, W. H. Spencer, Stephens, Strong, Taggart, Tuthill, Vache, Waterbury, A. Wright, W. B. Wright, Young—50.

NAYS—Messrs. Angel, Ayrault, Bergen, Brundage, Cambreleng, D. D. Campbell, Chatfield, Clark, Clyde, Conely, Cook, Cornell, Danforth, Forsyth, Gebhard, Greene, Hart, Hoffman, Hotchkiss, Hunt, Hunter, Hutchinson, Hyde, Jordan, Kernan, Kingsley, McNitt, Morris, Nicholas, Nicol, O'Connor, Perkins, Powers, President, Richmond, Riker, St. John, Shaw, Sheldon, Shepard, Stetson, Stow, Taft, Tallmadge, J. J. Taylor, W. Taylor, Tilden, Townsend, Vanschoonhoven, Ward, Warren, White, Witbeck, Wood, Yawger, Youngs—65.

Mr. LOOMIS said he wanted to take the sense of the Convention on a proposition ; but as no amendment had as yet succeeded, and as he had aided in defeating every one of them, he expected his would meet the same fate. He moved to amend so as to make the term of the elected judges of the court of appeals four years instead of eight. He regarded the abridgment of the term of office of our judges as the most valuable reform of any other in this article. If you elected a good judge for four years, you could re-elect him. If a bad one, four years was long enough. Besides, he did not want to see the term so long that a judge could not return to the ordinary business of life with success.

Mr. TILDEN said if the four judges were to be elected by the people at large for the purpose of infusing a popular influence into the court, he might vote with the gentleman. But that object would be fully attained by having the other four the judges who were soon to come before the people again. Believing also that we must rely on the four who were to be elected at large as the more independent members of the court, and that they would be the ablest lawyers in the state, he would not abridge their term of service. And as we had refused to allow the judiciary committee to improve their own system, he would not allow individuals of them to make it worse.

Mr. SIMMONS said it was a remark of Mr. Calhoun that the framers of the United States constitution had made one wiser than themselves. It would seem that the Convention so viewed the report of the majority of the judiciary committee. He had no fears of the immense weight of aristocratic learning that we should get upon the bench by this long term—nor on the other hand was he afraid of having a strong infusion of what was called common sense into the judiciary. But he liked to have

things called by the right name. If gentlemen were disposed to extend the jurisdiction of justices courts, have no higher court to rule over them—give them original jurisdiction in law and equity. So be it. But he would not give this court a high-sounding name, where in fact, the disguise being stripped off, it was only plain common sense justices of the peace. He went for the report as it was, believing that it was wiser than any of the committee.

Mr. LOOMIS's amendment was negatived, ayes 27, noes 79, as follows:—

AYES—Messrs. Archer, F. F. Backus, Bascom, Bowdish, Burr, Chatfield, Danforth, Flanders, Harris, Hart, Hotchkiss, Hunt, Hutchinson, Loomis, Mann, Morris, Richmond, St. John, Sanford, Sheldon, W. H. Spencer, Taft, Vache, Waterbury, Wood, A. Wright, W. B. Wright—27.

NAYS—Messrs. Allen, Angel, Ayrault, H. Backus, Baker, Bowen, Brown, Bruce, Brundage, Bull, Cambreleng, D. D. Campbell, Candee, Clyde, Conely, Cook, Cornell, Crooker, Dana, Danforth, Dorlon, Forsyth, Gardner, Gebhard, Graham, Greene, Harrison, Hawley, Hoffman, Hunter, A. Huntington, E. Huntington, Hyde, Jordan, Kemble, Kennedy, Kernan, Kingsley, Kirkland, McNitt, Marvin, Miller, Nelis, Nicholas, Nicol, O'Connor, Parish, Patterson, Peniman, Perkins, Porter, Powers, President, Riker, Ruggles, Salisbury, Shaver, Shaw, Shepard, Simmons, Stephens, Stetson, Stow, Strong, Taggart, Tallmadge, J. J. Taylor, Tilden, Townsend, Tuthill, Van Schoonhoven, Ward, Warren, White, Witbeck, Worden, Yawger, Young, Youngs—79.

Mr. ST. JOHN here moved the previous question on the second section, and there was a second, &c.

The question was then stated to be on Mr. HARRISON's amendment, as follows:—

§ 2 The supreme court of appeals shall be composed of a chief justice and seven associate judges, who shall hold their offices for eight years. The chief justice and three associate judges shall be elected by the electors of the state, on a general ticket; and four associate judges shall be selected from the class of justices of the district court having the shortest time to serve. Provision shall be made by law for the selection of such justices, from time to time, and for classifying those elected by the people, as that one shall be elected every second year.

This was negatived ; and the second section was adopted in the precise shape in which it was reported—ayes 63, noes 43 as follows:—

AYES—Messrs. Allen, Angel, Ayrault, H. Backus, Baker, Bowdish, Brown, Bruce, Brundage, Burr, Cambreleng, D. D. Campbell, R. Campbell, Jr., Clyde, Conely, Crooker, Dana, Danforth, Dodd, Dorlon, Forsyth, Gardner, Gebhard, Greene, Harris, Harrison, Hawley, Hoffman, Hotchkiss, Hunter, A. Huntington, Hutchinson, Jordan, Kemble, Kernan, Kingsley, Loomis, McNitt, Miller, Nelis, Nicol, Powers, Riker, Ruggles, Shaw, Sheldon, Stephens, Stetson, Taft, J. J. Taylor, W. Taylor, Townsend, Tuthill, Van Schoonhoven, Ward, Warren, White, Witbeck, Wood, A. Wright, W. B. Wright, Yawger, Youngs—63.

NAYS—Messrs. Archer, F. F. Backus, Bascom, Bergen, Bull, Candee, Chatfield, Clark, Cook, Cornell, Flanders, Hart, Hunt, E. Huntington, Kennedy, Kirkland, Mann, Marvin, Morris, Nicholas, O'Connor, Parish, Patterson, Peniman, Perkins, Porter, President, Richmond, St. John, Salisbury, Sanford, Shepard, Simmons, W. H. Spencer, Stow, Strong, Swackhammer, Taggart, Tallmadge, Vache, Waterbury, Worden, Young—43.

The Convention then took a recess.

AFTERNOON SESSION.

The third section of the report of the judiciary committee, as amended in committee of the whole, was read as follows:—

§ 3. There shall be a supreme court having general jurisdiction in law and equity.

Mr. MANN proposed to amend, by adding—"subject to such restrictions and regulations as shall be from time to time prescribed by law." Mr. M. said he had urged all that it was necessary to say, when he proposed this amendment in committee. He would merely add now, that in creating tribunals of this character, he wanted them under the control of the people, either directly, or through the legislature.

Mr. NICOL urged that however necessary these words might have been in the original section, they were unnecessary now, as the section stood amended. It would be tautology to say that this jurisdiction should be subject to legislative control.

Mr. RUGGLES differed with the gentleman as to the true construction of the section. He regarded these words as unnecessary to give the legislature power to control the jurisdiction of the court. He should vote for the amendment, as it placed the section in the shape in which it was before.

Mr. BROWN also urged that the Convention should come back to the original section, and restore the words struck out in committee, with a trifling alteration. He suggested that the section should read thus:—

"There shall be a supreme court having the same jurisdiction which the court of chancery and the supreme court now have, subject to such additions, limitations and regulations as may be prescribed by law."

Mr. O'CONOR said that however much he might be opposed to the plan of the committee, and whatever doubts he might entertain of its practicability, he thought it his duty to do all he could to give it the best possible chance of getting into operation and effecting the object of its framers. He did not see any great choice between the section as proposed to be amended and the original. They would both essentially effect the same object. If he had any choice between them, he preferred the original section.—Mr. O'C. went on to allude to the 16th section, which abolishes the higher courts down to and including the county court, as now organized—saying that when we came to that section, he intended to strike it out and insert a provision to the effect that the higher courts hereby constituted are a renewal and continuation of the corresponding courts heretofore existing—and that all actions depending in these courts shall be deemed to be pending in the corresponding courts hereby constituted. He explained why such a section should be inserted, and if it were, he added, it was no great matter what the wording of this section was.

Mr. SHEPARD, though he did not like this section as originally reported, nevertheless thought the amendment would not improve it.

Mr. CHATFIELD insisted that the section was right as it stood—and added, that he had proposed to give it that shape because he thought the original section was too restrictive, and gave the legislative power only to regulate the jurisdiction vested in the court. As it stood, it did not confer all jurisdiction on this court, but left the legislature to confer jurisdiction on other courts.

The question was announced to be on Mr. Brown's motion to add to the section, the words "subject to such restrictions, additions and re-

gulations as may from time to time be prescribed by law."

Mr. SWACKHAMER was not tenacious which of the amendments prevailed—but as the best legal talent in this body thought the construction doubtful, it should be settled. Mr. S. here went into a personal explanation. He alluded to the fact that when, the other day, after the conclusion of his speech on this subject, two gentlemen from New-York and Orange made some brief comments on it, their remarks were given in the published debates, but not his answer—that the gentleman from Orange (Mr. BROWN,) had made a satisfactory explanation, but that the other gentleman had not redeemed his pledge to do the same—that on another occasion he was erroneously made to say that he did not understand an amendment to one of his own, &c., &c.

These remarks drew out Mr. SHEPARD, and Mr. SWACKHAMER replied.

Mr. MORRIS' amendment was negatived.

Mr. BROWN's now coming up, Mr. O'CONOR raised the question whether his own amendment in regard to county courts as modified by Mr. STEPHENS, did not take precedence—having been offered in committee of the whole.

The PRESIDENT so ruled.

The proposition referred to, providing for president judges of county courts, with original jurisdiction (as heretofore published) was then read, and

Mr. O'CONOR urged some additional reasons to those heretofore given, in favor of some kind of county court with original jurisdiction between party and party. The common pleas of the city and county of New York particularly was one of great importance, and one in great favor there. And it was essential before passing upon the question of the supreme court, that we should know whether there were to be county courts, and what their character.

Mr. LOOMIS thought it quite as important to know first what kind of a supreme court we were to have, as that would materially affect the question of county courts. He hoped the Convention would take up these courts as we had begun, and in the order in which they were presented in this report. To be skipping about from one court to the other would produce confusion and delay. For one, he should vote against any kind of county court in this stage of our proceedings, and in this place.

Mr. RICHMOND urged that if we had county courts, we did not want thirty-two supreme court judges—and that hence this county court question should be first settled.

Mr. VAN SCHOONHOVEN insisted that the number of judges of the supreme court was not involved in this section. It related simply to the jurisdiction of that court, and should not be mixed up with any other question.

Mr. MARVIN concurred in this view of the question, and suggested that we should take up the 4th section, and have a direct vote on reducing the number of judges from 32 to 16, with a view of following up that motion, should it prevail, with another for county courts.

Mr. BROWN: Why not first settle the 3rd section?

Mr. MARVIN: Certainly, if that has not

been done. His idea was that if we determined to have 32 judges of the supreme court, the county courts might be regarded as gone. (A voice "I don't think so.") At any rate there would be no county court that any of us would care very much about.

Mr. TILDEN insisted that we could not determine the proper number of the supreme court, until we knew what force there was to be in the supreme court.

Mr. BROWN insisted that this third section had nothing to do either with county courts or with the number of judges of the supreme court. It merely settled the jurisdiction of that court.

Mr. TILDEN was not tenacious as to the order of proceeding, except in the particular we had mentioned.

Mr. STEPHENS explained the reasons why he offered this proposition—originally, and said that as it was likely to lead to embarrassment, if passed now, he would prefer, so far as he had any control over it, to withdraw it.

Mr. CAMBELENG thought the proposition incongruous here. He regarded it as a mere substitute of a president judge for a supreme court judge in holding county courts. For one, he preferred the supreme judge to the President judge—and he could have some kind of local court to discharge local duties. Under such a plan, one appeal would be saved. Hence he would adhere to the report of the judiciary committee—first settling the third section and then the 4th.

Mr. MARVIN denied that there would be any more appeals—under the system of president judges than under this system—and

This led to some conversation between Messrs. CAMBELENG, MARVIN, LOOMIS, JORDAN and CHATFIELD.

Mr. HOFFMAN urged the necessity of county courts with original and appellate jurisdiction, and the importance of establishing them in the constitution, instead of leaving it to legislation. He however opposed district county courts, with president judges. His plan was to have one judge in each county, who should be surrogate, to fix the minimum compensation so as to secure a good one—and then allow the larger counties to have one or more additional judges, whose minimum compensation would also be fixed—and then leave the legislature to confer jurisdiction. But he would vote against any proposition for county courts in this place.

Mr. SIMMONS gave his views on the question of county courts—which he regarded as essential in some shape

Mr. W. TAYLOR followed, indicating an amendment he intended to offer at the proper time, designed to leave it to the legislature, after a trial of the new system, to confer certain jurisdiction on the county courts.

After some further conversation,

Mr. STRONG gave notice of a motion to reconsider the section establishing the court of appeals.

Adjourned to 8½ o'clock to-morrow morning.

THURSDAY, AUGUST 27.

Prayer by the Rev. Mr. STOVER.

Mr. A. W. YOUNG presented the petition of females of Covington, Wyoming county, in favor of woman's rights. Referred to the committee of the whole having in charge the report of committee number eleven.

Mr. DUBOIS presented the petition of inhabitants of LaGrange, Dutchess county, against the establishment of free schools. Referred.

The PRESIDENT laid before the Convention a report from the clerk of the seventh chancery circuit in answer to a resolution of the Convention. Laid on the table.

The PRESIDENT also presented a communication from an association of teachers in Convention at Utica, against any diversion of the literature fund. Referred to the appropriate committee of the whole.

Mr. CHAMBERLAIN offered the following resolution which was agreed to:—

Resolved, That the Comptroller report to this Convention a statement in detail showing the amount of State stocks outstanding on the first day of September, 1846; for what purposes it was issued, and when payable; that for canal purposes in one column and that for all other purposes in another column. Also, the amount of funds belonging to the State available and unavailable, separately stated, and the sources from which it was derived, and the purposes to which it is applicable. Also his opinion when the unavailable portion may be realized.

THE JUDICIARY.

Mr. MANN moved a reconsideration of the

vote taken yesterday on his amendment to the third section of the judiciary report.

There were no objections and it was taken up.

The amendment was to add the words "subject to such restrictions and regulations as shall from time to time be prescribed by law," to the section providing for a supreme court.

Mr. WHITE called for the ayes and nays and they were ordered.

Some explanations were gone into between Messrs. BROWN, HUNT, O'CONOR, MANN and TOWNSEND.

Mr. WHITE then withdrew the call for the ayes and nays, and the reconsideration was agreed to.

Mr. NICHOLAS asked and obtained unanimous consent to change the record of his vote on agreeing to the second section yesterday, and he voted "no."

The Convention resumed the consideration of the judiciary report. The proposition in relation to county courts presented yesterday, was withdrawn.

Mr. BROWN offered an amendment as an addition to the 3d section creating a supreme court in the words following: "Subject to such additions, limitations and regulations as may be provided by law."

Mr. CHATFIELD opposed the amendment on the ground that it would leave it in the power

of the legislature to sever the jurisdiction of law and equity.

Mr. BROWN replied and contended that the amendment would not produce such a result. The legislature could not separate the jurisdictions, inasmuch as no place could be found for equity jurisdiction if the legislature even could separate it from the courts of law.

Mr. CHATFIELD raised a point of order but after some consideration and discussion it was found that he was mistaken as to the terms of the amendment.

Mr. RUGGLES said the objection of the gentleman from Otsego, to the amendment of the gentleman from Orange, applied with equal force to the section as it stands, which form the gentleman from Otsego desired to preserve. He urged the amendment of Mr. BROWN. There was nothing in the section as it stands to limit the equity jurisdiction of the supreme court.—He desired the amendment to prevail, because he thought there was much chancery business which ought to be done somewhere else—for instance in the surrogates' courts, where it would be done for less than half the expense it now costs. He alluded to the sales of infants' estates, &c., which could not be changed without such an amendment.

Mr. SIMMONS never would agree to a constitution which gave to the legislature the control of the judiciary, under the honeyed name of "regulation." He also strongly objected to the proposition to give the legislature the power to "limit" the judiciary. He thought the gentleman from Dutchess (Mr. RUGGLES) had not as General Jackson would say, "reflected on this with his usual sagacity." If such power were to be given to the legislature, they might hew away, little by little, the great remedial power of a court of judicature. They might limit and restrict individual rights in this way. He had no doubt that the legislature would have the right to regulate the proceedings, forms and pleadings of the court under the section as it came from the committee of the whole; further than this he would not go. He would vote for no provision which would not give the supreme court a voice in deciding upon the laws, and to determine whether an individual's rights had not been violated by the laws of the legislature. Nor would he allow the legislature to erect a shunpike to drive suitors into the court of appeals.

Mr. VAN SCHOONHOVEN would prescribe and define the power which the legislature might have over the jurisdiction of the court. The word "general" in the section as at present, would give an almost tyrannical power to the supreme court. He proceeded to illustrate his views at some length.

Mr. BASCOM would restrict the court in its equity powers by some provisions of law, giving the legislature power to extend it when demanded by the people. He proposed the following as an amendment to the amendment of Mr. BROWN:

§ 3. There shall be a supreme court having general common law jurisdiction, and such special equity jurisdiction as shall be enumerated and prescribed by

Bascom,) had proposed the introduction of a principle which he believed had not been contemplated, and could not receive the support of any other gentleman. It was simply to lock up the jurisdiction of equity to be doled out piece meal by the legislature from time to time as they might think proper. He had referred to the example of Massachusetts, where he (Mr. J.) believed there had been constant complaint against, and a continued struggle to rid themselves of that feature of their government. Now to come to the question: There were two classes of objectors, one who would not have the constitution fix the jurisdiction by any means, and another who would not leave it with the legislature, or suffer them to have anything to do with it at all. Between the two it was impossible to find any middle ground. He (Mr. J.) supposed the sole object was to vest in the supreme court the same jurisdiction as the supreme court and the court of chancery had possessed, and to put it as much and no more in the power of the legislature as it had been heretofore. He supposed it would be so as the section stood, at first, but to obviate all difficulty and question, the amendment offered by the gentleman from Orange (Mr. Bascom,) might be beneficial and he should support it by his vote. The supreme court and court of chancery had been created by a colonial statute; they were recognized in the former constitutions as existing and as having an established jurisdiction, such as was proposed by the king's bench and chancery in England. They had always been subject to the control of the legislature and he supposed ought to be to a certain extent. The legislature had altered the jurisdiction of the supreme court by extending that of the justices, they had altered the jurisdiction of the court of chancery by giving it new powers. They never had abused legislative power in this respect, and he had no fears they ever would.

Mr. HARRIS wished to make an observation in regard to this debate. He was not generally in favor of the application of the previous question and had not voted for it during the session, but he now appealed to the Convention if they were not here prepared to vote upon this question. The remarks which had been made upon this question were very pertinent, and he had listened to them with some degree of interest, but he believed if the roll should be called, there would not be found ten gentlemen who had attended to the remarks just made by the gentleman from Columbia. Then why should not the question be brought to a vote? We were constantly reminded by the people that our time is valuable, and that we should as fast as possible progress with our business.

Mr. SIMMONS was very much obliged to gentlemen of this Convention for their lectures, but when he wished to go to school he should choose his instructor. He supposed they were not to vote blindfolded on these important questions, because somebody—or some newspaper—out of doors, that knew nothing about it, thought they talked a good deal. He should avail himself of his right to speak as long and as often as he thought proper, without abusing the patience of the Convention. He then entered into an argument in opposition to the amendment.

Mr. JORDAN said the gentleman last up (Mr.

Mr. HAWLEY said he rose for the purpose of making a motion which in his limited experience in deliberative assemblies he had never before felt it his duty to make. He had always been opposed to the application of the previous question in ordinary cases, and had generally voted against it. He would not now resort to it, were it not that he believed that the progress of business demanded it. It could not have escaped the notice of the Convention or of the people throughout the state, that there is a class of members here who can talk from January to January on any and every question, or when there was no question legitimately under consideration. Indeed it appeared that they could talk longer and waste more time in speaking to just no question at all, than when confined to a particular point at issue. He believed that the working portion of the Convention were, and had been for some time past, ready to vote on this question, and wished no more time spent in useless debate. He spoke as he felt on this subject; and he would not follow the example of his learned friend from Albany, (Mr. HARRIS) by ever alluding to this abuse in complimentary language. Neither did he wish to treat the gentlemen with disrespect. But when gentlemen rise here in the very teeth of the decided disapprobation of a large majority of the Convention, consume its valuable time, object to being "lectured" therefor, and declare that they will "choose their own school master," he held it to be treating the business portion of the Convention with marked contempt. Mr. H. said he arose to make a motion to advance the business of the Convention—to husband the small portion of time still left to do the business for which it assembled, and to prevent, if possible, at this late day of the session, the Convention from stultifying itself for want of time to perform its duties. He moved the previous question on the section under consideration.

The demand for the previous question was seconded. 62 to 9, and the main question was ordered to be now put.

The yeas and nays were ordered on the amendment of Mr. Brown to restore the section as printed with the amendment given above—and being taken, there were yeas 38, nays 63, as follows:—

AYES—Messrs. Allen, Angel, Aurault, Baker, Bergen, Brown, Brundage, Crooker, Cuddeback, Dana, Dorlon, Dubois, Gardner, Graham, Greene, Hawley, Hunter, A. Huntington, Hutchinson, Jordan, Kemble, Loomis, Mann, Murphy, Nell, S. Nicoll, Patterson, Powers, Rhodes, Ruggles, Stephens, Swackhamer, J. J. Taylor, W. Taylor, Tuthill, Van Schoonhoven, Warren, W. B. Wright—38.

NOES—Messrs. Archer, F. F. Backus, Bascom, Bowditch, Bruce, Bull, Cambreleng, D. D. Campbell, R. Campbell, Jr., Candee, Chatfield, Clark, Clyde, Conely, Cook, Cornell, Danforth, Dodd, Flaunders, Forsyth, Gebbard, Harris, Harrison, Hart, Hoffman, Hotchkiss, Hunt, E. Huntington, Hyde, Kingsley, Kirkland, Miller, Morris, Nicholas, O'Connor, Parish, Penniman, Porter, President, Richmond, Riker, St. John, Sanford, Shaw, Sheldon, Shepard, Simmons, E. Spencer, W. H. Spencer, Stanton, Nelson, Stow, Strong, Taft, Taggart, Tallmadge, Townsend, Vache, Ward, Waterbury, White, Willard, Witbeck, Wood, A. Wright, Yawger, Young, Youngs—63.

The amendment next in order was that offered by Mr. BASCOM.

Mr. WARD called for the yeas and nays, and

they were ordered, and there were yeas 10, noes 100.

Mr. MANN'S amendment, heretofore withdrawn, was then voted upon and negative!—43 voting in the affirmative and 54 in the negative.

The PRESIDENT then announced the question to be on concurring with the report of the committee of the whole in its amendment of the 3d section, which now stands thus:

"There shall be a supreme court having general jurisdiction in law and equity."

Mr. KENNEDY called for the yeas and nays and there were yeas 96, nays 14:

NOES—Messrs. Bascom, Bergen, Bull, Gardner, Mann, Marvin, Murphy, Shepard, Simmons, Stow, Swackhamer, Taggart, Tuthill, Worden.

Mr. JORDAN moved the following as an additional section:

§ 4. The legislature shall have the same power to alter and regulate the jurisdiction in law and in equity, as they have heretofore possessed.

This section, he said, would place the jurisdiction over infants, drunkards, insane persons, &c., which the legislature had heretofore exercised. It was not subject to the objections urged to Mr. Brown's amendment, not being so general and extensive in its terms.

Mr. CHATFIELD made some remarks on the observations of Mr. HAWLEY [who was not now present] with which that gentleman prefaced his motion for the previous question. He asked what that gentleman had ever done to authorize him to call himself a "working member?" What amendment had he ever proposed—what part had he ever taken in the business of the Convention to justify him in lecturing gentlemen on this floor? He characterized Mr. HAWLEY's remarks as impudent, and proceeded in that strain for some time, concluding by offering the following amendment—saying that he should vote against it:—

"But proceedings in law and equity shall not be separated as distinct jurisdictions, to be administered by different judges, but provision shall be made by law for blending them in a common system of pleadings, proofs and practice, as far as shall be consistent with the ends of justice."

Mr. JORDAN said if the Convention was disposed to fix the jurisdiction of this court by an iron rule which could not be changed, he had no objection. He withdrew his proposition.

Mr. O'CONOR offered the following as sections 4 and 5:

§ 4. There shall be in each county a court of common pleas and a court of general sessions of the peace; and one or more county judges as may be prescribed by law.

§ 5. The State shall be divided into a convenient number of districts, subject to alteration by law, as the public good may require; for each of which districts there shall be one or more president judges, to hold their offices for eight years, who shall be authorized to hold their county courts in the several counties of their districts as may be prescribed by law.

Mr. BASCOM moved the following as an amendment:

There shall be a court of common pleas with such power and jurisdiction as shall be prescribed by law.

One of the judges thereof shall be elected in each of the counties of the state entitled by its number of inhabitants to a member of Assembly.

The state shall be divided into judicial districts so as

to embrace as near as may be, five of the counties entitled to elect a judge of said court.

There shall be a circuit session of the said court by one of the judges thereof in each of the counties, if a judicial district shall seem proper.

There shall be banc sessions of the said court by four judges thereof in the several counties of the district, as often as the judges thereof shall deem proper.

An appeal shall be from the decision of the four judges in banc to the court of appeals; but the party appealing shall recover no costs upon his appeal.

For the trial and decision of criminal causes there shall be associated with the judge of the common pleas the surrogate of the county and one justice of the peace of the county, or in the absence of the surrogate two justices of the peace.

The Governor may detail judges for judicial service from any of the judicial districts to any other district.

Mr. KIRKLAND offered the following as an amendment to Mr. BASCOM's amendment:

There shall in each county be a county court, which shall have the jurisdiction now existing in the county courts, subject to modification and alteration by law, and as such equity and other jurisdiction as may be conferred by law.

In the first judicial district, to be composed of the city and county of New York, there shall be four district judges of the county court—each of them shall alone hold county courts in said districts for the trial and disposition of civil cases. In criminal cases two of the members of the city of New York shall be associated with any one of said judges.

In each of the other judicial districts, of which there shall be seven to be established by law, there shall be a district judge of the county court; he shall alone hold courts for the trial and disposition of civil cases in each county in his district. In criminal cases the two county judges shall be associated with him. The term of office of said judges shall be eight years.

The district judges of one district may hold courts in any other district, and shall do so when required by law; and said district judges may be authorized by law to hold circuit courts.

There shall in each county be a first judge and an associate judge; they shall be elected by qualified electors of such county, and shall hold their offices for four years.

The first judge shall have and exercise the powers and duties of surrogate in his county. Each of said county judges shall also have and exercise such other powers and jurisdiction as may be conferred by law.

Provision shall be made by law for cases of vacancy in the office of said first and associate judges, or either of them, and for the case of the absence or inability of them, or either of them, to perform any of their official duties.

These propositions were debated at some length by Messrs. BASCOM, RICHMOND, BROWN, O'CONOR, KIRKLAND, MARVIN, LOOMIS, STOW and SIMMONS.

Mr. STRONG, in order to get a vote on the question whether we have county courts, called for a division on Mr. KIRKLAND's amendment—so as to take the question first on that precise point. That being settled one way, we could go on, and if possible, agree as to the kind of county court; and if we could not agree upon that, it would then be necessary to leave it to the legislature.

Mr. HOFFMAN would, if he could, have the justice that was administered, the justice of the state, and of localities. Whilst he would give the supreme court a jurisdiction as far down as possible, you could not go clear down. You must have common pleas with general jurisdiction to try small actions, and some sort of appellate jurisdiction from justices courts, and you must re-try the cause either at the court house or in the town. But he could not vote for this proposition. He disliked a one man court; but he preferred the judgment of one man who un-

derstood the subject to that of any number who did not. He would go for one, two, or three well-paid county judges—but he would vote for no county judges if you put over them a presiding judge, going from county to county, taking all the pay and possessing all the intellect, and leaving the local judge nothing but a block. The proposition of the gentleman from New-York was, a presiding judge and two dummies, not to be paid, not to think. Mr. H. could not be seduced into that, nor would he leave this matter to the legislature, if we could agree to anything here; and with patience he thought we could. You should have a county court with one or more judges, fixing the minimum pay, and putting on them the duties of surrogate—leaving their power and jurisdiction to the legislature; and you might so far direct the legislature as to say that all fees and perquisites should be paid into the county treasury. But so long as gentlemen brought forward only this horseback court, with a presiding judge, he should be compelled to vote against them all, until he saw what kind of state courts we could make out of these 32 judges, or some part of them. Having seen how far you could stretch this system into the localities, he should then be compelled to vote for such county courts as could be agreed to. If we could not agree, then we had no alternative but to turn it over to the legislature.

Mr. MORRIS had an amendment which he should offer at the proper time. It provided for the election in each county of a presiding judge of the county courts—who should be surrogate, and perform such other duties as should be prescribed by law—county courts to be held in each county by the presiding judge and the justices of the peace—any two of whom, with the presiding judge, to hold courts of appellate jurisdiction over justices of the peace—over the proceedings of officers of towns and counties, to try persons charged with offences, the punishment of which should not exceed ten years in the state prison—and to have such other powers and jurisdiction as may be conferred by law.

Mr. CROOKER remarked that this was his proposition exactly, only in different words.

Mr. SIMMONS read a proposition which he designed to offer at the proper time—providing that the state shall be divided into four judicial districts—with four justices of the supreme court in each district, and as many more in the district composed of New-York city as the legislature may authorize, not to exceed its proportion in point of population—their time to be eight years—one in each to go out every two years—also four judges of the superior court in each district, &c., &c.

Mr. JORDAN indicated an amendment he desired to offer to Mr. CROOKER's proposition—so as to leave its jurisdiction in criminal matters more to the control of the legislature after a fair trial of the competency of the supreme court circuits to dispose of this business.

Mr. W. TAYLOR alluded to the amendment he had heretofore offered, as designed to effect that precise object.

The question was now taken on Mr. KIRKLAND's proposition to amend, and it was negatived—ayes 31, noes 73, as follows:

AYES—Messrs Ayrault, Bergen, Bull, R. Campbell, jr., Candee, Gardner, Hunt, E. Huntington, Hutchinson, Kennedy, Kirkland, Marvin, Nicoll, O'Connor, Penniman, Perkins, Porter, Richmond, Riker, St. John, San ord, Shepard, W. H. Spencer, Stow, Strong, Taggart, Tallmadge, Tilden, Vach, White, Young—31.

NAYS—Messrs Angel, F. F. Backus, Baker, Bowdish, Brown, Bruce, Brundage, Burr, Cambreleng, D. D. Campbell, Chatfield, Clark, Clyde, Conely, Cook, Cornell, Crooker, Cuddeback, Dana, Danforth, Dorlon, Dubois, Flanders, Forsyth, Gebhard, Graham, Greene, Harris, Harrison, Hart, Hawley, Hoffin, n Hotchkiss, Hunter, A. Huntington Hyde, Jordan, Kemble, Kingsley, Loomis, Miller, Morris, Nellis, Nicholas, Parish, Patterson, Powers, President, Rhoades, Rugales, Shaw, Sheldon, Simmons, E. Spencer, Stanton, Stephen, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Townsend, Tuthill, Van Schoonhoven, Ward, Warren, Waterbury, Willard, Witbeck, Wood, A. Wright, Yawger, Youngs—73.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. BASCOM'S amendment came up next. Mr. B. was not very desirous that his amendment should be adopted now. He desired that it should be within his control hereafter, when the 13th section had been decided upon.

The amendment was negatived without a division.

Mr. O'Connor's proposition to amend was also negatived—ayes 35, noes 57, as follows:—

AYES—Messrs. Angel, Ayrault, Bergen, Bruce, Bull, R. Campbell, jr., Candee, Cornell, Crooker, Gardner, Harrison, Hotchkiss, Hunt, Hutchinson, Kirkland, Marvin, Maxwell, Murphy, Nicoll, O'Connor, Parish, Porter, Richmond, Riker, St. John, Sanford, W. H. Spencer, Stow, Strong, Taggart, Tallmadge, J. J. Taylor, Van Schoonhoven, Waterbury, White—35.

NAYS—Messrs F. F. Backus, Baker, Bascom, Bowdish, Brown, Brundage, Burr, Cambreleng, D. D. Campbell, Chatfield, Clark, Clyde, Cuddeback, Dana, Danforth, Dodd, Dorlon, Dubois, Flanders, Forsyth, Gebhard, Graham, Greene, Hart, Hoffman, Hunt, R. A. Huntington, Jordan, Kemble, Kingsley, Loomis, Miller, Morris, Nellis, Nicholas, Patterson, Powers, President, Rugales, Salisbury, Shaw, E. Spencer, Stanton, Stetson, Swackhamer, W. Taylor, Townsend, Tuthill, Ward, Warren, Willard, Witbeck, Wood, W. E. Wright, Yawger, Young, Youngs—57.

Mr. BASCOM gave notice of a motion for the reconsideration of the two last votes.

Mr. MORRIS offered the following as sections 4 and 5:—

§ 4. There shall be elected in each county of this state by the electors thereof, a president judge of county courts, who shall perform the duties and exercise the powers of surrogate for such county, and such other duties and powers as shall be prescribed by law.

There shall be in each county a county court, to be held by the president judge and the justices of the peace; any two of the justices of the peace with the president judge may hold such court.

§ 5. The county court shall have appellate jurisdiction over the proceedings of justices of the peace, and over the proceedings of officers of the towns and counties; and may try persons charged with offences, the punishment of which shall not exceed imprisonment in state prison for ten years, and may have such other and further powers and jurisdiction as may be prescribed by law.

Mr. CHATFIELD and Mr. STETSON said they were obliged to vote against all propositions for the establishment of county courts until the organization of the supreme court was determined, although in favor of a county court of some description. They hoped the proposition of Mr. M. would be withdrawn.

Mr. MORRIS acceded to this request, after explaining his proposition, and giving his views in relation to the formation of county courts.

Mr. M. in the course of his remarks said, his proposition was on all fours with the speech he inflicted on the Convention a week ago on Saturday, when he indicated at length his views of the judiciary system. Then he sent up no sections, but his remarks were in perfect accordance with these sections. The proposition of the gentleman from Cattaraugus (Mr. CROOKER,) was made some five days after that speech. Still, he would not charge his friend with plagiarism, for he did not believe the gentleman listened to that speech. But his friend could no more charge him with plagiarism, than Mr. M. could him—and that both should happen to alight upon the same thing, only showed that the proposition had the rare merit of uniting the views of at least two members of the convention.

Mr. BASCOM moved to pass over to the 13th section. Lost.

The fourth section was then read, as follows:

§ 4. The state shall be divided into eight judicial districts, of which the city of New-York shall be one. The others to be bounded by county lines: and to be compact and equal in population as nearly as may be.—There shall be four justices of the supreme court for each district, and as many more in the district composed of the city of New-York, as many from time to time be authorized by law, but not to exceed the number of justices in the other districts in proportion to their population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

Mr. RICHMOND moved to strike out "four" in the 4th line, and insert "two." He made this motion with a view to reduce the burthens of the people in supporting a judicial system with so large a number of supreme court judges in addition to the county courts, which he could not doubt would be established. Sixteen judges of the supreme court would be amply sufficient, he believed, to perform all the business of the state in connection with county courts.

The motion to amend was lost.

Mr. MARVIN offered the following substitute for the entire section:—

There shall be a supreme court. The state shall be divided into four districts; each district shall be divided into three circuits. There shall be four justices of the supreme court in each district. They shall be classified so that the term of office of one of the justices in each district shall expire at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years. The chief justice and the said four justices, or any three of them, may hold general terms of the said court in the said district, and any of whom may hold special terms. The chief justice or any one of the justices of the supreme court may hold circuit courts, and preside at the courts of oyer and terminer in any county in the state.

Motions to amend the original section taking precedence.

Mr. MANN moved to amend the original section, by striking out from the word "law," in the 7th line, to the end of the sentence.

This question was discussed by Messrs MANN, SHEPARD, LOOMIS, TILDEN, STEPHENS, BROWN and PATTERSON.

Mr. NICOLL enquired if the judiciary committee intended that the city of New-York should have an additional judge as often as its population entitled it to one, or once in ten years?

Mr. RUGGLES thought the increase would not take place, except once in five years, from the reading of the 14th section. An enumeration must be had, of course, to determine the population, either by the state or the United States.

Mr. STETSON understood that the parcelling out of the supreme judges in districts to different portions of the state did not break up the unity of the court. The city of New York increased in a much greater ratio than the country, and would soon be entitled to an unequal proportion of the court; but the judges were not to belong to the city especially, except as it was entitled to them, in the distribution of power by reason of its population. The question was if there was force enough provided for the business of the entire state?

Mr. HARRIS said there was no disposition to deprive the city of New York of an efficient judiciary. The report had allowed that city, as it had all other large cities in the state, to retain its local courts, and he thought no more could be demanded.

Mr. VAN SCHOONHOVEN thought there should be no distinctions or exceptions of any kind whatever in forming a judiciary system for the state—there should be uniformity throughout. If it was necessary that the city of New

York should have greater force than the report gives them under its arrangement for all other districts, why not send them an additional number of judges under this supreme court plan, and sweep away all other courts now existing under different organizations? So many different systems were perplexing to persons in the country who had suits in these city courts.

Mr. NICOLL said there were issues of fact enough in the city of New York to occupy constantly seven of these supreme court judges. If the Convention was disposed to grant them this number the city would not object. But he contented that the peculiar circumstances existing in the city of New York—a city which possessed one-half or more of the entire wealth of the state—entitled her to a permanent local judicial organization. There was constant necessity for application to judges, and a roving commission was not at all competent to perform the business arising there.

Mr. CHATFIELD moved to amend the amendment by striking out from the word "district" in the fifth line to the word "population" in the eighth line.

Messrs. HOFFMAN and WATERBURY continued the debate; but without taking any question the Convention adjourned to half past 8 o'clock to-morrow morning.

FRIDAY, AUGUST 28.

Prayer by the Rev. Mr. STOVER.

Mr. GEBHARD presented a petition from Olney Briggs, of Schoharie, against the use of religious books and ceremonies in common schools and academies, against Sunday laws, the prohibition of the passage of laws founded on the dogmas of the bible, &c.

Mr. PATTERSON enquired the name of the petitioner.

The Secretary replied, "Olney Briggs."

Mr. CROOKER said he was a member of the Convention of '21.

Mr. O'CONOR moved to lay the memorial on the table, and 42 voted in the affirmative and 20 in the negative, being less than a quorum.

Mr. CROOKER hoped a respectful reference would be given to the petition, notwithstanding the absurdity of some of its notions.

The ayes and nays having been ordered on the motion to lay on the table, it was carried, yeas 74, nays 19.

Mr. MURPHY presented four memorials from the county of Kings against electing judges by the people. Referred to the appropriate committee of the whole.

The PRESIDENT laid before the Convention a report from the assistant register of the 1st circuit, in relation to the sale of infant's estates, &c. Referred to the committee of five.

The PRESIDENT also presented a report from the clerk in chancery for the 6th circuit, of the moneys and securities in his hands. Laid on the table.

THE JUDICIARY.

Mr. STETSON gave notice of a motion to reconsider the vote taken on the second section

of the report, for the purpose of enabling him to offer the following amendment: To strike out "four," in the third line, and insert "three;" and after "serve," in the fourth line, add, "and two from the class having four years to serve."

Mr. SWACKHAMER moved a reconsideration of the vote adopting the 3d section.

Mr. RICHMOND, the same motion with regard to his amendment proposed yesterday to the 4th section.

Mr. KIRKLAND, the same with regard to his proposition as to the 4th section.

These motions lie on the table by consent.

The Convention resumed the consideration of the judiciary reports.

The amendment to the amendment pending at the adjournment last night was rejected.

The amendment then coming up, Mr. MANN called for the yeas and nays, and they were ordered.

Mr. JORDAN explained the reasons why the committee had introduced this provision.

Mr. TILDEN agreed that New York would pay four-tenths of the expense of the system, and therefore she ought not to be limited as was proposed by the section, in her representation in the supreme court.

Mr. SHEPARD said no three men in the world could do the examiners' business for the city of New York, and yet their duty would be added to the duties of the judge.

Mr. BROWN said the people would not consent that New York should have a greater amount of representation in proportion to her population, in the supreme court, than the other portions of the state, and he regretted that other

matters had been dragged into the discussion. He said ours was a representation of people, and not of property. New York business was productive of profit to New-York, while it was drawn from the country, and in case of war, or invasion, there were strong arms and stout hearts in the country to defend New-York. If the business in the courts at New York accumulated beyond the powers of the judges there, other judges could be sent from the country to assist in disposing of the arrears; but much of the arrears was attributable to the mode in which the business was done in New York.—Whenever he went down to the city to argue a cause, he rose with the sun, and had to walk about the streets, or stay at his hotel, until 10 o'clock, for the courts did not open until that hour; and when the sun had got a little beyond the meridian—at three o'clock—the courts adjourned. [A voice.—Yes, and how do they work when they are sitting?—not two hours work in five.] Now suppose Judge Ruggles, when he was on the bench, had worked in this manner, when would he have got through the business in his circuit? Why, he might have sat till doomsday. In relation to the work of examiners, to which Mr. SHEPARD had called their attention, he said that the examiners there were in the habit of putting twice as much matter in their examinations as was necessary. Half of the examinations with which they filled their ponderous documents had no more relevancy than chapters from the Alcoran. But the proposed plan would require the judges to take this testimony, and they would reject at least half the testimony now taken, and thus half the time would be saved. It was as pleasant to get up early in the city of New York as in the country, and the judges therefore should open the courts earlier. But how were the morning hours spent? Why, from 8 to 10 in the pleasant business of taking fees in chamber to the amount of from \$10 to \$20 in the course of the morning. This business, too, the proposed system would interrupt, for it was proposed to give the judges competent salaries directly out of the treasury, and the judges would have more time to attend to the trial of issues. They could open their courts at 8 o'clock, as in the country.

Mr. CROOKER: In my part of the country we begin at half-past seven.

Mr. BROWN said that was perhaps peculiar to that part of the country.

Mr. TILDEN regretted that the gentleman from Orange did not meet his argument. The gentleman had run into matters with which we had nothing to do, and for the purpose of preventing a fair decision of this question. He went on to show that the judges in New York sat all the year round, and consequently they had not the time and opportunity which the county judges had to read and prepare decisions, and they were compelled to take the morning hours. The bar too required time to prepare their cases and arguments. But the loss of time in New York was greatly exaggerated. The circuit court very often sat until a late hour of the evening; and he undertook to say that the judges of New York sat a larger number of hours and days in the year than any other.

Mr. SHEPARD briefly replied to Mr. BROWN.

Mr. JORDAN was disposed to provide amply for the city of New York. It was not a fair representation that the judges of the district of New York were to be all the judges they were to have there. Judges from the other districts would render assistance in case of necessity. But the fact was, as stated by the gentleman from Orange, (Mr. BROWN,) that the judges were engaged in the agreeable morning business of taking fees; and not in the morning only, for one judge of the common pleas and one of the superior court, were continuously employed in that business. But the plan before the Convention would abolish that business—and it was nine-tenths of the business they had to do. In New York these chamber duties had so absorbed the attention of the judges, that they never could have more than two at any one time in the common pleas, and one in the superior court engaged in the trial of issues; but this new system would give the services of these other judges to the business of the court. He might have made the same remarks too, of the Vice Chancellor. The whole however he trusted would be made more satisfactory to the people.

Mr. CROOKER would be willing to let New-York have her own way pretty much in these matters; and he would in the same spirit ask New-York to let the counties have their own county courts. This, however, was a state establishment that was under consideration. He had no doubt New-York had more business than other portions of the state; but go to the lumbering districts—his own for instance, which was situated on the Allegany river—and it would be found that they had four times more than the old agricultural counties. But would it be tolerated that they should ask for an increase of judges on that ground? The same argument would operate in favor of an increased representation in both the senate and assembly, to pass the laws—half of those with which they lumbered up the statute book originating in New-York. For the judiciary was as much a state establishment as the legislative department. If New-York required it, give them local courts; but she should not have more than her proportionate share of these state establishments.

Mr. STEPHENS contended that New-York should have as many judges as were necessary to dispose of her business.

Mr. RUGGLES was in favor of striking from the section the words which the gentleman from New York objected to. He did not regard it as some gentlemen did, giving New York an advantage by giving her a larger number of judges; nor did he look upon judges as representatives of the people. They were appointed to decide causes between individuals, and the relation between constituent and representative did not exist. He thought New York might be safely entrusted with the appointment of these judges, if the business of New York should require them, for the judges should be in proportion to the business to be done. He agreed however that there should be no increase of the judges, if the whole number of the judges of the state were adequate to all the business in the state.

Mr. NICHOLAS said the alternation of the

judges in holding circuits should be provided for by law as had been suggested, and he had prepared an amendment to the eighth section to attain this object. He believed that the thirty-two judges would be a sufficient judicial force for the state, and he was opposed to authorizing the legislature to increase the number of these judges. If the city and county of New York should require more judicial power to dispose of local business, it should be provided for by local courts, which the legislature should have the power to erect.

Mr. HOFFMAN said he should vote for the article as it stood and gave his reasons for doing so.

Mr. MORRIS took similar ground.

Mr. SIMMONS said recreation was necessary for judges unless they were constructed of leather with steel springs. He thought the New York judges did as much as they could. Judge Cowan tried to do more, and killed himself.

Mr. WATERBURY said in looking over this subject he had found that while the business of the city of New-York was done by five courts, with salaries in the remainder of the state there were 2,000 courts sustained alone by fees, the great amount of which never entered into the annual account of expenses for courts. He desired to have this matter arranged so that the lurther should be equalized; and the city of New-York should bear in mind that if they had a large amount of litigation, the remote and peaceable portions of the state had an interest in it. He thought the gentlemen from New York should not be opposed to allowing a country judge to come there and perform their business. To show that it might be for their interest to have such an arrangement, he alluded to the fact that the judge of the third circuit came here from the county of Delaware two years ago, and found the calendar behind with 400 causes, 200 of which belonged to the city of Albany, and by devoting a great many hours to his business he had worked up nearly the whole of the 400 causes. This was the way to do it, and if the city should have a country judge sent down there, they would find their business carried right through.

Mr. HUNT said, all litigation springs from trade—the transfer of property; consequently the judicial force must be strongest wherever the amount of trade is greatest. You might as well say that every section of the canal should have an equal number of lock-tenders, as that each section of the state should have the same judicial force without regard to the amount of trade there. New York was the place where a great portion of the trade of the state was transacted, by agents who had little personal interest in it; and the same remark applied to much of the litigation there. Ought the house holders living near a public market to bear the whole burden and expense of settling the quarrels that may arise among those who come there to sell their produce?

Mr. O'CONOR argued in favor of placing the city of New York in a position by which she would be enabled to elect so many judges of the supreme court as would be able to transact its business.

Mr. HAWLEY said that it was with reluc-

tance that he rose to make a motion similar to that which he felt compelled to make yesterday, and for the same reasons which he then gave for so doing. He did not intend that his remarks then, relative to the waste of time in debate, should have any particular personal application. They were general in their nature, and applied to a certain portion of the Convention as distinguished from a certain other portion. Yet he was perfectly willing that any gentleman who thought the coat would fit him should put it on. Soon after he moved the previous question yesterday, he was called from his seat a few moments to transact business with a gentleman from another state, who was about to leave in the cars. On his return, he was informed that the gentleman from Otsego, (Mr. CHATFIELD,) had made a personal attack upon him. He regretted that he was absent when his action and motives had been thus assailed. He could assure the gentleman from Otsego that in his remarks yesterday, he did not assume that he (Mr. H.) belonged to the class which he had designated as *working members*. He had not regarded it as necessary, in order to be considered a working member by his constituents, to waste the time of the house by rising frequently in his place to announce to the Convention and to the people, "that he was constantly in his seat attending to his duties here," as the gentleman from Otsego has been careful to do. He had frankly admitted that that gentleman had been industrious from the very commencement of the session, and had kept his constituents advised of the fact, by announcing every few days in debate "that he had been almost constantly in his seat since the Convention assembled, and that he had seldom been seen outside the bar of the house." The gentleman yesterday complained that he (Mr. H.) had done nothing to entitle him to be considered a working member,—had brought forward no new propositions—had made no amendments, &c. Mr. H. confessed that this was true to some extent. He had not, like the gentleman, been in the habit of bringing forward new propositions every day which were matters of mere legislative detail, and not proper subjects of constitutional provision; thereby lumbering up our way—blocking the wheels, and retarding the progress of this body. Had he presented an elaborate report to this house, and had he after that report had been considered and amended by the Convention, been constrained to say, as the gentleman had said on this floor, "that there was scarcely a shred of the original left—not even enough for him to swear by," he might, perhaps, be considered by that gentleman as one of the business members. He had made no such pretensions—he would not arrogate so much to himself. He felt bound, in justice to the gentleman, to say—that he did not intend yesterday to charge him with making long speeches. Unlike some others, who start and pursue a single idea for hours, without being able at last to reach it, that gentleman generally made his point, spoke directly to it—(sometimes stopping even short of it)—then rung it through all the changes of which his fertile imagination is capable—and closed by ringing the party bell and taking his seat. Yet on a vote he was generally defeated. On the question

"shall the main question be now put," taken yesterday, he (Mr. H.) believed that the gentleman from Otsego was found standing "solitary and alone."

Mr. CHATFIELD: No. One gentleman voted with me.

Mr. HAWLEY: Very well—some working man, I suppose. Mr. H. said he did not feel disposed to question the motives of any gentleman in regard to this abuse; but it was too well known that a great deal of the time of the Convention was wasted in useless debate—an end to which it seemed impossible to find without a resort to the previous question. Hoping that the gentleman from Otsego would appropriate to himself no more of his remarks than he was justly entitled to, he moved the previous question on the amendment proposed by the gentleman from New-York.

Mr. MORRIS hoped the gentleman would withdraw his amendment to allow the Convention to settle the number of which the court shall consist.

Mr. HARRIS withdrew his amendment.

Mr. MORRIS then moved to strike out of the 1st line, the word "eight" and insert "ten," and to strike out from the second line the word "four" and insert "six." He said his object was to constitute the court of ten members, and to make a majority (6,) elective by the people, to give them a preponderance over the judges from the supreme court; for if it were not so, it would be very difficult to get a reversal of an opinion pronounced in the supreme court.

The previous question was seconded, 53 to 11, and the main question was ordered to be put, when the amendment of Mr. MANN was lost, as follows:

AYES—Messrs. Allen, Bergen, Brundage, Conely, Cornell, Harris, Harrison, Hunt, Hyde, Jones, Kemble, Kennedy, Mann, Murphy, Nicoll, O'Connor, Riker, Ruggles, Sanford, Shepard, Stephens, Swackhamer, Tallmadge, W. Taylor, Tilden, Townsend, Vache, Van Schoonhoven, White—29

NAYS—Messrs. Archer, Ayrault, F.F. Backus, Baker, Bascom, Bowditch, Brown, Bruce, Bull, Burr, Cambreleng, D. D. Campbell, R. Campbell, Jr., Candee, Chamberlain, Chaufield, Clark, Clyde, Cook, Crooker, Cuddeback, Dana, Dodd, Dorlon, Dubois, Flanders, Forsyth, Gebbard, Graham, Hart, Hawley, Hoffman, Hotchkies, Hunter, A. Huntington, K. Huntington, Hutchinson, Jordan, Keenan, Kingslev, Kirkland, Loomis, McNeil, Marvin, Miller, Morris, Nelis, Nicholas, Parish, Patterson, Penniman, Porter, Power, Rhoades, Salisbury, Shaw, Simmons, E. Spencer, W. H. Spencer, Stanton, Tetson, Stow, Strong, Tait, J. J. Taylor, Warren, Waterbury, Willard, Witbeck, Wood, Worden, A. Wright, W. B. Wright, Yawyer, Young, Youngs—77

Mr. LOOMIS moved to strike out the words which had been under discussion and insert—"But not to exceed in the whole such number in proportion to its population as shall be in conformity with the number of such judges in the residue of the state, in proportion to its population." He said this was designed not to change the purport, but the phraseology of the section to make it more clear and definite.

Mr. HARRIS thought New York should have two extra judges, if the legislature should see fit to give them, and hence he moved an amendment to produce that result, by inserting "not exceeding two" after the word "law."

Mr. TILDEN thought that would put them in a worse condition than the amendment of the

gentleman from Herkimer, for it gave them six permanently, when they might in the course of a short time, by an increase of population, be entitled to more.

Mr. HARRIS withdrew his amendment as it was not to the taste of the gentleman from New York.

Mr. STEPHENS opposed the amendment of Mr. Loomis.

Mr. BROWN was desirous to give to New York a good judicial system; and he suggested an amendment to increase the number of judges with every increase of a certain amount of population.

Mr. NICOLL renewed Mr. HARRIS's amendment, and argued in favor of it. He was willing to take half a loaf if he could not get a whole one.

Mr. STRONG did not see the necessity on every question to enquire if the members from the city of New York would go for it, as was the fashion with some. Much had been said of the amount of business done in the city of New York which would really lead to the conclusion that that city was embroiled in an interminable list of lawsuits. But he contended that the country was interested in much of this business. He also noticed the manner of dispatching business in New York. The court was called for 10 o'clock, A. M., and at 11 the judge came in and staid only till three. In his county the courts opened at 8 o'clock and very often sat till 10 at night, and when Judge Cowen was on that circuit, he opened his court at 6 o'clock. (Laughter.) The lawyers who were not used to it, came running in, putting on their coats as they ran—but in a day or two he brought them to the work and they got along very well. And in respect to the necessity of time for preparation of causes by the bar, as spoken of by the gentleman from New York (Mr. TILDEN), he did not think it was necessary to give them from 3 P. M. to 10 A. M., for the lawyers could prepare one case while others were trying another. It had been suggested to him that the state of things in New York was attributable to a scarcity of lawyers (laughter); if so, he would advise them to get some common sense lawyers (laughter) from old Essex, Monroe and Erie, and they would do up their business. He ventured to say that country lawyers from Monroe could go into court and argue a case without requiring from 3 P. M. to 10 A. M. to prepare for five hours court business—they would be prepared with their briefs to argue the cases as they arose.

Mr. BAKER observed that of what had been said this was the sum: "The law came by reason of transgression," and the delegates from New York having shown that the men of that city are sinners above all those that dwell in the state, they are therefore entitled to a number of judges in proportion to the excess of their transgressions.

Mr. SHEPARD contended that New York would require a greater judicial force than was proposed to be given to her.

Mr. LOOMIS said the amendment to the amendment involved the same principle as that just voted upon by the Convention, though in a less objectionable form—inasmuch as it fixed a

limit to the excess of power proposed to be conferred on New York. It proposed to give New York the selection of a greater number of judges than any other portion of the state, and that the state should pay them. It contemplated also the idea that these judges were to be district judges—whereas the report of the judiciary committee made them judges of the supreme court of the state, and was based on the supposition that 32 were enough to do all the judicial business of the state, by a proper arrangement of terms.

Mr. VAN SCHOONHOVEN opposed the amendment.

The amendment proposed by Mr. HARRIS and renewed by Mr. NICOLL was lost, ayes 24.

Mr. LOOMIS'S amendment was carried—ayes 49, noes 35.

Mr. VAN SCHOONHOVEN moved to strike out in the 6th and 7th lines, "in the district composed of the city of New York," and also to strike out the words introduced by the amendment of Mr. Loomis. He wished to be understood as desiring that the increase should be made by the state at large, and not by any particular district.

Mr. JORDAN moved to insert after "more," in the 6th line, "not to exceed one in each district."

Mr. VAN SCHOONHOVEN assented to this as a modification of his motion. So his proposition was that the clause should read as follows:

"There shall be four justices of the supreme court for each district, and as many more, not to exceed one, in each judicial district, as may from time to time be authorized by law."

Mr. RICHMOND inquired how many additional judges in all, this amendment would permit?

Mr. VANSCHOONHOVEN replied that it might not result in any additional judges—the matter being entirely left to the legislature.

Mr. SIMMONS sustained this amendment, and urged briefly his reasons for leaving this matter as far as possible under the control of the legislature, who would take care that the city of New York did not tap the system for the supply of its own mere local wants.

Mr. HOFFMAN insisted that the Convention had decided rightly in saying that New York should be a judicial district, and should have equal power with other districts in the selection of judges. He hoped the Convention would not be seduced from the rule it had settled that each district, in proportion to its population, should name the judges for the state. The amendment would overthrow the rule. Another objection: Here was a large increase of judges proposed. Allow an increase of the number, and you held out inducements to the legislature to reduce the salaries—and if you paid your judges paltry salaries your system would fall still-born. Again, if you allowed an increase of the number, you must fix some limitations on the number, and on the time when this increase was to be made—or the number would be too often varied by the legislature. For one he had rather reduce the number of judges than increase it.

Mr. VAN SCHOONHOVEN replied that the section as it stood allowed the legislature to in-

crease the number indefinitely, and gave New York the power to elect them.

Mr. LOOMIS remarked that neither of the gentlemen who had just spoken had adverted to the 14th section, which authorized an increase of the number of judges by the legislature, at stated periods and in a particular manner. He urged that the proposition would be in conflict with the principle of the article which was to give the people of the state an equal voice in the election of judges to equalize the political power. But this proposition would make it necessary to have eight more judges, one in each district, or more.

Mr. VAN SCHOONHOVEN replied in support of his amendment.

Mr. SIMMONS said it was true that the 14th section provided that the districts would be re-organized at stated periods. Gentlemen wanted New York provided for *ad interim*, through the legislature. The amendment would make this provision uniform throughout the state, so that if Buffalo needed the same thing, in this interim, the legislature could take care of her also, *ad interim*. This was very well. He would have the legislature provide an additional judicial force locally, in the interim between the stated periods of re-arranging the districts; but he would not have this increase in New York only. Otherwise, the system might sit like a coat of mail, and pinch. The matter could all be set right by the legislature once in ten years.

Mr. STETSON was satisfied we should get no question to-day, unless it was before dinner. He therefore moved the previous question.

The call was seconded &c., and the main question put, on Mr. VAN SCHOONHOVEN'S amendment, and it was negatived, ayes 14 noes 89, as follows:

AYES—Messrs. Allen, Archer, F. F. Backus, Bruce, Conely, Cornell, Dana, Gardner, Greene, Hunt, Simmons, Townsend, Van Schoonhoven, Warren—14.

NAYS—Messrs. Angel, Ayrault, Baker, Bascom, Bergen, Bowditch, Brown, Brundage, Bull, Burr, Cambreleng, D. D. Campbell, J. Candee, Chathell, Clark, Clyde, Cook, Crooker, Cuddeback, Dodd, Dorlon, Dubois, Flanders, Gebhard, Graham, Harris, Harrison, Hart, Hawley, Hoffman, H. H. H. Hunter, A. Huntington, E. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kennedy, Kernan, Kingsley, Kirklin, Loomis, Mann, Marvin, Maxwell, Miller, Morris, Nellis, Nicholas, Nicoll, O'Connor, Parish, Patterson, Penman, Porter, Powers, President, Richmond, Riker, Ruggles, T. John, Salisbury, Sanford, Shaw, Sheldon, Shepard, E. Spencer, W. H. Spencer, Stanton, Stetson, Stow, Strong, Taft, J. T. Taylor, W. Taylor, Tilden, Vache, Waterbury, White, Willard, Wood, Worden, A. Wright, W. B. Wright, Yawger, Young, Youngs—59.

On motion of Mr. BROWN, the word "in" was substituted in place of "for," after "court," in the 5th line.

Mr. TILDEN moved to amend by adding to the section as follows:

And it shall be the duty of the chief judge of the court of appeals, as often as necessary, to assign justices of the supreme court to the several districts, as nearly as may be in proportion to the judicial business of such districts, and when occasion shall require to assign special duties to particular judges.

Mr. BAKER moved the previous question, upon this amendment, and there was a second &c., and

The main question was ordered to be put, and the amendment was lost: ayes 44, noes 60, as follows:

AYES.—Messrs. Allen, Bergen, Brown, Brundage, Cambreleng, Conely, Cornell, Cuddeback, Dorlon, Dubois, Harrison, Hart, Hunter, A. Huntington, Jones, Kemble, Kennedy, Kingsley, Mann, Marvin, Maxwell, Miller, Murphy, Nellis, Nicoll, O'Connor, Parish, Porter, Powers, President, Ruggles, Sanford, Shaw, Shepard, E. Spencer, Stanton, Stephens, Stetson, W. Taylor, Tilden, Townsend, Vache, Waterbury, White—44.

NAYS.—Messrs. Archer, Ayrault, Baker, Bascom, Bowdish, Bruce, Bull, Burr, D. D. Campbell, Candee, Chatfield, Clark, Clyde, Cook, Crooker, Dana, Flanders, Forsyth, Gardner, Gebhard, Graham, Greene, Harris, Hawley, Hoffman, Hotchkiss, E. Huntington, Hutchison, Hyde, Jordan, Kernan, Kirkland, Loomis, Morris, Nicholas, Patterson, Pennington, Richmond, Riker, St. John, Salisbury, Sheldon, Simmons, W. H. Spencer, Stow, Strong, Taft, Tallmadge, J. J. Taylor, Van Schoonhoven, Willard, Wood, Worden, A. Wright, W. B. Wright, Yawger, Young, Youngs—60.

Mr. BERGEN moved to amend by making the term of office sixteen years, classified so that one in each district should go out every four years.

Mr. BASCOM gave notice of a motion to reconsider the motion of the gentleman from Otsego.

Without taking the question, the Convention took a recess.

AFTERNOON SESSION.

The amendment proposed by Mr. BERGEN was rejected.

Mr. BROWN moved to amend, so that two of the justices should go out of office every four years. Lost—ayes 33, noes 44, as follows:

AYES.—Messrs. Bergen, Bowdish, Brown, Cambreleng, R. Campbell Jr., Chatfield, Clark, Clyde, Cornell, Crooker, Cuddeback, Dana, Dorlon, Graham, Greene, Harrison, Hart, A. Huntington, Hyde, Kemble, Kernan, Maxwell, Miller, Murphy, Nellis, Nicholas, Nicoll, O'Connor, Patterson, Salisbury, Simmons, E. Spencer, Stephens, Townsend, White—33.

NAYS.—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, Baker, Bascom, Bull, Burr, D. D. Campbell, Candee, Cook, Dubois, Gardner, Hawley, Hoffman, Hotchkiss, Hunt, Hunter, Loomis, Marvin, Morris, Parish, Perkins, President, Richmond, Riker, St. John, Shelton, W. H. Spencer, Stetson, Stow, Strong, Tallmadge, J. J. Taylor, Tilden, Ward, Willard, Witbeck, Wood, Yawger, Young, Youngs—44.

Mr. CHATFIELD moved to add to the section, "and shall not be eligible to a re-election." He could conceive nothing worse, or any thing which could more disgrace the ermine, than to see a judge on the bench higgling for a re-election. It was for the purpose of preventing this that he moved his amendment. He demanded the ayes and noes upon it.

Mr. HARRISON moved to add to the amendment, "for two years after the expiration of his term of office."

Mr. CROOKER remarked that this would be worse than putting the word "native" in.

Mr. STETSON said if a judge was found meddling with elections, he would not be re-elected. He could not vote for an ostracism, and he regarded this as such.

Mr. STOW regarded this as an important provision. But he would extend the term of office to twelve years, classified to go out one in three years, and would make judges ineligible for a certain period after their term had expired. It was not in human nature to resist the temptation of using an office to secure a re-election.

Mr. J. J. TAYLOR liked the principle of the amendment, but it was not broad enough. He would make the judge ineligible to any other

office, for a certain period after his term shall expire.

Mr. STOW said that was what he was aiming at. He proposed to amend so as to make the term of a judge twelve years, and to make him ineligible to any other office, within two years after his term shall expire—those holding for the longest period to be ineligible to re-election or re-appointment.

Mr. CHATFIELD accepted this as his own.

Mr. BROWN thought if we dispensed with the classification, giving all of them the full term of twelve years, there would be no necessity for the disqualification—as no judge would probably desire longer. The average time for which our judges had held office was about eight or nine years. But to say that a judge serving for two years only, should not be re-eligible, would be to prevent any body taking the office that ought to fill it. He concurred with the gentleman from Otsego, that nothing could be more unworthy of a judge, or of any other public functionary, than the improper use of the advantages of his station to secure a continuance in office—but he would not place a judge in a position where he should have no inducement to the faithful discharge of public duty. He would have a judge by all means, by dint of industry, study and integrity endeavor to gain the good will and confidence of the people—though the result might be to give him a strong hold upon the public esteem and regard, and perhaps to secure a continuance in office.

Mr. DANA concurred with the gentleman from Orange that the only way in which a judge could legitimately electioneer for a re-election, would be by a faithful discharge of his duty; and that there was no danger of his being successful in any other mode of electioneering.—We had two or three thousand judicial officers elected by the people, but he did not know of an instance where a justice of the peace had descended from the faithful discharge of his duty to promote his own re-election. In his own town, if there were such a justice, it would be the sure way to insure his defeat, though he might be ever so well qualified.

Mr. CHATFIELD was very happy to hear that human nature was so much better in Madison county than elsewhere. He had known justices of the peace, though caring little or nothing for the office itself, to forget that the office was a judicial office, when the period of re-election came round. He had seen them going into the hustings, using money, and every other appliance that politicians resorted to to secure a re-election; yet in the discharge of their official duty he did not know that he had anything to complain of. He had never yet known a man become so god-like as to lose entirely his human nature—and you might elect whom you would to the bench of the supreme court, you will find them human, however learned they might be.—He trusted no man who filled that station would be without that laudable ambition of which the gentleman from Orange spoke, nor did he believe our judges would be without it; nor did he imagine that they would be without party feeling. The old supreme court, he had been told, was one of the most active political engines in the state—that they in fact controlled the po-

litical destinies of the state. He knew that the state took its political character from that bench. It would be next to impossible that a judge elected by the people would be able to keep himself entirely free from party politics. He would go with the gentleman from Tioga, (Mr. TAYLOR,) to make judges ineligible to any other office; but he would not cut off a judge from a re-election if he had not served his full term.— If eight years was not long enough, say twelve. But he believed eight long enough.

Mr. W. TAYLOR said he offered some time since, a resolution of enquiry into the propriety of making the office of judge of the supreme court elective for a term of six years, and making him re-eligible. He was however well satisfied with the term of eight years; but he was opposed to the amendment making him ineligible. Why should a judge, after serving eight years, in a manner acceptable to the people and creditable to himself, be rendered ineligible—or rather why should the people be deprived of his services for another term. The gentleman from Otsego would have a fresh set of judges every lit le while, and apply the rotation principle to them, whether the people might be inclined to retain them or not. Mr. T. preferred, when a man had done his duty well, that he should be re-elected, rather than one of whom we know little comparatively, and who could not have the experience of the incumbent. As to a judge electioneering to get himself re-elected, Mr. T. thought the argument hardly entitled to consideration. How could a judge gain the confidence and regard of the people, but by an elevated, upright, able discharge of public duty? Certainly any other course would be certain defeat. Nor did he imagine that there was any thing in the idea that a judge might be re-elected term after term, until he had become too old, from physical debility, to discharge his duty. Mr. T. was willing to leave this whole matter to the people who elected them. He had no fears that they would elect a man either too old or too young.

Mr. STOW confessed that some such amendment as this, would obviate in some measure his objection to an election of judges. He denied the right of the majority to be represented on the bench. It was the majesty of the law that should be represented there, and nothing else. Party subserviency was the last thing that should be seen or felt there. True, the result of a popular election of judges might be that incumbents would endeavor to commend themselves to popular favor by a course of strict integrity and impartiality in administering the law. But it was true also, that the reverse of all this might be the case, and in high party times, subserviency to party rather than to duty and right, might be a commendation. Parties would take up the man that could succeed—and it was human nature that a judge should attempt to commend himself to the party that was strong enough to elect him. Mr. S. regarded the one term principle as in favor with the people of the Union, and of the state—whether applied to your president or to any other public officer. And he would put a man upon his responsibility to himself, and to his fame, and would give him twelve years in which to build

up a reputation for himself and his posterity. He trusted the great security we had always heretofore had for the fidelity of the judge, would be retained in the constitution—that they would be removed from temptation. "Lead us not into temptation" was as applicable to them as to the humblest member of society.

Mr. PATTERSON moved to strike out the two last words of the amendment—"or re-appointment"—saying that he did not choose to sanction the idea that the judges were to be appointed—and that question might as well be settled here as at any other time.

Mr. HUNT opposed the original proposition. It recognized a principle which man never acted on in his own transactions. When we employed a mechanic to do a certain piece of work, we were not in the habit of saying to him, if you do this well I shall never employ you again in my life.

Mr. NICOLL doubted whether we should get good judges at the outset, if they were to understand that they could not be re-elected after serving perhaps two years. No professional man would abandon his profession for that period or even for six or eight years, in the expectation that he could return to it from the bench with success. The amendment in fact would limit the range of selection very much. Indeed you would be obliged to take an inferior set of men—nor did he believe that there was any danger to be apprehended from a judge's electioneering for a second term. The people would never sanction such a course in a judge. Indeed it would be certain to defeat his re-election.

Mr. TALLMADGE said he had regarded the eight years' term as the best part of this section. When we came to the seventh section which had some provisions in regard to eligibility, we could perfect it, if not right now, and settle this question then. He preferred the article in this respect as it stood. If we elected them for eight years, and then declared their ineligibility to any other office during the term, that it struck him, was as strong a safeguard as we could adopt against their becoming partisans, and would no doubt lead them to devote themselves to their duties. If then, we held out the promise that if they came out of the eight years with integrity, sobriety and industry, they might anticipate a re-election, it seemed to him we should have done all we were called upon to do. But if it was thought best to say that they should be ineligible for two years after their terms expired, the proper place for it was the seventh section.

Mr. RICHMOND said the gentleman from New York (Mr. NICOLL) was unnecessarily alarmed on the subject of filling these places—Mr. R. had been informed by a gentleman who had had facilities for observation, that there were already 150 candidates in the field for these offices. And Mr. R. believed there were many of them who had already got their clothes made, as was sometimes said of candidates for the assembly. Mr. R. had no fears but what we could easily get these 32 judges. If there were any fears on the subject we had only to write over to New Hampshire, which had already furnished so many able men for office. Probably there

were a great many over there yet. At all events there was Connecticut, the land of steady habits, she could supply any deficiency of material here. Pay them good salaries, as some seemed to suppose we must, and he had no fears that the office of judge of the supreme court would go a-begging. Besides, if they could only be induced to do their duty to themselves and the state, by making them re-eligible, he wanted no such on the bench. He would have men accept these stations for the honor of it, and endeavor to justify the expectations of those who put them there by a course of high integrity and duty—as well as build up a reputation for themselves for ability and learning. It would not hurt us or them, if our judges did as Cincinnatus did—go back and take hold of the plough. It would be no descent for a judge to do that. On the contrary, it would be an honor to him, and an example worthy of all commendation.

Mr. A. W. YOUNG had been from the first against disqualifying any man for office. If, as had been said, there were already 150 candidates in the field for these offices, what were we to expect at the expiration of every term, if the incumbents were to be out of the question? He was not so favorable as some gentlemen seemed to be, to this rotary principle, as applicable to judicial affairs. He would not over pay these judges—certainly not pay them so much as to make the office of judge desirable mainly for its emolument. He would then allow them to be eligible again, and specially if there was to be that scramble for the place which seemed to be anticipated.

Mr. BASCOM opposed the amendment, as implying, under the reasons given for it, that the people would be induced by official corruption, to re-elect an official wrong-doer. He should prefer, instead of enlarging, to shorten the term. He would make it four years instead of eight, and thus bring the judge at stated and comparative short periods before the appointing power. There could be no propriety in this principle of ineligibility, except to prevent a man from being continued on the bench after he had become too old. But that could be more effectually prevented by a short term than by this disqualification. Still, if they were to be appointed by any central power, he would limit them to one term.

The question was here stated to be on Mr. PATTERSON's amendment.

Mr. PATTERSON said the object was to test the question whether they would appoint or elect these judges.

Mr. NICOLL hoped that question would not be settled in this indirect way. It would be unworthy of this body to dispose of so important a question in this indirect mode. We had been discussing another and entirely different question, and he hoped that question and that only would be disposed of by the vote to be taken. He hoped the amendment would be withdrawn.

Mr. LOOMIS was prepared to discuss this question of eligibility when it came up, as it would properly under the 8th section. He went on to oppose the extension of the term to twelve years. He thought he had been able to trace the neglect of judicial reform heretofore mainly

to the length of term for which our judges held office. He dwelt upon the effect of a permanency in office upon men who had been bred to the system of practice now in vogue, and on the effect of that tenacity in favor of every thing in which they had been educated and to which they had been accustomed. Eight years was the utmost limit to which he would go. This proposition of ineligibility he regarded as founded on a lurking distrust that a popular election was a bad mode of selecting judges. If that was so, the remedy was not in making them ineligible but in changing the mode of selection—make it by appointment. But he had no fears of the result of a popular election, nor had he any apprehension that a judge could promote his re-election by any other than a course of strict fidelity to duty.

Mr. KIRKLAND asked if the gentleman from Chautauque had withdrawn, or intended to withdraw his amendment, as requested by the gentleman from New York?

Mr. PATTERSON had not. He was opposed to the appointment of judges, and did not want to recognize such a principle here.

Mr. KIRKLAND asked if the gentleman expected this dignified body to decide by indirection, one of the most interesting and important questions that could be brought before us? This was neither the time nor the place for it. When it came up fairly under the 12th section, he hoped it would be fairly and fully discussed.—The amendment settled nothing.

Mr. STOW modified his amendment by inserting "re-eligible" in the place of "eligible to re-election or re-appointment."

Mr. CHATFIELD called for a division of the question, and for the ayes and noes, which were ordered, and the Convention refused to extend the term to twelve years, ayes 27, noes 74, as follows:—

AYES—Messrs. Fergen, Bruce, Brundage, D. D. Campbell, Candee, Chatfield, Clark, Cook, Cornell, Gardner, Hart, Jordan, Kemble, Kennedy, Kirkland, Marvin, Murphy, Nicholas, O'Connor, Parish, Perkins, Richmond, Riker, Ruggles, Simmons, Stow, J. J. Taylor—27.

NOES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bowditch, Bratton, Brown, Bull, Burr, Cambreleng, Chamberlain, Clyde, Conely, Crooker, Cuddeback, Dana, Dorlon, Dubois, Eiders, Graham, Green, Harrison, Hawley, Hoffman, Hutchkiss, Hunt, Hunter, A. Huntington, Hutchison, Hyde, Jones, Kernan, Kingsley, Loomis, McNeil, Maxwell, Miller, Morris, Nellis, Nicholas, Nicoll, Patterson, Penniman, Powers, President, St. John, Salisbury, Sanford, Shaw, Sheldon, Shepard, E. Spencer, W. H. Spencer, Stanton, Stephens, Stetson, Strong, Taft, Tallmadge, W. Taylor, Tilden, Townsend, Vache, Ward, White, Willard, Witbeck, Wood, W. B. Wright, Yawger, Young, Youngs—74.

The remainder of the amendment, the "one term principle," was lost, ayes 21, noes 85, as follows:

AYES—Messrs. Bergen, Bratton, Bruce, Bull, D. D. Campbell, Candee, Chatfield, Clark, Clyde, Cook, Cornell, Gardner, Kennedy, Murphy, O'Connor, Richmond, Salisbury, Simmons, Stow, J. J. Taylor, Vache—21.

NOES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, Baker, Bascom, Bowditch, Brown, Brundage, Burr, C. C. Cambreleng, R. Campbell, Jr., Chamberlain, Conely, Crooker, Cuddeback, Dana, Dorlon, Dubois, J. R. Flanery, Graham, Greene, Harris, Harrison, Hawley, Hoffman, Hutchkiss, Hunt, Hunter, A. Huntington, Hutchison, Hyde, Jones, Jordan, Kemble, Kernan, Kingsley, Kirkland, Loomis, Mann, McNeil, Marvin, Maxwell, Miller, Morris, Nellis, Nicholas, Nicoll, Parish, Patterson, Penniman, Perkins, Pow

ers, President, Rhoades, Riker, Ruggles, St. John, Sanford, Shaw, She don, Shepard, E. S. Spencer, Stanton, Stephens, Stetson, Strong, Taft, Talmadge, W. Taylor, Tilden, Townsend, Ward, White, Willard, Witbeck, Wood, Worden, A. Wright, W. B. Wright, Yawger, Young, Youngs—85.

Mr. BASCOM moved to amend so that the term should be reduced to 4 years, one elected each year. Lost.

Mr. MARVIN then called up his proposition as a substitute for the entire section. (See a. above.) Mr. M. said this reduced the number of justices to 16, the four districts to be divided into circuits. He desired by this amendment to prepare the way for county courts on a proper basis. And the fate of this amendment would settle the question of county courts.

Mr. MARVIN's substitute was lost, ayes 36, noes 63, as follows:

AYES—Messrs. Ayrault, Bergen, Bull, Candee, Chamberlain, Cornell, Gardin, Hotchkiss, Hunt, Hutchinson, Kennedy, Kirk and Mann, Marvin, Murphy, Nicoll, O'Connor, Parish, Perkins, Richmond, Riker, St. John, Salisbury, Sanford, Shaw, Shepard, Sirmans, W. H. Spencer, Stanton, Stow, Talmadge, Tilden, Vache, White, Worden, Young—36.

NAYS—Messrs. Allen, F. F. Backus, Baker, Bascom, Bowdish, Brayton, Brown, Brundage, Burr, Cambreleng, K. Campbell, jr., Chaffield, Clark Clyde, Conely, Cook, Crooke, Cuddeback, Dana, Dorlon, Dubois, Flanders, Harriss, Harrison, Hart, Hawley, Hoffman, Hunter, A. Huntington, Hyde, Jordan, Kemble, Kernan, King, Loomis, McNeil, Maxwell, Miller, Morris, Nellis, Nicho as Patterson, Powers, President, Ruggles, Sheldon, E. Spencer, Stephens, Stetson, Strong, Taft, J. W. Taylor, W. Taylor, Townsend, Ward, Willard, Witbeck, Wood, A. Wright, W. B. Wright, Yawger, Youngs—63.

Mr. BAKER moved a reconsideration of the motion to lay on the table. Circumstances might arise hereafter to induce him to change his vote.

§ 4. The state shall be divided into six judicial districts, to be denominated the first, second, third, fourth, fifth and sixth judicial districts, of which the city of New York shall form the first. There shall be a superior court in each of the said districts, which shall have jurisdiction in all matters of law and equity within the state, and such supervisory and other power over inferior tribunals and officers within its district as now exists in the Supreme Court, subject to the appellate jurisdiction of the Supreme Court of Appeals. It shall in the first district be composed of six judges and in each of the other districts of four judges. One of the said judges in each of said districts shall be commissioned as chief justice of the court in his district. Each of said judges shall, during his continuance in office, reside in his district.

§ 5. The judges of the court of appeals, and of the superior courts, may hold courts in any district under such regulations as may be prescribed by law. Each of said judges shall possess the power now possessed by any judge of the Supreme Court or the Chancellor at Chambers, subject to regulation or modification by law.

Circuit courts may be held by any one of said judges and general terms of the superior court in any district by any three of them, and special terms by any one of them for the hearing and disposition of matters usually heard at special terms.

Courts ofoyer and terminator may be held by any one of said judges, with whom a said court shall be associated the two county judges, except in the city and county of New York where two Aldermen of said city shall be associated with such judge in said court ofoyer and terminator.

Provision shall be made by law for the transfer of causes from one district to another, and for the change of venue to a county in the same or another district, as the ends of justice may require.

§ 6. The judges of the supreme court of appeals and of the superior courts shall hold their offices for ten years.

§ 7. Cases, both in law and equity, shall be tried at

said Circuit courts, and without a jury, whenever the parties in interest in a suit, and the judge holding the circuit assent thereto. Provision shall be made by law for cases in law or equity not properly triable at a Circuit Court. Provision shall also be made by law for the performance of the duties heretofore performed by masters in chancery.

§ 8. Laws may be passed to diminish the number of the judges of the supreme court, court of appeals, and of the judges of the superior court, and of the district judges of the county court in any district, if the number hereby authorized shall be unnecessary. Laws may be passed to increase the number of the judges of the supreme court of appeals, and the judges of the superior court, and the said district judges in any district whenever and as often as the public interests demand.—Any such additional judge shall be elected or appointed as shall be prescribed by law authorizing such additional judge. The districts in this article mentioned may be altered by law whenever and as often as the public interests demand. No law authorizing a diminution or increase in the number of judges or the termination of any district shall be passed without the votes of two thirds of the members elected to each branch of the legislature, and no such law shall affect any judge then in office.

This was negatived without a division.

Mr. KIRKLAND moved a reconsideration, to lay on the table.

Mr. WORDEN enquired of the chairman of the judiciary committee what provision was intended to be inserted for the appointment of a chief justice of the court?

Mr. RUGGLES replied that no such provision was intended to be put into the constitution. The legislature could provide for it, or for the designation of one of the judges to preside.

Mr. WORDEN asked if it was intended that no judge should be designated in the constitution and laws as chief justice?

Mr. RUGGLES replied that such provision was intended to be proposed.

Mr. WORDEN did not know how the records of our courts could be made evidence in the courts of the United States without the certificate of a chief justice under the law of Congress.

Mr. RUGGLES read the law in question.

Mr. WORDEN did not understand that as applying to a court where there was a multitude of judges, as in this new supreme court.

Mr. RUGGLES insisted that as there would be a presiding judge at each town, he would be the presiding magistrate within the meaning of the act of Congress. But if there was any doubt about it, the legislature could remove it at once, by designating one of the judges as presiding judge.

After some further conversation between Messrs. WORDEN, BASCOM, BROWN and RUGGLES, the subject dropped.

Mr. BROWN opposed the fourth section, as giving an unjust preference to the city of New York.

Mr. PATTERSON replied that as the section stood New York was to be a district, so long as this constitution lasted, and there could be no injustice in allowing the city to elect judges according to her population.

Mr. BROWN, in reply to Mr. BRUCE, explained why it was that the calendar was not sometimes cleared off by a circuit judge. It was the twenty shilling fee for every cause on the calendar.

Mr. JORDAN remarked that New York had under the ratio a less representation on the

bench than the other districts would have according to population.

The vote on the fourth section, as amended, was then taken, and it was agreed to—ayes 70, noes 33, as follows:

AYES—Messrs. Allen, Angel, Archer, F. F. Backus, Baker, Bascom, Bowdish, Brayton, Brown, Brundage, Furr, Cambrleng, R. Campbell, jr., Chittfield, Clark, Clyde, Cook, Crooker, Cuddeback, Dana, Dorlon, Dubois, Flanigan, Graham, Greene, Harris, Harrison, Hart, Hawley, Hoffman, Hotchkiss, Hunter, A. Huntington, Hyde, Jordan, Kembl, Kernan, Kingsley, Loomis, Mann, McNeil, Maxwell, Morris, Neills, Nicho-

las, Patterson, Powers, President, Rhoades, Riker, Ruggles, Salisbury, Shaw, E. Spencer, Stanton, Stephens, Tetson, Strong, Tilton, J. J. Taylor, W. Taylor, Townsend, Ward, Willard, Witbeck, Wood, A. Wright, W. H. Wright, Yawger, Youngs—70.

NAYS—Messrs. Ayrault, Bergen, Bruce, Bull, Candace, Chamberlain, Corne, Hunt, E. Huntington, Jones, Kennedy, Kirkland, Marvin, Murphy, Nicoll, O'Connor, Parish, Penniman, Perkins, Richmond, St. John, Stanford, Sheldon, Shepard, Simmons, W. A. Spencer, Stow, Talmadge, Tilden, Vache, White, Worden, Young—33.

The Convention then adjourned to half past eight to-morrow morning.

DAY, AUGUST 2.

Prayer by the Rev. Dr. SPRAGUE.

SATURDAY AFTERNOON SESSIONS.

Mr. WHITE offered the following:

Resolved, That this Convention will meet this afternoon at the usual hour.

Mr. NICOLL thought the resolution premature.

Mr. SIMMONS *postmature*.

Mr. NICOLL said many gentlemen had made their arrangements for this evening in the expectation that the usual course would be pursued, and he thought nothing would be accomplished by the adoption of the resolution.

Mr. WHITE called for the yeas and nays.

Mr. ST. JOHN enquired what the "usual hour" of meeting on Saturday afternoons was, seeing that the Convention had never held any afternoon sessions on Saturdays. [Laughter.]

Mr. J. J. TAYLOR said this attempt to save this little bit of time on Saturday afternoon was an excess of virtue. If they meet at half past 8 a. m. and again at half past 3 p. m. every other day in the week, and sat from 8 to 9 hours they might be allowed to dispense with afternoon sessions on Saturday. Indeed he was of opinion that they should have done their business better if they had sat a less number of hours, for the consequence was that they had no time for reflection and their propositions were crude and ill-digested.

Mr. SIMMONS said it was only for this day, that we might dispose of this judiciary matter.

Mr. J. J. TAYLOR replied that if this were adopted, they should have a similar motion next Saturday.

Mr. CROOKER thought to pass this resolution would be to give license to gentlemen to make unnecessary speeches. [A VOICE: "of which we have had too many."]

Mr. RICHMOND said he should vote for the resolution but he was of opinion that it would be productive of no good, [laughter,] for on Monday the gentlemen now absent might come to reconsider what the Convention might have done in their absence.

Mr. WHITE said he had no desire to disturb the harmony of the Convention, and as it was questionable, from the feeling exhibited, whether it would be productive of good in the despatch of public business, he would withdraw his resolution. [A voice "that's right."]

Mr. STRONG was sorry the resolution was

withdrawn, for he should have liked to make a little speech upon it.

Mr. CROOKER: Oh you can hang your speech upon something else.

INCORPORATIONS.

Mr. MURPHY called for the consideration of his resolution, laid on the table by consent some days ago, whose object was to make the report of the committee on incorporations the special order after the report of the committee on canals, finances, &c.

Mr. CROOKER hoped no time would be lost on this matter now. He felt bound to object to the consideration of the resolution for it would be time enough to consider what they would act upon when they had disposed of what was before them.

The PRESIDENT stated the question to be on the motion of Mr. MURPHY, to take the resolution from the table.

Mr. CROOKER said in his judgment that was one of the least important questions of which the Convention had to dispose.

Mr. STRONG thought they had better get through the report before them, and then if they had any time left, they could determine what to take up without much difficulty.

Mr. LOOMIS desired to have the resolution adopted now, to prevent any conflict of questions for precedence hereafter.

Mr. SIMMONS did not think it worth while to pass this resolution now. They must first dispose of the judiciary and the financial reports, and then he thought they should take up that on private rights, and resanction the article if nothing else, if they had any time left.

Mr. KIRKLAND thought they were wasting the time of the Convention. He therefore moved to lay the resolution on the table.

The PRESIDENT:—It lies on the table now. [Laughter.]

Mr. KIRKLAND then moved to lay on the table the motion. [Laughter.]

Mr. LOOMIS called for the yeas and noes.

Mr. HOFFMAN rose to a privileged question. He said the first moved is the first in order with privileged motions. The motion to take up was a privileged question. The motion to lay on the table was a privileged question; and as the motion to take up was the first made, it was the first in order.

The PRESIDENT dissented, and affirmed

that the motion to lay on the table was first in order.

The yeas and nays were then ordered.

Mr. HOFFMAN enquired if the motion to lay on the table was debateable.

The PRESIDENT replied in the negative.

The yeas and nays were then taken on the motion to lay on the table, and they were yeas 49, nays 31.

FUTURE AMENDMENTS

Mr. MARVIN, on the subject of future amendments to the constitution, made the following report, which was committed and ordered to be printed:—

§1. Any amendment or amendments to this constitution may be proposed in the Senate and Assembly; and if he same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and referred to the legislature, then next to be chosen; and shall be published for three months previous to the time of making such choice; and if, in the legislature then next to be chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to both houses, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become a part of the constitution.

New — The general election to be held in the year 1866, and in each twentieth year thereafter; and also at such time as the legislature may by law provide, the question, "shall there be a convention to revise the constitution and amend the same?" shall be decided by the electors qualified to vote for members of the legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a convention for such purpose, the legislature at its next session, shall provide by law for the election of delegates to such convention.

THE JUDICIARY.

The Convention resumed the consideration of the judiciary report.

Mr. MANN submitted the following additional section:—

§ The legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and equity as they have heretofore possessed; but proceedings in law and equity shall not be separated as distinct jurisdictions to be administered by different judges.

The amendment was debated by Messrs. MANN, SIMMONS, HOFFMAN, RUGGLES, MORRIS, BASCOM, SWACKHAMER, STETSON, BROWN, LOOMIS and JORDAN.

Mr. RUGGLES proposed to amend so that the provisions of the section should apply alone to the supreme court, and

Mr. MANN accepted the modification.

Mr. BROWN offered the following substitute for the section of Mr. MANN:—

§ —. The powers, jurisdiction and proceedings of the supreme court shall be subject to such additions, limitations and regulations as may be prescribed by law.

Messrs. CHATFIELD, KIRKLAND, LOOMIS, SHEPARD and MORRIS further continued the debate upon the latter proposition, and the yeas and nays being ordered it was negatived—yeas 30, nays 48.

Mr. LOOMIS moved to strike out the amendment of Mr. RUGGLES to the section proposed

by Mr. MANN, confining its provisions to the supreme court.

This motion was debated by Messrs. TILDEN, LOOMIS, RUGGLES, FORSYTH, CHATFIELD, MANN and SIMMONS, during which the question was raised whether the legislature would have power to confer equity jurisdiction upon inferior courts, such as surrogates' courts, under the section, if amended on the motion of Mr. Loomis?

Mr. RUGGLES contended that they would not have that power.

The amendment was lost—yeas 16.

Mr. STETSON and Mr. RICHMOND further debated the proposition.

Mr. SIMMONS moved to amend Mr. MANN's section, by striking out "jurisdiction and"—so as to make it applicable to "proceedings" only. Lost.

Mr. MANN'S proposition was negatived—yeas 32, nays 64, as follows:—

AYES—Messrs. BASCOM, BOUCK, BURR, R. CAMPBELL, JR., CLYDE, CORNELL, DANA, GRAHAM, GREENE, HOFFMAN, HUNT, A. HUNTINGTON, JONES, KERNAN, LOOMIS, MANN, NELLIS, NICOLL, PATTERSON, RHODES, RICHMOND, RUGGLES, T. JOHN, SHAW, SHELDON, W. H. SPENCER, STETSON, STRONG, SWACKHAMER, WATERBURY, WHITE—32.

NAYS—Messrs. ANGEL, AYRAULT, F. F. BACKUS, H. BACKUS, BAKER, BOWDISH, BRAYTON, BROWN, BRUCE, BULL, D. D. CAMPBELL, CANDLEE, CHATFIELD, CLARK, CONELY, COOK, CROOKER, CUDEBACK, DODD, DORLON, DUBOIS, FLANDERS, GARTNER, HARRIS, HARRISON, HART, HAWLEY, HOTCHKISS, HUTCHINSON, JORDAN, KEMBLE, KENNEDY, KINGSLEY, KIRKLAND, McNEIL, MARVIN, MAXWELL, MILLER, MORRIS, NICHOLAS, O'CONNOR, PARISH, PENNINGTON, POWERS, PRESIDENT, RIKER, SALISBURY, SANFORD, SHEPARD, SIMMONS, E. SPENCER, STEPHENS, T. W. TAFT, TALLMADGE, TILDEN, WARD, WILLARD, WITBECK, WOOD, A. WRIGHT, YAW, YOUNG, YOUNGS—64.

Mr. JORDAN now moved a section in these words:—

The legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and equity as they have heretofore possessed.

MR. CHATFIELD insisted that this amendment had been voted down distinctly.

Mr. PRESIDENT replied that it had not been voted upon by itself, though it formed part of the proposition just negatived.

Mr. JORDAN insisted that his proposition had not been voted upon at all. It gave the legislature the power it now had—nothing more—and that was safe, as no mischief had heretofore grown out of it.

Mr. JORDAN'S proposition was adopted, 45 to 32.

Mr. BROWN laid on the table, that it might be printed, the following:

§. Whenever the population of any judicial district shall exceed — thousand, provision may be made by law for the election, by the electors of such district, of assistant justices of the supreme court therein, who shall have power within such district to hold circuit courts, to preside at courts of oyer and terminer, and to act as associate justices of the supreme court with one or more justices of the supreme court, in holding the general terms of said court; and to exercise and perform all the powers and duties of a justice of the supreme court at chambers. They shall be compensated in like manner, as the justices of the supreme court—and shall hold their offices for the term of eight years.

Mr. HUNT also laid on the table to be printed, the following:—

§12. Each senate district at its biennial election for senators, shall choose three electors of judges. No citizen shall vote for more than two of such electors, and the three persons having the highest number of

votes shall be elected. Should fewer than three electors be chosen at any such election in consequence of two or more of the four persons receiving the highest number of votes, having an equal number of votes, one or more of such persons as the case may require, shall be selected to fill the deficiency by lot. The electors thus chosen throughout the state shall convene at such time and place as may be prescribed by law, and elect the justices of the supreme court, and fill all vacancies therein occurring.

The fifth section was then read as follows:—

§ 5. Any three of them may hold general terms of said court in any district; and any one of them may hold special terms and circuit courts and preside at the courts of oyer and terminer in any county."

Mr. MURPHY moved a substitute as follows:—

§ 6. Any four of the justices of the supreme court of whom the senior justice in age, who is not of the court of appeals, shall always be one and shall preside, may hold general terms in any district; and any one of them may hold special terms and circuit courts, and preside at the courts of oyer and terminer in any county.

Mr. MURPHY said he had not hitherto during the protracted discussion of now nearly three weeks upon the report of the committee on the judiciary, said a single word on the subject. He had observed this silence not because he thought the subject unimportant, but on the contrary because he deemed it one of the principal objects, if indeed it were not the chief object, of the assembling of this Convention. He had been content to be a listener rather than a speaker—to learn rather than to attempt to teach—to give the report the full benefit of the expositions of its friends without cavil and without embarrassment. But now we were recording our names upon the different portions of the system, and a silent vote might perchance be hereafter misconstrued, even if it might not possibly be censured as unjust to the constituency. We had also reached a part of the report of the committee of the whole when he was compelled by the honest convictions of his judgment to express his dissent, and to make the attempt, unavailing as he believed it would be, to render it, as far as it could be made, conformable to his views. He said unavailing, because the Convention as if in "wandering mazes lost," seems bewildered by the number of plans presented, and as if it had found itself compelled rather to make its escape from its embarrassments by carrying straight forward the report of the committee, than to attempt to perfect their system. It would appear as if a large majority of the Convention were opposed to the proposed plan as a whole, yet that each member was fearful of the least innovation upon it, lest we should be compelled to begin a reconstruction. Else why is it that amendments come from all parts of the house, as well from a majority of the committee who have devised the plan, and who have become sensible of its defects, as from others, and that all are steadily voted down? Like the enchanted ship, with sail all set and rudder nailed, the plan of the judiciary committee seems doomed to hold its course regardless of the hidden rocks which past experience has made known, and which are laid down upon the charts. The pilots even who set our course, have been displaced from the helm, and onward we speed indifferent to consequences. Unavailing as he considered the attempt, there-

fore, he had nevertheless in the discharge of duty determined to make one effort to arrest this headlong course, by submitting the amendment which had just been read. As a sincere advocate of substantial reform, he wished to see an efficient judiciary system adopted. Every change was not reform. Bad as was the present system, there might be a change for the worse; to avoid which we should keep steadily in view the evils under which we now suffer, and as steadily seek to obviate them. He knew of no better test to apply to the proposed alterations, than whether they corrected those evils, at the same time that they did not impair those other parts of our system which it is not desirable to disturb. And what are those evils? Are they not the delays in procuring decisions, and the expense attending the administration of justice? Certainly no one will deny that public opinion has pointed out these as the principal if not the only ones to be corrected. He proposed, then, in the few remarks which he should now submit, to subject the proposed system to this test. He was happy, however, to bear testimony to the fidelity, industry, and ability with which the committee had discharged its duty. He believed that it had been actuated by a sincere desire to effect the reforms to which he had alluded; and that it had presented us in this plan with some proposed changes which would go very far to that end. If it has failed in other respects to accomplish this purpose, it was perhaps to be expected from the complication which must exist in any judiciary system, for a state of such important and varied interests as this, and from the intrinsic difficulty of devising any new plan entirely sufficient. He would first refer to those points in which he thought the committee had succeeded, and then to that in which it had failed, with a view of presenting his amendment to the consideration of the house. First in importance of the advantages of their system, is the adoption of the principle suggested by the gentleman from Seneca, (Mr. BASCOM) that of giving the best justice, by which I mean the best talent and learning and intellect, for the trial of all causes, whether the amount involved be large or small. This idea is worthy of a true reformer. It is to me a grand conception, that the suitor who shall have a small amount in controversy, an amount as important, perhaps to him, as a large sum to others, shall have the same judicial wisdom and learning as the suitor who may have his thousands at stake. One of the great vices of our present system has been the administration of inferior justice, as it has come to be considered in our common pleas courts, in consequence of their being subordinate to the supreme court. There have been in many of the counties of the state judges of those courts, of distinguished ability, yet in general they have been otherwise. Suitors have in consequence had no confidence in their decisions; writs of error have multiplied, delays have consequently ensued, and the system itself has become odious. The committee has wisely recommended that there shall be but one court of record for the trial of causes in the county, and that a judge of the highest court of original common law and equity jurisdiction shall preside in it. A reform, which will give

us a good administration of the law, and therefore speedy and cheap, will be in this manner, at least partially accomplished. Besides, the more you lessen appeals and writs of error, the more you lessen expense. It is not the compensation which the law officers and attorneys receive for any particular service that is burdensome, but it is the multiplication of services in each suit which is the cause of the ruinous expenses of litigation in our courts. If you send a supreme court judge in your counties to try causes, litigants will be satisfied with his determination, and not seek to carry their suits any further. They will know that it will be, in general, money thrown away to attempt to get a reversal, because the judge who tried their cause will be also a judge of the highest court. In regard to expense, another great saving is made to the tax-payers in abolishing county courts. The summoning of two sets of grand jurors and two sets of petit jurors, one of each for the oyer and terminer and circuit courts, and the other for the special sessions and common pleas, oftentimes, as has happened in the county of Kings, at one and the same time, will be avoided. The plan of the committee meets these evils in another respect, by abolishing the expensive and dilatory practice of written examinations before an examiner in chancery. Every lawyer knows how those examinations are oftentimes protracted from day to day, sometimes month after month, until he becomes wearied with them himself. The expense is oftentimes enormous, and generally the most serious portion of the costs. By the abolition of this practice, and the substitution of oral examinations at the hearing in court, both this time and this expense will be saved. It is idle to suppose that there is any difficulty in taking this testimony just as easily as evidence is now taken in a trial at law; for although from the forms of proceeding in chancery by bill and answer, more issues of fact are presented by the pleadings than in pleadings at law, in consequence of the latter being fictitious; yet the same number of issues of fact arise on the trial at law when the fictions are discarded and the true case presented. But even if more time be required to take the testimony by the judge in chancery than on a trial at law, it will be more than compensated by the time saved in not having to wade through the mass of written evidence of an irrelevant character, which under the present system is collected, and which he must read. Another excellent feature of reform, is the abolition of fees and perquisites, which all our judges, except the three justices of the supreme court and the chancellor, have enjoyed. No plan could be devised by human ingenuity more effectually to defeat the regular and prompt administration of justice than the allowance of perquisites to the judge. It holds out to him constantly bribes to delay his business, or at least to delay suits. Interlocutory orders, as they are called, such as orders for further time to plead, to stay proceedings, and the like, for each of which he receives a fee, necessarily serve to protract the litigation, while the temptation of the fee is held out to influence the judge to kindness in granting them. The same temptation exists as to taxa-

tion of costs, and the judge knows that the attorney will take his business where the most liberality exists in taxation. This is unjust to the judge himself. Even if he can resist these influences, still he is likely to be suspected; for men will attribute the same motives of action to him as are known to govern other individuals. These fees also operate to delay the administration of the law in another way. The judges of the first circuit have for many years devoted the best part of the day, that is the morning, to chamber business during the term of the circuit. In my own county, these courts have rarely opened before eleven o'clock in the morning. So far as these reforms are effected, I am pleased with the report of the committee. But the report falls short in other particulars. It was not to be expected that they would have given us a perfect work. They have, it appears to me, committed a great error, and one which will continue the delays in law, and that is contained in the section to which my amendment applies.— That section, as it now stands, creates eight different parts of the supreme court, by declaring that any three of the justices may hold the terms in each of the eight districts. Under this plan, two of these courts may be sitting at the same time; and may decide differently on the same state of facts existing in two causes before them respectively. Or should a court sitting on Long Island decide to-day one way, another portion of the court sitting at Buffalo the next month might be of a different opinion in a similar case, and would differently decide, because one of these courts cannot give law to the other. The only court in which you can obtain a decision which will be law to the whole state, will be the court of appeals. The supreme court, as such, will no longer exist; at least you will have no such court of original jurisdiction. A supreme court is one which declares the law for the whole state; as well for itself as for inferior tribunals, and for the public. But eight courts sitting in as many districts, and all having equal powers, cannot act in concert and be united in the law. There can be no connection between them. They become district courts, and sink at once to an inferior position in the public estimation. The consequence will be that no confidence will be felt in them, especially if they occasionally give different decisions; and suitors will consequently resort to the court of appeals in much greater numbers than if the decisions of the supreme court were uniform and consistent. I am not satisfied with the system proposed by the committee in other particulars; but I am willing to sacrifice my own opinions in regard to them to the decision of the Convention, if a remedy be provided for the difficulty which I have now referred to. I have voted in favor of the establishment of county courts, in the hope that by adopting them a new plan would be fixed for a supreme court. That idea is now hopeless. I cannot consent to the present plan, and at the same time claim to have cured the evils of which the public complain. These evils must continue under it. Appeals and writs of error will multiply, and the court of appeals will, in less than five years, become completely clogged, and be

unable to proceed. The amendment which I propose, is offered with the view of making a connection between the districts, without interfering with the distinctive features of the plan of the committee. It leaves the same number of judges, and the same districts. It provides that one of the judges, or more if it be necessary, may be designated to preside in these courts; to go from one district to the other, and carry with him the opinions of his brethren from one branch of the court to the other; and by taking part in the decisions, to draw them together, and to produce uniformity. This, I admit, is not a perfect system. It is the best, however, of which the plan of the committee is susceptible. It may be objected that one man cannot sit in all these banc courts; that the physical power of no single individual would be sufficient to go through with the labor. The plan which the amendment contemplates, is to prevent any two or more of these district banc courts sitting at the same time. The presence of one man in all of them will require that they be held consecutively. According to the suggestion of the chairman of the committee, (Mr. RUGGLES,) there would probably be three banc terms held in each district in a year. This would make twenty-four terms in all, and require the presiding judge to make the circuit of the state three times a year. If each of these terms averaged two two weeks each, forty-eight weeks in the year would be occupied by him in court. Of course no time would be allowed him for writing out his opinions. But I apprehend that three terms a year will be more than will be necessary.— With two terms in each district, he will have time enough, especially if this presiding duty be assigned annually or biennially to different judges. But the difficulty can be entirely obviated by the designation of two or even more for the purpose. The object is to connect these courts; to provide a means of interchange of opinions; and to approximate as near to uniformity as under the system we can do. There are other advantages flowing from this union besides keeping down appeals. The judges thus appointed to preside will become more skilled. The office will be a preparatory school for the court of appeals, in which four of them are by the committee to sit. Liberality of views will be promoted, the spirit of the whole people of the state appreciated, and that progress of law as a science, based upon the rights of man, secured. I have voted against the union of the tribunals of law and equity as provided for by the committee, simply on the ground that it effects no reform of itself. The only effect of it will be to impose double duty upon the same judge, whereas a division of labor in law as in every other art, trade or profession, is of advantage to the public in securing a more perfect and speedy work. The plan of the committee keeps up the distinction between the two tribunals as before. Equity powers will be exercised by twenty-eight judges, instead of by one chancellor and nine vice chancellors as now. I am prepared to take the step proposed by the gentleman from New-York (Mr. O'CONNOR) and to adopt one common mode of procedure in law and equity, and that is by bill and answer. Unless that step be taken, your union of the law and chance-

ry courts into one, with a separate and distinct mode of proceeding as now, works no reform.— I wish to see a plan by which a suitor will not be thrown from one court to another because his counsel has mistaken the remedy, and such a plan is secured by the proposition of the gentleman from New-York. Still, as I have said, I am willing to waive my objection to this and some other parts of the report, if we only remove the evils which the public have called upon us to remedy. Justice administered promptly and at a fair charge, will satisfy the intelligent constituents whom we represent; provided it flow from honest, independent and capable tribunals. With the adoption of my amendment I will be content to sustain the plan of the committee.

Mr. NICOLL concurred entirely in the remarks of the gentleman from Kings; but he thought there would be great difficulty in carrying out his proposition. The object was to secure something like uniformity in the proceedings and decisions of these district courts. He had entertained great distrust of the committee's plan. In seeking to avoid Scylla, they had fallen upon Charybdis. In their efforts to avoid centralization, they had erred too much in the other direction. These eight district courts might cause a conflict of decision, and uncertainty in the law, and the system might break down under its own pressure. But it was physically impossible for one judge to preside in all these courts. He would suggest a modification of this section which he had drawn up, providing that two judges should be selected for this purpose, and omitting the clause that required that such presiding judges should be of the senior class as follows:—

General terms of the said court may be held in any district by three or more judges thereof. Two of the said judges shall be selected in a manner to be provided for by law, for the purpose of presiding in said courts.

Mr. MURPHY had no objection to any modification that would carry out the object he had in view.

Mr. BROWN said it was not probable that this proposition would be decisively settled to-day—and as he thought favorably of the proposition, or rather of its object, (for it was impracticable in the shape in which it was presented) he rose to suggest that it should be a subject of reflection between this and Monday. It sought to remedy a defect in this system which the judiciary committee had not sought to conceal, though they thought it in a great measure compensated by other portions of the plan. He repeated, that if two bank terms only were to be held in each district, then one judge might preside at them all.

Mr. BASCOM was inclined to think favorably of this amendment, substantially. He hoped however it would be laid over for the present.

Mr. CHATFIELD, presented the following substitute for the section:—

§ 5 General terms of said court shall be annually held in each of said districts; and may be held by any three of said judges; and any one of said judges may hold special terms and circuit courts, and one or more of said judges shall preside at the courts of oyer and terminer in any county.

Mr. CHATFIELD desired to secure a court

in banc in each of these districts annually. As the section stood, it was permissive only. The same remark would apply to the latter clause of the substitute. He desired to make it mandatory in both cases.

The PRESIDENT ruled the substitute out of order at present.

Mr. MURPHY said the gentleman from Orange had shown him a substitute for his proposition which he liked better than his own, and would send up in lieu of it.

Mr. JORDAN confessed that this section was susceptible of improvement. But it was impossible to judge of the effect of this proposition, at once, and to carry it out in all its workings. He desired time to see how the moves on the board were to be made, and whether, on the whole, it was an improvement. He suggested that it lie on the table and be printed.

Mr. HOFFMAN was not able fully to understand the proposition of the gentleman from Kings in all its bearings. As to the proposition of Mr. CHATFIELD, he suggested that if it was to be printed, it ought first to be amended so as to have it practicable to have four judges sitting in banc. The report of the majority of the committee held out some encouragement to continuing the one-horse term of the supreme court in matters of practice. That he had rather not have in the report. He suggested that the substitute of Mr. C. be amended so as not to invite that kind of court for that sort of business.

Mr. PATTERSON suggested that instead of fixing a rule in the constitution, that this presiding judge should be the senior in age, that the matter had better be left to the legislature.

Mr. MURPHY said the substitute for his own amendment, suggested by the gentleman from Orange, contemplated that the presiding officer should be designated by law.

Mr. PATTERSON said that would be better. Another difficulty—if one judge was to preside in all these courts, we could not have two courts in banc sitting at the same time.

Mr. MURPHY said that was the very evil he desired to avoid.

Mr. PATTERSON replied that unless these courts were to sit at the same time there was no use in cutting it up into eight parts—as one court could do as much business as eight, if its terms were held at different times in various places.

Mr. MURPHY said these considerations had not escaped him in considering this subject—and he should be glad to see it so modified as to meet these objections and still carry out its object—which was to accomplish a connection between these courts, which would make this really a supreme court of original jurisdiction.

Mr. BROWN offered the following as carrying out the idea of the gentleman from Kings—though Mr. B. was not to be considered as adopting it—for he wanted time to reflect upon it:—

§ 5. Provision may be made by law for designating from time to time one of the said justices to preside at the general terms of the said court to be held in the several districts. Any three or more of said justices, of whom the said justice so designated shall always be one, may hold such general terms, and any one of them may hold circuit courts and courts of oyer and terminer in any county.

Mr. MURPHY accepted this as a substitute for his own.

These several propositions were ordered to be printed.

Mr. STEPHENS laid on the table a resolution, that the Convention would adjourn *sine die* on the first Saturday of October next.

The Convention then adjourned to half-past 8 o'clock on Monday morning.

MONDAY, AUGUST 31.

Prayer by the Rev. Dr. SPRAGUE.

Mr. SHAW presented a remonstrance from trustees and teachers of the Moravian Institute, on the subject of the diversion of the literature fund. Referred to the appropriate committee of the whole.

Mr. WORDEN presented the remonstrance of the Genesee Wesleyan Seminary on the same subject. Referred.

DUTIES AND CANALS.

Mr. AYRAULT presented a plan for paying the state debt and completing the unfinished canals, as follows:—

§ 1. The legislature shall not sell, lease, or otherwise dispose of any of the navigable canals of this state, including such as the state may hereafter finish and make navigable; but they shall remain the property of the state forever; and the tolls and all the revenues accruing therefrom shall be applied as provided for in this constitution.

§ 2. The tolls shall be so regulated as to best preserve the public faith, and to provide for the punctual payment of the public debt as hereinafter specified; and no reduction of tolls shall be made unless in view of these objects, until the whole of said debt shall be fully paid.

§ 3. For the purpose of completing the unfinished canals, the legislature may have power to increase the

present state debt to the amount of, but not exceeding in the aggregate, \$250,000, (exclusive of a contingent liability for the payment of \$1,713,000 loaned to solvent corporations,) provided it can be loaned at a rate of interest not exceeding 5 per cent.; but such increase shall not exceed in any one year \$1,000,000; and no such further increase shall be made unless for the better enabling the state to fulfil its engagements, by prosecuting with a view to completion some part or all of the unfinished canals, to wit:—The Erie canal enlargement, Genesee Valley canal and Black River canal; but the present state debt shall not be increased for any other purpose, unless to repel invasion or suppress insurrection.

§ 4. After paying the expense of collecting, superintending and ordinary repairs, \$1,600,000 of the revenues of the state canals, shall in each year, and at that rate or a shorter period, commencing 1st July, 1846, be applied or set apart as a sinking fund for the next ten years, to pay the interest: and redeem the principal of the state debt, until 1st July, 1855, when \$2,000,000 of said revenues shall thereafter continue to be applied or set apart annually, or in that proportion for a shorter period, in like manner, and to the like effect, until the whole of said debt and the interest thereon is fully paid and satisfied.

§ 5. The balance of the revenues of the canals, be the same more or less, after paying as provided in the last preceding section, together with the auction and salt duties and all other receipts into the treasury not otherwise specifically appropriated, shall be applied at the discretion of the legislature, in defraying the ordi-

nary expenses of the government, the completion of the unfinished canals, and the payment of the public debt; that is, the said canal revenues are thus sacredly pledged, until the state debt and interest thereon is fully paid and extinguished.

§ 6 If the funds herein provided for paying the public creditors shall not be realized in time to meet the state stocks falling due, provision shall be made by law for issuing new stock for that purpose: said new stock shall be made payable at such time as the revenues will meet the same.

EXPLANATORY.

The balance of the aggregate state debt, including all sums borrowed from specific state funds, is believed to be less than \$22,000,000, and cannot exceed \$22,300,000 — borrow \$2,700, 00 is \$25,000,000 Appropriate in payment \$1 500,000 annually for ten years, and \$2,000,000 annually thereafter, will pay a debt of \$25,000,000, and interest thereon, in 25 years Or apply all the revenues after completing the canals, and it is believed the debt will be extinguished at a much earlier period.

This plan simplifies the state debt by treating the amount in the aggregate instead of the numerous specific and general funds in which it has been heretofore considered; and it secures the early completion of the public works, thereby increasing the revenues from the increased business caused by cheapening transportation without a reduction of tolls.

It was referred to the committee of the whole and ordered to be printed.

JUDICIARY EXPENSES.

MR. PERKINS offered the following :

Resolved, That the Comptroller be requested to furnish this Convention with the amounts paid within the last three years to judges of the several courts of oyer and terminer, in this state, for services, under part fourth, chapter first, title one, section thirteen of the Revised Statutes.

Mr. P. explained his object to be to call for the amounts paid for returns of testimony made to the Governor in capital cases under the statute. His resolution was suggested mainly by a knowledge of the fact that the circuit judge had charged \$700 for furnishing a copy of his notes to the Governor in the case of Freeman the murderer, and \$300 for the notes of the trial of Wyatt.

The resolution was agreed to.

THE JUDICIARY.

The Convention resumed the consideration of the judiciary article, the fifth section being still under consideration.

Mr. J. J. TAYLOR moved to amend by inserting the words—"or any judge of the court of appeals," after the word "then," in the 2d line. Mr. T. explained his object to be to enable any judge of the court of appeals, as well as any judge of the supreme court, to hold special terms, and circuit courts, and to preside at the courts of oyer and terminer in any county. It had been suggested that the judges of the court of appeals would not have business to employ them throughout the year. Others believed they would have more business than they could accomplish. Judges were better officers from being constantly employed, and his amendment was intended to allow them to hold terms of the supreme court, without making it necessary that they should do so. Among other advantages to be derived from this, the judges would be able to gain some experience in the nisi prius courts.

Mr. HOFFMAN supported the amendment, for he thought it would be wise to require the judges of the court of appeals, not only to sit in banc, but to sit on circuit. He would amend the section so that the judges of the court of ap-

peals might be employed every where in banc, in circuit and in oyer and terminer, so as to leave the door open to a beneficial arrangement by the legislature. He proposed to amend the section so as to read as follows :—

The judges of the supreme court and of the court of appeals, or any two or more of them, may hold terms of said supreme court; and any one of them may hold circuit courts, and preside at the courts of oyer and terminer in any county.

Mr. WORDEN understood it to be the intention of the judiciary committee, (whose chairman was now absent, he feared in consequence of ill health,) to have a court of appeals disconnected with the judges of the inferior courts, so that when appeals came up they might be heard by a class of men who had not mingled in any way with the decisions and reasonings of the inferior tribunals, and as a consequence had no preconceived opinions. He feared the amendment of the gentleman from Herkimer would produce an effect that was not intended. He did not believe the legitimate business of that court would permit them to hold circuit courts; and feared that there was a disposition to throw too much upon the court of last resort, where judges should have abundant time to make up their opinions upon the cases brought before them.—Nor did he think their knowledge of the practice in these courts would be sufficient to make them competent to the duties of holding terms in nisi prius. He should therefore oppose the amendment.

Mr. PERKINS discussed the probability of a judge who had tried a case on circuit and made a decision which might be carried up for review, adhering to his decision to avoid any imputation on his judgment which a reversal might be supposed to make. He opposed the amendment.

Mr. SIMMONS agreed with the gentleman from Herkimer that two or more judges should be permitted to hold special terms, and he would be even willing to adopt the phraseology of the present constitution, and say one or more, so that the people might have courts held occasionally at their own doors. He would not, however, make this a constitutional provision, but leave it to the legislature.

Mr. PATTERSON said as a part of the court of appeals would be elected by general ticket, that part might consist of laymen, and it was held to be desirable that they should be so; but it would be obviously improper that laymen should hold circuit courts.

Mr. SIMMONS said it was not proposed to make it obligatory on them to do so, but merely to give them the discretionary power which it could not be supposed the lay members of that court would exercise.

Mr. PATTERSON opposed the amendment. Mr. HOFFMAN objected to the judges of the court of appeals sitting at circuit, if they did not sit at banc, and others objected to their sitting in circuit if they did sit in banc. How should they reconcile these differences. He thought the discharge of banc and circuit duties would increase the abilities of the judges of the court of appeals to discharge their peculiar duties, and tend to expose incompetency, if it should find its way into the court of last resort. He thought the gentleman from St. Lawrence, (Mr. PERKINS,) was mistaken

in supposing that a judge who had sat below and searched for the law, was thereby disqualified to sit in error. He repeated, however, that he would leave this to the legislature.

Mr. F. F. BACKUS said the amendment would prevent laymen ever accepting a seat in the court of appeals.

Mr. J. J. TAYLOR accepted the amendment of the gentleman from Herkimer.

Mr. WATERBURY said the amendment would defeat one object which had been contemplated. They had desired to have a tribunal that was entirely uncommitted to any decision in the courts below—not blind to the law, but not wedded to preconceived conclusions.

Mr. SWACKHAMER said if the amendment of the gentleman from Herkimer was to prevail, it would be necessary to reconsider the section constituting this court. Judges coming from the courts below, would necessarily be incompetent to review a decision with that candor and fairness that would actuate a person entirely dissevered from the inferior courts. He considered this a vital principle.

Mr. J. J. TAYLOR said if he desired to fill the pockets of lawyers he would prevent men sitting in more than one court. No one thing had been so productive of appeals, to prevent which he thought was a prominent object. He thought there would be no pride of opinion to prevent judges reviewing calmly and deliberately the opinions they had been called upon to make on circuit, necessarily in haste.

Mr. KIRKLAND asked what the gentleman from Herkimer meant, by proposing to leave out the words, "any district."

Mr. HOFFMAN replied that he feared these courts would be considered district, instead of state courts.

Mr. KIRKLAND feared the omission of those words would lead to a continuance of that centralization of which so much complaint had been made. He suggested some modification which would obviate his objections and make the amendment a valuable one.

Mr. HOFFMAN replied, and the debate was continued by Messrs. SIMMONS, RICHMOND, MORRIS, HARRIS, PATTERSON, TALLMADGE, STETSON, and RUGGLES.

Mr. STETSON moved to amend the amendment by striking out the words "and of the court of appeals," and insert "or a judge of the court of appeals," after "them," in the third line, so that the judges of the appeal court may hold circuit courts and courts of oyer and terminer, but not terms of the supreme court.

Mr. HOFFMAN said this would make the whole nothing more than a district system, instead of a system for the state at large.

Mr. RUGGLES, at some length, explained the purposes of the committee in framing the fifth section, and replied to the arguments which had been brought in favor of the proposed amendment.

The amendment of Mr. STETSON was lost, 20 to 34.

The question then recurred on the amendment of Mr. TAYLOR, as amended by Mr. HOFFMAN. The ayes and noes were called, and there were yeas 18, nays 70.

Mr. J. J. TAYLOR renewed his amendment

in its original form before it was amended on the suggestion of Mr. HOFFMAN.

The amendment was lost.

Mr. MURPHY offered an amendment to the fifth section, as follows:—

Provision may be made by law, for designating, from time to time, one or more of the said justices of the supreme court, not of the court of appeals, either of whom may preside at the general terms of the said court to be held in the several districts. Any three or more of the said justices, of whom one of the said justices so designated shall always be one, may hold such general terms. And any one of them may hold special terms and circuit courts, and may preside in courts of oyer and terminer in any county.

Mr. BASCOM desired to offer an amendment to obviate objections which had been made. It was to insert the words "having the shortest period to serve," so as to require the president judges to be taken from the experienced class of judges.

Mr. BROWN advocated Mr. MURPHY's amendment; but objected to Mr. BASCOM's.

Mr. HOFFMAN objected to a one man court, and proceeded to illustrate his position.

Mr. BASCOM withdrew his amendment.

Mr. NICOLL moved to strike out "special terms and," from the last clause of the amendment.

Mr. SIMMONS would rather leave the matter in the hands of the legislature.

Mr. NICOLL explained his purpose to be to require those special terms to be held by more than one judge, inasmuch as questions of grave importance would there have to be decided.

Mr. KIRKLAND called for the yeas and nays, and there were yeas 30, nays 50.

Mr. BAKER moved to amend so that it would read "two of them may hold special terms," &c.

This was briefly debated by Messrs. BAKER and BROWN, when the vote was taken by rising, and there were yeas 34, nays 32.

Mr. STETSON demanded the yeas and nays, and they were ordered.

Messrs. STETSON and SIMMONS farther debated the amendment, when

Mr. BAKER modified the same so that it would read "any one or more," &c.

Mr. MURPHY accepted the amendment. (It is embodied above.)

The substitute of Mr. MURPHY (see above) was then adopted without a division.

The 6th section was then read as follows:

§ 6 They shall severally at stated times receive for their services a compensation to be established by law, which shall not be diminished during their continuance in office.

Mr. RICHMOND moved to strike out all after the word "law." He thought the judiciary committee had made a mistake there. They could not wish to tie up the hands of the legislature so that they could not diminish a salary that was too high.

This amendment was lost, yeas 13, noes 68.

Mr. BROWN offered the following substitute for the clause proposed to be struck out, saying that he did so at the request of Mr. LOOMIS, who penned it, and would not be here until this afternoon:

"But no law shall be passed by which the salary of any judge shall be diminished below the amount established by law at the time of his acceptance of his office—nor shall any law increasing the salary of a judge take effect within two years after its passage."

Mr. B. said the object was to allow the legislature to reduce the salary of a judge to the point where it stood when the judge took office, but not below that amount—and to prevent any increase of salary taking effect within two years.

Mr. SIMMONS preferred the original section as it stood. That had a well settled meaning. It was in the present constitution, though applicable to other officers, and meant precisely what this amendment did, and was clear and explicit—save the latter clause, which was improper. We should only mystify the section by the amendment.

Mr. RICHMOND dwelt at much length on the original section—contending that it would invite efforts on the part of the judges to get their salaries increased, and once raised to a high point, they would not be reduced during their continuance in office. He was for paying them well, but he would not fix it in the constitution that a salary once fixed, no matter how high it was, should not be reduced for eight years. He should prefer to see the word diminished struck out, and increased put in.

Mr. BROWN reminded the gentleman that the question was on the amendment, not on the original section. The speech and the amendment did not hang together.

Mr. RICHMOND replied that it was all one question—and he did not want to make two speeches when one would answer. He went on to say, that as the next legislature would fix these salaries, the section should read that no judge's salary should be increased during his continuance in office. And if gentlemen had any confidence in the people, they would so amend it.

Mr. HOFFMAN opposed both the original section, the amendment, and the suggestion of Mr. RICHMOND. The object of any such provision should be to make the judges independent of the legislature, and it had nothing to do with the popularity hunting question of confidence or want of confidence in the people. It was not necessary that man, in settling this question, should have a popularity halter in his pocket, going about to see if he could not find a popularity horse to mount. The question was how we could make judges independent of the legislature. We should see to it that the legislature should not increase the pay of the judge. If they could, they could pension him—they might reward him for his decisions, or punish him for his decisions, by refusing to reward him. They ought not to have the power to reduce or increase the pay of a judge. He went on to urge that the minimum compensation of a judge should be named in the constitution—that the legislature ought not to be permitted to go below it—and the least compensation he would name would be \$3,000. He was free to confess that opinion, and that the danger was, under this increase of the judicial force, that their compensation might be fixed at too low a sum. A man who would not go on to the bench from any other motive than pay, was unfit to be there. So was the man who would go there without adequate pay. They must have bread, a shirt and lodgings. If you did not give it to them by law, they would have it, he would not say how. But they would have it. He urged

that \$3,000 was little enough for a judge who had to travel over the whole state, leave his family, and his affairs to be managed by others, and to live a good part of the time in your large cities, where he must pay the high prices which transient persons had to pay there. He would have the judge speak the law without the fear of losing his bread, or the hope of acquiring the favor of the legislature and money. Without an independent judiciary to stand by the constitution, there was no vitality in it.—And to be really independent, the legislature should have no power to deal with them in the matter of salary.

Mr. BASCOM followed. He should not be deterred from doing his duty, if gentlemen did undertake here to asperse the motives of those who differed from them. He did not come here with a popularity halter in his pocket, looking after popularity horses; and he regretted that gentlemen could not vote in a minority on such a question, though it was a silent vote, without having such imputations cast in their teeth. He voted with the thirteen in favor of the amendment just negatived; and because he was not willing to give the power to increase salaries and withhold the power to diminish also. The control of this whole matter of salary he would leave to the legislature, let gentlemen denounce the motive for such a vote as they would. He had another reason for voting to strike out the clause in question. It was because there was no prohibition in this article against judges receiving fees or perquisites. Had the judiciary committee adhered to their decision, and reported such a clause, he should not have made war upon this section. He opposed the principle of having a minimum salary. It was based only on the assumption that the judges would have a stinted compensation, and that we were sent here to see to it that public officers did not do injustice to themselves in the matter of compensation. Much more watchfulness, he apprehended, would be required to prevent them from getting more than they should. Unless this section was amended as he desired, he should move to strike out the whole of it, and insert the 13th section of his plan—which provided for a fixed salary, without fees or perquisites, alterations of salary to affect only those to be chosen after such alteration—travelling expenses to be allowed to a judge in one specified case.

Mr. BROWN: That is worse than all.

Mr. BASCOM reminded the gentleman that his particular clause was once adopted by a majority of the judiciary committee. And yet there was nothing about fees or perquisites in this article.

Mr. PATTERSON referred the gentleman to the last section of the report. It was all there.

Mr. BASCOM had overlooked that. It removed, of course his objection on that ground. But his main objection stood, that the section provided for an increase and not for a decrease.

Mr. BROWN said injustice was done to this proposition of the gentleman from Herkimer—as one object specifically to provide against an increase of salary taking effect during the term of a judge. The proposition was not his own. He was in favor of another provision like that suggested by Mr. HOFFMAN—and such an one,

he understood, would be offered. The minimum he would have a liberal and just one, such as would command the very best talent in the state. He was not, with the gentleman from Genesee, for cutting down salaries to the very lowest point.

Mr. RICHMOND would not pay one officer more than he would another for equally valuable services.

Mr. BROWN would not either. And hence, he would not allow the clerk of a court more than the judges on the bench, as had been the practice.

Mr. WHITE moved to amend so as to provide that the salaries of a judge should not be less than \$3,000 per annum—and which shall not be increased nor diminished during his continuance in office.

Mr. WATERBURY remarked that that would be \$103,000. He doubted about that going down among his constituents. They could not swallow that thing. [A voice—"They pay more now?"]

Mr. PERKINS thought we should not be able to agree on any minimum, and should only be wasting time on it. He should be willing to vote for \$2,500—but nothing more.

Mr. RICHMOND explained. He moved to strike out this clause because it was not in harmony with the determination of the Convention in regard to salaries. Mr. R. went on to show the propriety of the course he had taken, and the injustice of imputing to him a desire to ride popularity hobbies. He adverted to the large increase of salaries made by the legislature in 1815 or 1816, as a warning against placing the power to reduce entirely out of the hands of the legislature.

Mr. BURR had voted against the amendment, not because he thought the section right as it stood, but because he desired to see it put in a different shape. He desired to provide for paying the judges a fixed salary—not to be increased or diminished during their continuance in office. He expressed himself favorable to the report of the judiciary committee in the main, and pointed out some few particulars in which he desired to see it amended—though, from the fate of amendments generally, he did not expect to see any material amendment made in it.

Mr. LOOMIS' amendment was lost.

Mr. W. H. SPENCER then moved to amend so as to provide that the law fixing salaries, once passed, should not be altered oftener than once in ten years—or after the taking of the census. Lost.

Mr. PERKINS moved to provide that no law increasing or diminishing salaries shall take effect within two years of its passage. Lost.

Mr. COOK moved to add this proviso in lieu of the original—that the salary of no judge of the supreme court or court of appeals shall be increased or diminished during his continuance in office.

Mr. STRONG sustained this amendment—urging that this matter of salary should be left entirely to the legislature.

Mr. WHITE now proposed his amendment in blank—[as above.]

Mr. SALISBURY moved to fill the blank with \$2,000.

Mr. WHITE, \$3,000.

Mr. NICOLL \$2,500.

The question was first put on \$3,000 as the minimum, and lost, ayes 18, noes 73, as follows:—

AYES—Messrs. F. F. Backus, Bouck, Hoffman, Jones, Kennedy, Maxwell, Morris, Murphy, Nicoll, O'Connor, Penniman, Riker, Ruggles, Stephens, Tallmadge, J. J. Taylor, Vache, White.—18.

NAYS—Messrs. Angel, Archer, Ayrault, H. Backus, Baker, Basom, Bowdish, Brayton, Brown, Bruce, Burr, R. Campbell, jr. Candee, Clark, Conely, Cook, Cornell, Crooker, Cuddeback, Dana, Dodd, Dorlon, Dubois, Flanders, Gebhard, Graham, Greene, Harris, Harrison, Hart, Hawley, Hotchkiss, A. Huntington, Hutchinson, Kernan, Kingsley, Kirkland, Mann, Marvin, Miller, Nellis, Nicholas, Parish, Patterson, Perkins, Powers, President, Rhoades, Richmond, St. John, Salisbury, Sanford, Sawyer, Shaw, Sheldon, E. Spencer, W. H. Spencer, Stanton, Stearns, Stow, Strong, Taft, W. Taylor, Warren, Waterbury, Willard, Witbeck, Wood, Worden, A. Wright, Yawyer, Young, Youngs.—73.

And next on \$2,500.

Mr. TALLMADGE preferred not to name any sum, but to leave the whole matter to the legislature—and hence he should vote against filling the blank with any sum. Others probably voted against \$3,000 on the same ground. There was therefore no use in trying to fill the blank, when a majority probably were against the whole amendment.

Mr. W. H. SPENCER was also opposed to filling the blank with any sum.

The Convention refused to insert \$2,500, ayes 27, noes 62, as follows:—

AYES—Messrs. Bouck, Brown, Candee, Dorlon, Dubois, Harrison, Hoffman, Jones, Kingsley, Mann, Maxwell, Miller, Morris, Murphy, Nellis, Nicoll, O'Connor, Penniman, Perkins, Powers, Rhoades, Ruggles, Sanford, Stephens, J. J. Taylor, W. Taylor, Vache, White.—27.

NAYS—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bowdish, Brayton, Bruce, Burr, R. Campbell, jr. Clark, Conely, Cook, Cornell, Crooker, Cuddeback, Dana, Dodd, Flanders, Gebhard, Graham, Greene, Harris, Hart, Hawley, Hotchkiss, A. Huntington, Hutchinson, Kennedy, Kernan, Kirkland, Marvin, Nicholas, Parish, Patterson, President, Richmond, Riker, St. John, Salisbury, Sawyer, Shaw, Sheldon, E. Spencer, W. H. Spencer, Stanton, Stearns, Stow, Strong, Taft, Tallmadge, Warren, Waterbury, Willard, Witbeck, Wood, A. Wright, Yawyer, Young, Youngs.—62.

Mr. WHITE then withdrew his proposition.

Mr. COOK'S amendment was then adopted, 75 to 11—and the section, as amended, was agreed to.

The Convention then took a recess.

AFTERNOON SESSION.

The seventh section was read, as follows:—

§ 7. They shall not hold any other office or public trust. All votes for either of them for any elective office, (except that of justice of the supreme court, or judge of the court of appeals,) given by the legislature or the people, shall be void. They shall not exercise any power of appointment, except in licensing practitioners in their courts.

Mr. BROWN moved to amend by striking out all after the word "appointment."

Mr. O'CONOR suggested the addition, after the word appointment, of these words:—"But may be authorized to appoint trustees, receivers, auditors, referees, elisors, caperis, and other agents, to perform duties in any pending suit or matter, and to license counsellors and attorneys." This would allow the legislature,

whilst they deprived the judge of all patronage, to allow him to appoint such assistant officers as might be necessary in the progress of a cause. As to the power to license attorneys, &c., that, under his amendment, would depend entirely on the legislature.

Mr. NICOLL suggested that the entire clause should be struck out. The only patronage the courts had was the appointment of clerks, and if their appointment was provided for in another manner, there was no necessity for enumerating all these officers.

Messrs. KIRKLAND and TAGGART took the same view of the question, and

Mr. O'CONOR waived his suggestion, saying that the entire clause had better be struck out.

Mr. MURPHY alluded to his resolution of enquiry offered at an early stage of the session, into the propriety of providing in the constitution that no other duties should be assigned to a judge than those which were strictly judicial—saying that he intended by that to reach not merely the appointment of clerks, but all other duties which the legislature had thrown upon judges. Some such general provision, he urged, would be all that was necessary to reach the end which these amendments had in view. He had also offered a resolution of enquiry into the propriety of incorporating into the institution a prohibition of all inspection laws, and against licensing any particular calling, business, or profession. He was still of that opinion, though he would not deprive judges of the power of excluding improper persons from practicing in their courts. What he objected to was the power of conferring affirmatively the power to practice.

Mr. STRONG moved by way of amendment, to strike out the words, "except licensing practitioners in their courts," and inserting:

"Nor shall they prohibit any citizen from practising as attorney and counsellor in any court, except for want of good moral character."

Mr. S. said his object was to improve the character of a profession, which was now disgraced by the conduct of some unworthy members of it. He would have all of them stand on their own bottoms, and not on a mere piece of parchment tied with a blue ribbon. He was also opposed to any power to grant privileges to any class of men—but would leave suitors to choose their own counsel as they could now their own physician.

Mr. BROWN urged that we should not leave this matter open, as proposed, but should affirmatively prohibit the exercise by judges of all power of appointment to public office, and of all patronage whatever. As to the power of licensing attorneys, he cared nothing about it.

Mr. PATTERSON said the principal object of the judiciary committee in inserting this clause, was to prohibit judges from appointing their clerks. He suggested, therefore, that it would be better to strike out all after the word "void"—and then have a separate section to this effect:

"The legislature shall provide by law for the election of one or more clerks of the supreme court."

Mr. CROOKER hoped the profession would exercise a becoming liberality and vote for Mr. Strong's proposition.

Mr. WHITE proposed the following addition to Mr. STRONG's amendment:—

"And the ability to read and write."

Mr. LOOMIS did not wish the protection of the constitution thrown over his profession as such, but he could not assent to having a provision in the constitution which would prohibit the courts, composed of high public officers, from preventing men who were totally unfit to advise them upon questions of law, or to be of any service to them, or to clients from practising in them. It was not the profession that were interested but the public, in the despatch of business in the courts, and in their character. He could not yield to any paltry prejudices of this kind, nor stultify himself by the adoption of such a provision as this. Let it remain open for the legislature to provide for; and if they make such a law, and find it to be unwholesome, they can the next year abolish it. It will not be so if made permanent in the constitution.

Mr. WATERBURY hoped this amendment would ake. Let every man who had a lawsuit look up the man that he choose to take care of his rights. He had no idea of conferring on the profession the exclusive privilege of practising in the courts, any more than he would grant exclusive privileges to any other calling.

Mr. CROOKER looked upon these special licences to practice law as on a par with licences to sell ardent spirits. They were designed for the protection of the public—but if the public desired to play with edged tools, let them do it, and cut their fingers if they chose.

Mr. SWACKHAMER sustained Mr. STRONG's proposition at some length.

Mr. BASCOM would be obliged to vote against the motion as it stood; but if one should be made to sweep away all the privileges now enjoyed by his profession, he would go for it.—It would seem invidious to apply this principle only to those who are to enter the profession hereafter.

Mr. HOFFMAN said if gentlemen would come down to the question whether they would recognize any such profession or office as a lawyer's doctor's, or teacher's in schools, he might not find any difficulty in voting with them; because he knew that in a few years they would be obliged to come back to the present system.—There must be such a class of men as lawyers, and the only question was how they were to be appointed. He preferred the present mode of appointment by examination, (although he confessed that he regarded the rules of examination as illiberal, because it supposed that study in a certain place for a given period gave the necessary skill,) because by it the appointments could not be made partisan favors, and did not enter into politics at all.

Mr. BROWN opposed the amendment. He was not in favor of the rule which required seven years study; there were many things which required to be liberalized; but he could have nothing to do with the amendment of the gentleman from Monroe. He would be found joining in no miserable cry against lawyers as a profession.

Mr. STRONG withdrew his first amendment, and offered the following in its place:—

"Any male citizen of the age of 21 years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to a mission to practice in all the courts of this state."

Mr. MURPHY combatted the views of Mr. HOFFMAN as any thing but the views of a reformer; and he denied that (in reply to Mr. BROWN) the effect of this proposition would be injurious to the profession, or that all those who voted for it, joined in any miserable cry against lawyers. He regarded it as calculated to rid the profession of a class who by virtue of their parchment and blue ribbon only, were admitted to practice—for the examination was a mere form—and through whose ignorance or negligence many a just cause had been lost. He preferred to leave suitors to choose their own counsel instead of being forced, as they often were now, to employ ignorance or indolence or both, and suffer all the consequences.

Mr. WATERBURY sustained the amendment.

Mr. TAGGART moved the previous question, and there was a second.

The main question was ordered to be put, when the question upon the amendment of Mr. STRONG was taken by ayes and noes and carried, ayes 60, noes 17, as follows:—

N YS—Messrs Cuddeback, Dana, Greene, Loomis, McNeil, Miller Nicholas, O'Connor, Patterson, Riker, Sanford, Shaw, Taggart, Tallmadge, Wood, A. Wright, Youngs—17

Mr. PATTERSON thought it was preposterous to have any such thing in the constitution, and moved to strike out what had just been inserted.

This was ruled out of order.

Mr. BROWN moved to insert after "appointment," the words "to public office." Agreed to.

Mr. TALLMADGE moved to strike out the first sentence, and insert, "The judges of the court of appeals and the justices of the supreme court shall not be elected or appointed to, or hold any other office or public trust during the term for which they shall respectively have been elected."

Mr. KIRKLAND believed this was going farther than the Convention was prepared to go at this time. In effect, it would disfranchise the judges for a certain time, if from any cause they should resign before the close of their term.

Mr. J. J. TAYLOR hoped the amendment would prevail. In this way alone could judges be preserved from becoming partizans. It allowed to take office at any time they chose to resign, they might lay their plans while on the bench, and only occupy it from motives of ambition and aggrandizement.

Mr. BASCO apprehended the object of the mover of the amendment, would not be attained by its adoption. He thought these officers, as well as others, should have every inducement to discharge their duties well.

Mr. A. W. YOUNG feared that those least qualified for the office would be the most likely to hold on. He thought the amendment a good one, and hoped it would be adopted.

Mr. TALLMADGE desired to place the judiciary beyond the reach of offers of place or promotion either at the hands of the Executive or the legislature. He would have a judge, when he accepted office to devote himself strict-

ly to his duties, instead of being approachable by the dispensers of patronage or place. In no other way could we have a pure bench. The judge must not be looking out for promotion during his term, if we would have him attentive to his duties rather than to politics.

Mr. BROWN said this identical proposition was before the judiciary committee and rejected. The effect of it, if adopted, would be this. If a man should be elected a judge of the supreme court, no matter what his eminent abilities for other stations might be, however much the country might need these services, here would be a constitutional prohibition against appointing him to such a station for eight years.

Mr. TALLMADGE replied. He did not believe these 40 judges would so monopolize the talent of the state that no one would be found to discharge the duties of other offices.

Mr. PATTERSON said the committee supposed they had made ample provision against electioneering judges, in this 7th section. He pointed out objections to the amendment. A judge who had been in office only a year might be afflicted with sickness which might be so protracted as to induce him to resign. Then this amendment would utterly preclude the people from electing him to any office until the expiration of eight years. He could sanction no such principle.

Mr. W. TAYLOR hoped the constitution we should adopt would confer no exclusive privilege upon any class of citizens, nor impose any unjust restrictions upon any. He deemed this an unjust and uncalled for restriction.

The amendment of Mr. TALLMADGE was negative, as follows:—

AYES—Messrs. Allen, F F Backus, Cook, Cornell, Gardner, H rrisson Hoffman, Jones, Kennedy, Mann, Marvin, Morris, Nicholas, Peniman, Perkins, Richmond, Riker, Shaw, Sheldon, Swackhamer, Taft, Tallmadge, J. J. Taylor, Vache, Waterbury, Wood, Yawger, Youngs—26.

NOES—Messrs H Backus, Bascom, Brayton, Brown, Bruce, Brudage, Burr, R. Campbell, Jr., Candee, Clark, Conely, Crooker, Cuddeback, Dana, Dodd, Dorton, Dubois, Flanders, Graham, Greene, Harris, Hart, Hawley, Hotchkiss, A. Huntington, Kernan, Kingsley, Kirkland, Loomis, McNeill, Maxwell, Miller, Nellis, Nicoll, Parish, Patterson, Powers, President, Rhoades, Ruggles, Salisbury, Sanford, Shaver, W. H. Spencer, Stanton, Stevens, Stetson, Taggart, W. Taylor, Tilden, Van chonhoven, Warren, White, Worden, A. Wright, W. B. Wright—36.

Mr. MANN moved to amend the amendment of Mr. STRONG by inserting the word "white," so that it would read "any white male citizen."

Mr. STETSON moved the previous question on this.

Mr. CROOKER would like to know what construction was to be put on this word "white?" It might cut off some of us that now practised law! [Laughter.]

Mr. RICHMOND raised the question that as this amendment had been disposed of, this motion was not in order.

The PRESIDENT so decided.

Mr. MANN then moved to re-consider the vote on Mr. STRONG's amendment. Lays over one day.

Mr. STETSON moved the previous question on the section and it was seconded.

The 7th section was adopted as amended.

The 8th section was then read and adopted as follows:—

§ 8. The classification of the justices of the supreme court, the times and places of holding the terms of the court of appeals, and of the general and special terms of the supreme court within the several districts, and the circuit courts and courts ofoyer and terminer within the several counties, shall be provided for by law.

The 9th section was then read:—

§ 9. The testimony in equity cases shall be taken before the judge, who shall hear and decide the case in the same manner as testimony is taken upon the trial of an issue at law

Mr. BROWN offered the following amendment, to come in at the end of the section:—

“And the legislature may provide for the trial of issues of fact in all proper cases by a jury.”

Mr. HARRIS deemed the section imperfect as it stood, and he offered the following as a substitute therefor:—

§ 9. The office of master and examiner in chancery are abolished. The testimony in equity cases shall be taken before the judge who shall hear and decide the same; but the legislature may provide by law for the examination of foreign and distant witnesses, and the taking of testimony conditionally, and for the reference of any question or cause to an auditor or auditors, referee or referees, upon special application, or by consent of parties.

Mr. NICOLL thought we had better leave all the detail of this matter to the legislature. All that was necessary was to provide that testimony in chancery cases should be taken in open court.

Mr. CROOKER was also opposed to the section as it stood.

Mr. HOTCHKISS moved to adjourn. Agreed to—38 to 35.

Adj, to 8 1-2 to-morrow morning.

TUESDAY, SEPTEMBER 1.

Prayer by the Rev. Dr. SPRAGUE.

The PRESIDENT presented a communication from the Comptroller, in answer to Mr. PERKINS' resolution adopted yesterday, calling for the amounts paid to judges for furnishing notes of trials to the Governor. It was ordered to be printed.

ADJOURNMENT SINE DIE FIXED.

Mr. STEPHENS asked for the consideration of his resolution, heretofore offered, fixing the day of adjournment *sine die* on the 1st Saturday in October.

Mr. CROOKER thought an earlier day should be preferred. He, therefore, moved to amend by making the day the last Tuesday in September.

Mr. STEPHENS accepted that amendment.

Mr. STRONG moved to amend so as to fix the hour of adjourning at 12 o'clock of that day.

Mr. STEPHENS accepted that amendment.

Mr. NICOLL called for the yeas and nays.

Mr. BURR said he did not know that they should be ready to adjourn by that day.

Mr. CROOKER: We never shall unless we fix the day.

Mr. BURR said if they fixed the day they would not be bound to adjourn upon it, and therefore they had better proceed with their business, and adjourn as soon as they were ready.

Mr. W. H. SPENCER moved to lay the resolution on the table. He did not believe the Convention could now decide when it would be prepared to adjourn.

Mr. STRONG asked him to withdraw that motion, and Mr. S. consenting, Mr. STRONG proceeded to say that he hoped the resolution would not be laid on the table, because if they did not fix the day of adjournment they should go on as they had done, spending the time in mere talk. When gentlemen once knew that the day of adjournment was certain, one effect, he apprehended would be produced—if anything could produce a salutary effect—of which he had serious doubts—which would facilitate their

business. Fix the day, and he hoped gentlemen would go to work, talking less and doing more. It was not necessary to lay the resolution on the table, for if anything should happen to require a continuance of the session, the Convention could rescind the resolution. He was for fixing the day at once. It was necessary that the people should have time to examine the constitution that might be adopted here, so that they might vote upon it understandingly. From 15 to 20 days would not be a sufficient time for the people to consider the constitution, if it took this Convention from four to five months to make it. Thirty days would be requisite. He knew the people were very anxious to have it at as early a day as possible, and he was for giving it them by fixing the day of adjournment.

Mr. CROOKER said he was perfectly satisfied that unless the day of adjournment was fixed there would be nothing operating on the minds of gentlemen, to induce them to shorten their speeches. During the last few days many gentlemen have been troubled to dispose their minds to listen. On one day one gentleman made five speeches on the same question and another gentleman made four. Now this was inflicting a good deal on some of us. He thought if this resolution were adopted and adhered to they should go to work and stop this interminable talk. There was nothing else that would accomplish that desirable object.

Mr. A. W. YOUNG said it was well known there was a point beyond which this Convention could not sit, and all the time which intervenes would be required to complete their labors, and much must necessarily be passed over with very little debate. They must adjourn by the 1st of October and it was unnecessary to fix the day a month in advance; he therefore moved to lay the resolution on the table.

The yeas and nays were then taken, and resulted thus: yeas 31, nays 57. So the resolution was not laid on the table.

AYES—Messrs. Archer, Ayrault, Baker, Bascom, Brown, Brundage, Candee, Clark, Conely, Cuddeback,

Dana, Graham, Hart, Hotchkiss, Kennedy, Loomis, Mann, Nellis, President, Salisbury, Sanford, Shaver, Shaw, W. H. S.enger, Swackhamer, Townsend, Van Schoonhoven Willard, A. Wright, Yawger, Young—31
 NOES.—Messrs. Angel, F. F. Backus, H. Backus, Bergen, Bowditch, Brayton, Bruce, Bull, Burr, Cambreleng, K. Campbell, Jr., Cook, Crooker, Dodd, Dorton, Dubois, Flanders, Gree, Harrison, Hawley, Hoffman, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kernat, Kingsley, Kirkland, Marvin, Maxwell, Miller, Nicholas, Nicoll, O'Connor, Parish, Patterson, Powers, Richmond, Riker, St. John, Sears, E. Spencer, Stanton, Stephens, Stetson, Stow, Strong, Taft, J. J. Taylor, Warren, Wat-rbury, White, Wood, Worcen, W. B. Wright, Youngs—57.

Mr. BROWN moved to amend, by striking out "the last Tuesday in Sept" and inserting "the 1st Tuesday in October." [A voice, "on or before"] oh, its no use to say before, (laughter.) The 1st Tuesday in October will allow 4 weeks to the people, and gentlemen were mistaken if they supposed that the people did not know how the matter stands as we go along. We must go as far as we can, and 4 weeks will be sufficient for the people. We can do everything in that time.

Mr. KENNEDY. Provided we do not have too many "long talks."

Mr. BROWN. Well, we must do all we can and leave the rest.

Mr. CROOKER. We can do it all up if you will give us a chance to work.

Mr. HOFFMAN hoped the Convention would not be hurried on this or any other occasion, and be compelled to do the very mischief which hurry always brings with it. When they came here a few months ago they were strangers to each other and to this species of legislation. They had a new and difficult trade to learn. They had much to learn from each other, and they had been diligent in doing this business, making as much progress in it as any set of men on God's earth could be reasonably expected to have made. The complaints of delay were the most baseless complaints that could be made. Well, having acquired some knowledge from one another—having acquired a knowledge of the tools with which they had to labor—having obtained a familiarity with the subject, he asked gentlemen if it was not certain that they should do more business in the next thirty days than in the last ninety? If they would be patient—if they would keep cool during this hot weather—if they would think during the hours they were here they would entirely succeed. He said this with a most perfect acquaintance with matters of this kind. He admitted there were three or four subjects before them which must be acted upon. If they separated without settling them the Convention would have done nothing. If they could not settle the disputed question of finance—if they could not settle the disputes relative to banks—if they could not adopt some general rules relative to corporations—if they could not defend the public against the extravagance of municipal bodies having the taxing power, then the result of their labors would be an abortion. They must remedy this evil or they could have no legislature as they had not had for the last fifteen years. But notwithstanding all this he would again say to gentlemen that if they would be deliberate—if they would keep cool—if they would act here with ordinary common prudence, they would succeed

by the day mentioned for the adjournment by the gentleman from Orange. He knew the public had examined what has been done here completely—they get along with it as fast as the Convention. They would not take the people by surprise if they continued to sit to the day which the amendment would fix. The people read the discussions of this body so far as they are pertinent—they form their opinions on the subject—and on the first of October they will not be taken by surprise.

Mr. STEPHENS said gentlemen had said that there was a general understanding that the Convention would adjourn by the 1st of October—but his acquaintance with the opinions of gentlemen satisfied him that there was no such agreement. On the contrary, the 10th of October was mentioned by some, and the 15th by others, and knowing the tendency there was to go on from day to day, without any definite result, he moved his resolution to ascertain when the Convention would agree to adjourn. He had no desire to precipitate business, though he differed with gentlemen as to the possibility of getting through the business before then. That, however, was a question that did not now come up.

The amendment of Mr. Brown was agreed to without a division.

The resolution, as amended, was then agreed to without a division; and the day of adjournment is therefore fixed for Tuesday, the 6th of October, at 12 o'clock at noon, leaving the Convention precisely five weeks within which to complete its business.

ORDER OF BUSINESS.

Mr. WHITE offered the following resolution:

Resolved, That it be referred to a select committee to consider and report what business should be transacted by this Convention before its adjournment, and that said committee be also instructed to consider and report what measures, if any, should be adopted in case it shall be found impossible to consider and determine upon the several important reports of standing committees, which have been or may be made, at a sufficiently early period to enable the Convention to submit to the people, at the ensuing November election, the result of its deliberations of such reports.

Mr. W. called for the yeas and nays thereon.

Mr. NICHOLAS moved to lay the motion on the table to save the time of the Convention.

Mr. WHITE called for the yeas and nays, but they were not ordered.

The motion to lay on the table was carried.

THE JUDICIARY.

The Convention resumed the consideration of the judicial reports.

The pending question was Mr. Brown's amendment to the ninth section.

Mr. BROWN withdrew his amendment, and offered the following substitute for the whole section:—

Provision shall be made by law for the taking of testimony in equity cases in open court, in the same manner as testimony is taken upon the trial of an issue at law—cases proper for a reference may be referred to one or more auditors or referees and the legislature may provide for the trial of issues of fact in all proper cases by a jury.

Mr. TAGGART addressed the Convention at length on both the section and the amendment, pointing out the necessity of some more definite

provision. He concluded by offering the following substitute:—

§ 13. The legislature shall, by law, so regulate the practice and proceedings in all courts, that every party to any action or proceeding may have any remedy or relief to which he may be entitled in reference to the subject matter of such action or proceeding either legally or equitably in the same action or proceeding, without resorting to any other action; and the testimony in all cases shall be taken at the trial, or hearing before the court, referee or referees, except such as may be taken out of court upon commission, or conditionally, or to perpetuate testimony, in cases provided by law.

The question was first upon the proposition of Mr. BROWN.

Mr. KIRKLAND objected to the phraseology of this proposition, as defeating the very object sought to be attained. It would require the taking of testimony in all equity cases before a jury. He sent up the following amendment as the best, in his opinion, and covering the whole case:—

§ 9. Cases both in law and equity shall be tried at said circuit courts; and without a jury whenever the parties in interest in a suit, and the judge holding the circuit, assent thereto. Provision shall be made by law for cases in law or equity not properly triable at a circuit court. Provision shall also be made by law, for the performance of the duties heretofore performed by masters in chancery.

Mr. KIRKLAND moved to strike out the word "may" and insert "shall."

Mr. O'CONOR opposed this change. To make this imperative upon the legislature, would be productive of mischievous consequences.

Mr. NICOLL said the words, "in all proper cases," so qualified this phrase as to obviate the objection urged by his colleague.

Mr. KIRKLAND advocated his amendment as absolutely necessary to induce the legislature to act on this subject. They had heretofore refused to act, and the imperative form was necessary.

Messrs. LOOMIS and MORRIS briefly continued the debate, when the amendment of Mr. KIRKLAND was agreed to, yeas 60, noes 36.

The proposition of Mr. BROWN was further debated by Messrs. MARVIN, VAN SCHOONHOVEN, TALLMADGE, HARRIS, BROWN, NICOLL, BASCOM, TILDEN and STOW, and negatived.

Mr. HARRIS offered the following substitute:

§ 9. The testimony in equity cases heard on pleadings and proofs, shall be taken before the judge, who shall hear the case in the same manner as testimony is taken upon the trial of an issue at law. The trial may be by or without a jury, according to the nature of the case, and as may be prescribed by law. Cases proper or reference may be referred to one or more auditors or referees.

Mr. MORRIS moved first to amend the original section so that it would read as follows:

§ 9. The testimony in all civil cases shall be taken in the same manner as testimony is taken in issues at law, subject to regulation by law. All trials of issues of fact shall be tried by a court and jury, except where the parties shall agree to try the same before the court, or where the same shall be referred according to law.

Mr. M. advocated his amendment. His object was the utter annihilation of the distinction between cases in law and equity. For this reason he had used the words "all civil cases."

This was further briefly debated by Messrs. NICHOLAS and BASCOM, and negatived.

Mr. BASCOM moved the following substitute which was negatived, 33 to 37:

The mode of trial and taking testimony in all classes of civil causes shall be uniform as near as may be, and the office of master and examiner in chancery is hereby abolished.

Mr. MANN moved to amend by adding "the offices of master and examiner in chancery are hereby abolished."

Mr. M. called for the yeas and nays. He advocated the adoption of the amendment.

Mr. BROWN opposed it. He did not wish offices to be abolished by a constitution. They might be created, but it was incongruous to abolish them by the fundamental law.

Mr. COOK said the office might be abolished, and the legislature would be compelled to find some other means of doing the business.

Mr. STRONG feared there was a design in the amendments which had been offered to retain the offices of master and examiner in chancery. He desired to see them stricken out of existence, for they were blood-suckers on the people.

Mr. KIRKLAND thought a constitution could and should be framed so as to dispense with masters and examiners, leaving the court to appoint referees or other officers to discharge the duties when required.

Mr. RHOADES asked Mr. BROWN if it was so absurd to abolish an office in the constitution, what construction he would place on the 16th section, where several courts were abolished? Was not the one as great an absurdity as the other?

Mr. BROWN said that section was in the report entirely against his will. He should vote against this amendment. The duties of master must be performed by somebody, and he would not confer upon the judges the appointment of a great number of referees, a patronage which had led to great abuses in other states.

Mr. VAN SCHOONHOVEN said the voice of the people required these offices to be abolished, to get rid of a set of officers who have been a burden to the community, and leave their duties to be discharged by some other department.

Mr. BASCOM was glad the proposition was presented distinctly. He was of opinion that the establishment of a distinct class of officers to do such duties was unsound in principle.—Much of the duty discharged by them could be done by the sheriff. It was one duty of a master to sell a farm under a mortgage, under a certain proceeding. Under another proceeding this duty devolved upon the sheriff. Why could not the sheriff do this duty in both cases? His fees for this work were only some three or four dollars, while the master received \$20 and upward. Mr. B. referred to the other duties of masters to show that it was not necessary under any circumstances to retain this office.

Mr. BRUCE said there were in the state 188 examiners and 168 masters in chancery and the feeling of the people was well known to be in favor of abolishing this horde of officers; and whether it was done by the constitution or not, these offices must be abolished. The question was a simple one, it must therefore be well understood, and each one must be ready to vote on it. He therefore moved the previous question,

which was seconded and the main question ordered to be now put.

Mr. NICOL called for a division of the question, so as first to take the vote on abolishing the office of examiner.

Mr. STRONG raised a point of order. He contended that the call for the division came too late.

The PRESIDENT (Mr. JONES) overruled the point of order.

Mr. DODD inquired how the division would be made.

The PRESIDENT explained.

The yeas and nays were then called for and ordered.

Messrs PATTERSON and CROOKER contended that the question was indivisible.

The PRESIDENT reversed the decision.

Mr. MURPHY desired to read a proposition which he should offer if this amendment were rejected. [Cries of "Oh, no, we have got information enough."]

The yeas and nays were then taken on the amendment and resulted, yeas 88, nays 6. So the amendment was carried.

Mr. MURPHY moved a reconsideration of the vote just taken for the purpose of explaining his vote.

Mr. PATTERSON said the motion could not be now reconsidered.

Mr. MURPHY was permitted to explain and he went on to show that the gentleman who had made certain motions had failed in their object. The abolition of examiners in chancery was but an abolition in name inasmuch as their duties were to be performed by auditors or some other officers.

Mr. VAN SCHOONHOVEN rose to a point of order. He would not consent to the gentleman from Kings going into an argument unless they could explain all round.

Some conversation ensued in which the PRESIDENT said the gentleman from Kings was proceeding by unanimous consent.

Mr. VAN SCHOONHOVEN said the amendment just disposed of was acted upon under the operation of the previous question and therefore the gentleman from Kings was out of order as the previous question applied to the reconsideration. [Cries of "Oh, withdraw your opposition. It is only a personal explanation."] Mr. V. S. desired to ask the gentleman from Kings how long his explanation was likely to be?

Mr. MURPHY: Just as long as I choose to make it.

Mr. VAN SCHOONHOVEN then appealed from the decision of the CHAIR and reduced his appeal to writing, as stated above.

A long conversation arose thereon, and the Convention then sustained the decision of the CHAIR.

Mr. MURPHY continued. He wished before proceeding to explain his vote, to say in reference to the question of order which had just been raised, that before attempting to speak, he had asked the PRESIDENT whether the previous question had been exhausted, and if a motion to reconsider was in order. The PRESIDENT answered in the affirmative, and said that the question could not be considered without the unanimous consent of the House. That was given,

and he was proceeding when the gentleman from Rensselaer (Mr. VAN SCHOONHOVEN) interrupted him with the point of order. Now he would submit it to the house, whether he had at any time trespassed upon the indulgence of the house, and whether, in that respect, he could not favorably compare with that gentleman.

Mr. VAN SCHOONHOVEN wished the gentleman from Kings to repeat the remark he had just made.

Mr. MURPHY said it was unnecessary, as he should at once give the explanation which he originally rose to make, of his vote on the question previously taken. He had voted in the negative, because the amendment of the gentleman from New York, declaring that masters and examiners in chancery should be abolished, did not accomplish the object which the proposer undoubtedly had honestly in view. Unless it were accompanied with a prohibition upon the legislature, there would be nothing in the constitution to prevent the appointment of other officers by different names, such as auditor and the like, to discharge precisely the same duties. This amendment changes names, but not things. It was similar to the amendment offered by the gentleman from Monroe (Mr. STRONG) yesterday in regard to licensing lawyers. The effect of the proposition of that gentleman was like that of the committee to make a constitutional provision in favor of lawyers where none existed before. He (Mr. M.) had voted for it in order to perfect as far as possible the section of the committee's report, and then voted against the whole of that part of the section. The amendment of the gentleman from Monroe abolished the term of study, and in this it was an improvement upon the section of the committee. In that view he voted for it, with an intention, however, to vote down the whole. But that vote could not be given in consequence of the interpretation of the Chair that the adoption of the amendment precluded the motion which had been made by the gentleman from New York (Mr. NICOLL) to strike out, in consequence of the amendment being an entire substitute for the whole clause. Seeing that he (Mr. M.) had thus been caught in voting for a proposition which he did not approve, he had determined not to be caught a second time, and therefore voted against the amendment of the gentleman from New York (Mr. MANN), because it did not effect the desired purpose, and left the evil where it was. In regard to the merits of the question, he did not intend to say anything more than that he wished to see real reform carried out. He would not sanction those specious glosses by way of amendment which gave "the word of promise to the ear and broke it to the hope." For one, he fully believed that all the duties of a master in chancery can be discharged by other officers of the court without any great expense to the parties, and just as well. The clerk of the court could compute the amount due on a mortgage where there was a default, and a jury could find the amount due if there were any defence. Matters of account could be given to a referee; while in regard to sales, they could be conducted by the sheriff of the county. He (Mr. M.) had sent an amendment to the Chair to the effect that the duties of masters in chancery

should hereafter be performed in the same manner as like duties are discharged in proceedings at law. The expense saved to the public would be very great. Every lawyer knows that nearly one-half of the expenses of foreclosing a mortgage in chancery is paid to the master. The lawyer standing next to his client has to advance the amount, and gets abuse for himself of a large bill of costs. The abolition of the system would therefore be a benefit both to the public and the profession. But there was another point of view in which he desired to put the question, and that was in regard to the mode of appointment. These officers, if continued, would be either elected by the people, or appointed by some other power. Now it was impossible to have every petty officer elected. The number of officers would be so large as to present a practical inconvenience for popular election.— On the other hand, the principle upon which we are proceeding is to limit executive patronage, and therefore an appointment is objectionable. The best way to get rid of the difficulty is to abolish the office and devolve the duties, which must be discharged by the officers of the court and those appointed by law, to carry out the judgments of the courts of law. But more than all, the union of these services in courts of law and equity will have a tendency to blend the systems.

Mr. VAN SCHOONHOVEN entered into some explanations.

Mr. BROWN explained why he had refused to vote on the question just taken. The amendment effected nothing at all.

After a few remarks from Mr. STRONG, Mr. MURPHY withdrew his motion to reconsider.

Mr. TILDEN, for Mr. W. TAYLOR, who had been compelled to leave the Convention, offered the following amendment:—

"The legislature, as far as practicable, shall assimilate the forms of pleadings and the mode of taking testimony on trials of causes at law and in equity."

Mr. T. proceeded to advocate the adoption of the amendment.

Mr. FLANDERS moved an amendment to require the legislature to revise the pleadings and practice in all courts of law and equity, so as to render them simple, brief, intelligible, and subject to as little expense as possible.

Mr. CROOKER said if they were to require that from the legislature it would be necessary to go back and repeal the 90 days provision, or the legislature would never be able to do the duty which would devolve on it. He suggested that the legislature should issue a commission for that purpose.

The amendment to the amendment and the amendment were negatived.

The section as amended was then agreed to.

The 10th section was then read as follows:—

§ 10 Surrogates shall be elected for four years.— They shall be compensated by fixed salaries, and they shall not receive any fees or perquisites of office.

Mr. CROOKER moved the following substitute:—

"There shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for four years, and who shall hold the county court, perform the duties of the office of surrogate and the duties now performed by any county judge."

Mr. HARRIS moved to postpone the consideration of this section until after the 13th had been considered. Agreed to.

The 11th section was read as follows:—

§ 11. Justices of the supreme court and judges of the court of appeals may be removed by joint resolution of both houses of the legislature, if two-thirds of all the members elected to the assembly and a majority of all the members elected to the senate, concur therein. Surrogates and all judicial officers, except those mentioned in this section, and except justices of the peace, may be removed by the senate on the recommendation of the Governor, but no such removal shall be made unless the cause thereof be entered on the journal, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the journals.

Mr. CROOKER moved to strike out the words "surrogates and." Agreed to.

Mr. LOOMIS did not like this mode of trial and removal. He preferred that charges against judicial officers like all others, should be tried in the tribunals of the country. He offered the following substitute for the whole section:—

"The Legislature shall define by law offence, misconduct and negligence in office, which shall be deemed cause of removal. Any officer who may be indicted, tried and convicted of any such offence, misconduct or negligence in office, or for any offence committed while holding any public office, the punishment for which by law may be imprisonment, shall by such conviction and the judgment thereon, be ousted from such office."

The same was rejected.

Mr. CROOKER thought the construction of the first part of the section would authorize a removal of justices of the supreme court and court of appeals without cause and without an opportunity to be heard.

Mr. BROWN did not conceive the language liable to such a construction. But to obviate all misapprehension, he would move to add after the words "removal shall be made," in the 9th line, the following, "by virtue of this section."

Mr. O'CONOR advocated this amendment and it was adopted.

Mr. MORRIS said the intention of this section, which was in part copied from the old constitution, was originally to reach and remove officers who had become broken in mental vigor, or imbecile; but it had been perverted and used to justify removals on grounds that if true, would have justified an impeachment. To prevent this abuse, an amendment had been adopted, the effect of which had been to create two modes by which persons might be dismissed from office—the one having all the effect of an impeachment, without the opportunity being given to the incumbent to meet the charge. He proposed to make the section mean what it was intended to mean, and not to have two modes of conducting proceedings in the nature of an impeachment. He proposed to amend by inserting after the word "may" in the second line—"for inability to discharge the duties of his office, arising since his election."

Mr. PATTERSON objected, that under this amendment, you could not remove a judge for gross immorality.

Mr. MORRIS: You could impeach him for that.

Mr. PATTERSON: Suppose he were guilty of gross neglect of duty?

Mr. MORRIS: That too would be cause for impeachment.

Mr. O'CONOR objected on the ground stated by Mr. PATTERSON, that a judge guilty of gross immorality, not recognized by the law as a crime or immorality, could not be impeached—nor removed on the ground of inability—and yet the public judgment might be decisive against him.

Mr. BROWN hoped the amendment would be withdrawn. This section had been very carefully considered. A judge might neglect to do his duty—might leave the country for a year, or go to Washington and stay for months, and there would be no way to reach such a case, for the trial by impeachment was a long and tedious process.

Mr. MORRIS replied that the delay might arise from the difficulty of proving the charges—and these were the very cases where the party was entitled to a trial. Mr. M. objected to have many removals for causes which were or should be ground of impeachment. He insisted that this section was intended to reach the case of a man, who without fault of his own, had become disabled from doing his duty, and he desired to make it mean that and nothing more.

Mr. MORRIS' amendment was lost.

Mr. PATTERSON moved to change the word "joint" to "concurrent," before "resolution." Agreed to.

Mr. CROOKER proposed a substitute for the whole section—providing for the removal of all judicial officers (except justices of the peace) in one and the same manner, by the legislature, for causes for which they could not be impeached. Lost, 34 to 39.

Mr. MORRIS moved to insert after the word "opportunity," in the 12th line, "to introduce witnesses and." The vote was 31 to 32—no quorum.

Mr. MORRIS called for the ayes and noes, and the amendment was agreed to—ayes 53, noes 39.

Mr. LOOMIS offered the following substitute for the whole section:—

Any public officer may be removed from office, before the expiration of his term of office, by the Governor, after trial and conviction of any crime, gross immorality, misconduct or negligence in office, or inability to discharge his duties.

Mr. LOOMIS said he was induced to offer this from the impracticability of the section as it now stood—giving, as it did a party a trial before each house, and converting the legislature into a sort of criminal tribunal. Besides, we had provided for the election of a great many officers, and yet had provided no mode for their removal. This substitute would provide for all cases.

Mr. MARVIN inquired who the gentleman supposed were to try these judges?

Mr. LOOMIS:—Any judge, before a jury.

Mr. MARVIN submitted to the Convention gravely whether they were prepared to place all the judges of the state in the power of any twelve men in the country to pass upon their incompetency. He was in favor of the section as it was reported by the committee. He should have voted for Mr. CROOKER's amendment, but for the fact that it provided for a hearing by counsel and witnesses

Mr. NICHOLAS urged that this very section was in the present constitution, and had never been abused for corrupt purposes. He did not see why we should change it.

Mr. BROWN said the section had been perfectly emasculated by the amendments made to it. The amendment now proposed would be still worse, as under it no removal of an incompetent judge could take place until after he had been indicted, tried and convicted of crime. He hoped the Convention would come back to the original section and adopt it.

Mr. CROOKER still objected to the section in that it provided two different modes of trial for two different kinds of judicial officers. He read a section, which he had drawn, to prevent this difficulty.

Mr. KIRKLAND opposed the proposition of Mr. LOOMIS as dangerous in the extreme, placing as it did our judges at the mercy of any court of sessions in any county in the state—and exposing them to active persecution. The original section, he regarded as making ample provision for the cases intended to be reached by it.

Mr. LOOMIS could see no more danger or impropriety in putting a public officer on trial before a jury, than in putting other men on trial before a jury, for life or character or property. Questions of inability or incompetency were tried before a jury every day, and on their verdict, men were often deprived of the control of their property and consigned to a mad-house.—A judge might be guilty of forgery and perjury, and yet there was no power to remove him. A case of this kind occurred a few years ago, and for months after the discovery was made, process was tested in his name as first judge. There must be some easier and more expeditious remedy for such cases than the slow process of impeachment.

Mr. PERKINS hoped, whatever provision might be made in regard to judicial officers, that some more summary mode of dealing with financial officers of counties and the state would be adopted, than by indictment, trial and conviction.

Mr. LOOMIS asked if the gentleman supposed he intended other officers than those named in the constitution?

Mr. PERKINS replied that we had named a treasurer and comptroller—who might by collusion embezzle money to a large amount before you would get all this machinery in motion.

Mr. LOOMIS' amendment was negatived, ayes 5, noes 75.

Mr. TALLMADGE offered a substitute providing that judges of the court of appeals and of the supreme court might be removed by a majority of all the members elected to the Senate, on the recommendation of the Governor. The treatment of official delinquencies or imbecility was one thing—the treatment of crime another. Judicial officers might take to bad habits—which might incapacitate them for duty. The law did not recognize that as an indictable offence—and yet it was desirable to reach such a judge and remove him. True, this power might be used to make political removals, but it could not injure the party removed, and would be certain defeat to the party thus abusing it.

Mr. PERKINS moved further to amend by requiring the Governor to assign the reasons for the removal in the recommendation.

Mr. TALLMADGE opposed this amendment—but

Without taking the question the Convention took a recess.

AFTERNOON SESSION.

The propositions of Messrs. PERKINS and TALLMADGE were negatived.

Mr. BROWN asked consent to move a reconsideration of the amendment made to the pending section on the motion of Mr. MORRIS.

No objection being made, the motion to reconsider was announced.

Mr. MORRIS opposed the reconsideration.—The section, even as amended, did not suit him, nor was it what justice to individuals demanded; for no man could be said to be heard in his defence, unless he could introduce his testimony.

Mr. BROWN said he had made his motion simply with a desire to save time. By the amendment the whole matter was thrown open to misunderstanding and to great latitude of construction. But very few cases of complaint had arisen under the old constitution, and he hoped this section would be permitted to remain as it was, and that the Convention would pass on to more important matters.

Mr. STOW asked if the mover of this amendment desired to have a case tried over again, after it had once been passed upon by a jury?

Mr. MORRIS replied that there would be no need of that, as the record of the Convention would be sufficient.

Mr. LOOMIS insisted that there should be a section somewhere in this constitution providing for the removal of all officers named in it, and without converting both branches of the legislature into criminal tribunals. He hoped a select committee would be raised to devise such a section.

The Convention refused to pass over the section.

Mr. MARVIN urged that the section was right as it originally stood.

Mr. VAN SCHOONHOVEN sustained the amendment of Mr. MORRIS.

Mr. PATTERSON insisted that the original section afforded an ample opportunity to a party of being heard, whilst the amendment clearly indicated that one side only was to be heard.

Mr. MORRIS' amendment was reconsidered, and rejected, 28 to 60.

Mr. St. JOHN moved the previous question upon the section.

There was a second, and the main question was ordered. The ayes and noes were also ordered, and there were ayes 86, noes 11.

The next section was then read, as follows:

§ 12 The justices of the supreme court shall be nominated by the Governor and appointed by and with the consent of the senate; or

§ 12. The justices of the supreme court shall be elected by the electors of the respective districts, at such time as may be provided by law, but not within ninety days before or after the general annual election.

Mr. SWACKHAMER moved to strike out the first of these alternative sections

Mr. STOW moved to amend by striking out "the senate," in the first section, and inserting

after "consent," "of a majority of the senate, and of one-half of all the members of the senate from the district in which the justice is to be appointed." Mr. S. said if the Convention decided in favor of having judges appointed by the Governor and senate, he desired to give the minority a considerable voice in the selection—which in the manner of selecting the judiciary, was not right. And this question could be settled independently of the other question in regard to the election of judges.

Mr. BROWN did not design to argue this question; presuming that gentlemen had reflected well on the subject, and had made up their minds how they should vote. All he wanted to say was that these judges were not local judges belonging to districts; but judges for the whole state—and that if this proposition failed, there would come up in succession, questions on the judicial district system, the general ticket system, and the present system.

The amendment was lost, and Mr. S. moved a reconsideration, to lie on the table.

Mr. BROWN, with a view to raise the distinct question, between the general ticket and district system of election, moved to strike out of the first part after "shall be," and insert, "elected by the electors of the state at such time as may be provided by law, but not within ninety days before or after the general election." He said that if this was voted down, he should then bring up the questions as between an appointment by the Governor and Senate, and an election by districts. If he could not get the general ticket, then he went for the appointment by the Governor and Senate.

Mr. MURPHY said he was in a singular predicament. Unless he could have his way, he preferred the appointment by the Governor and Senate. He proposed to amend so that the section should read:—

"The justices of the supreme court shall be elected by the electors of the respective senatorial districts of the state, at such times as may be provided by law."

Mr. MURPHY said he supposed if there was any virtue in an election by the people, it was because they could be trusted with the selection more safely than the present appointing power. But the people, in order to elect judges intelligently, must know them. The election by general ticket, or by judicial districts, would, in his judgment, defeat the very object which the advocate of a popular election had in view. Suppose an election by general ticket to take place immediately after the adoption of this constitution, would it be pretended that the people of the state would know one tenth of them? Must they not take them on faith in the politicians that met at Syracuse to nominate them, not because they knew the men that composed them, but because they were regularly nominated? If you could devise a plan by which the elector would know for whom he was voting, and what his qualifications were—he would go for it; but the general ticket system in his view was full of difficulties, and would lead to greater abuses than the present system. A knowledge of the man to be voted for, must be first known to the elector. The judicial district system was only an approximation of this result. The smaller the district, the nearer you brought the candi-

date home to the knowledge of the elector.— This mode of selection was a change of the mode that we had been accustomed to since the foundation of the government—and the only guarantee we had of its safety was that the elector should know for whom he was voting.— Hence he went for single districts, against the general ticket or judicial district system—and deeming the principle of the amendment important, he called for the ayes and noes on it.

Mr. STETSON regarded the amendment of Mr. MURPHY as involving a principle at war with the fundamental principles of democracy—and tending to establish an oligarchy or oligarchies among us. And Mr. S. went into this view of the subject with much vehemence, and at length. These judges were not local judges—not the representatives of localities—but judges for the state at large—and of course, no mere locality had the right to elect or appoint them for the whole state. The argument that we should get better judges by narrowing the circle within which they should be elected, if carried out would lead to monarchy. It was on this principle that the Crown of Great Britain sent a Lord Lieutenant to Ireland and a Governor General to Canada. He denied the right of any one county or cluster of counties in the state to appoint or select the officer that was to sit in judgment on the lives and property of citizens of a remote section of the state. He denounced the proposition as one that in effect robbed the people at large of the power they now had, through their Executive, of appointing judges. It was removing this power farther from the people, and conferring it upon oligarchies, not responsible to those for whom they were to select judges. As such, he predicted that it would be denounced in every school district in the state, as establishing an oligarchy of one seventh of the people, to appoint judges for all the rest. And he denounced it in advance, as a scheme to remove further from the people the election of their judges.

Mr. STRONG had no objection to any gentleman's giving his views on this question, and telling the Convention what he thought the true principles of democracy were. But he did object to the gentleman's coming over to his (Mr. STRONG's) seat, when every one about him almost was deserting, under his moving speech, and taking actual possession of it, (though Mr. STRONG had drawn it, and had a vested right in it)—slapping his hands in his (Mr. STRONG's) face, and thumping on his (Mr. STRONG's) desk, as if to drive him (Mr. STRONG) away from it. Mr. S. said had he not been a man of courage—had he not seen bears before he saw his friend from Clinton, he would have been frightened—

Mr. STETSON called Mr. STRONG to order.

Mr. STONG: What for?

Mr. STETSON: For gross discourtesy and personality.

Mr. STRONG: State your point of order in writing.

Mr. STETSON: This unbridled licence of language—

Mr. STRONG: Send up your point of order.

Mr. STETSON: The grossness of his remarks as applied to a member.

Mr. STRONG claimed the floor unless the point of order was stated.

The PRESIDENT: (Mr. RHOADES temporarily occupying the chair,) The gentleman from Monroe will proceed in order.

Mr. STRONG: Well sir, that's the only way the gentleman could get out of it. What I said was true, every word of it. Mr. S. went on to repeat that he had no objection to the gentleman's giving his own views, but he did object to the manner in which the gentleman appropriated to himself a part of the house which Mr. S. claimed as belonging to himself. And notwithstanding all the gas the gentleman had let off here, (and we had heard it once before,) he doubted if it had the effect to change a vote.

Mr. BASCOM followed in reply to Mr. STETSON, arguing in favor of the senate district system as the surest and only mode of getting good judges, if they were to be elected, and combatting the general ticket of all others, as calculated not merely to give us a partizan bench, but a bench, the mass of whom would be unknown to the people who voted for them, and the creatures of the central power through whose influence they would be nominated.

Mr. BAKER moved the previous question—and there was a second &c.

And the question was put on Mr. MURPHY's proposition (single districts) and carried, ayes 60 noes 49, as follows:

AYES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bowditch, Brayton, Bruce, Bull, Burr, Candee, Chamberlain, Clark, Clyde, Cook, Crooker, Dana, Dodd, Dorlon, Flanders, Forsyth, Graham, Harris, Harrison, Hawley, Kernan, Kingsley, Kirkland, Marvin, Maxwell, Murphy, Nicholas, Parish, Patterson, Penniman, Porter, Richmond, Salisbury, Shaver, Shaw, E. Spencer, W. H. Spencer, Stanton, Strong, Swackhamer, Taft, Taggart, Tallmadge, Townsend, Van Schoonhoven, Warren, Waterbury, Wibick, Worden, A. Wright, W. B. Wright, Yawger, Young.—60.

NOES—Messrs. Angel, Bouck, Brown, Brundage, Cambreleng, R. Campbell, jr., Conely, Cornell, Cuddeback, Dubois, Gardner, Greene, Hart, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kennedy, Loomis, Mann, Morris, Nellis, Nicoll, O'Connor, Perkins, Powere, President, Rhoades, Riker, St. John, Sanford, Sears, Sheldon, Stephens, Stetson, Stow, J. J. Taylor, W. Taylor, Tilden, Tutbill, White, Willard, Wood, Youngs.—49.

Mr. BROWN moved a reconsideration of this vote; and the motion lies on the table.

Adj. to half past 8 o'clock to morrow morning.

WEDNESDAY, SEPTEMBER 2.

Prayer by the Rev. Dr. POHLMAN.

THE JUDICIARY.

Mr. NICOLL offered the following resolution:

Resolved, That the fifth section of the report of the

judiciary committee be recommitted to that committee, with instructions so to alter the same as that the judges of the supreme court be limited in the exercise of their judicial powers to the districts in which they shall have been chosen.

Mr. N. said he felt it to be a solemn duty to his constituents to present the resolution just read. After the decisive vote of the Convention yesterday afternoon, it was apparent that the judges of the supreme court would be elected in single senate districts. In his judgment it was not only a matter of the highest expediency but of the plainest principle, that these judges should be confined in the exercise of their judicial duties to the district in which they are to be chosen. He felt satisfied that the constituency which he in part represented would never consent that their lives, liberty and property should be at the mercy of judges over whose election they would have no control—and such he fully believed would be the feeling of the people of the state generally when they should learn in what manner we had determined to elect the judges. The argument adduced in favor of the district system was founded on a palpable fallacy, to wit: that our judges were the representatives of the people, acting as the component parts of a great whole, in which the state was fully, fairly and equally represented. This was not in any manner true. It might, he admitted, if the court were only to act when assembled as a whole, as in the case of the legislature and the court of errors, where every constituency has a voice, and is entitled to be heard in every matter brought before those bodies; but according to the plan already adopted by the Convention, any three of the judges of the supreme court will be not only authorized but required to hold its terms. The several districts in which the court will be held cannot be expected to have their own judges beyond a mere fraction of the time. As a general rule, justice will be administered to them by magistrates elected at a distance, irresponsible to them in any manner, and perhaps indifferent to the approbation of any but their own immediate constituency. This was a violation of all the principles on which the foundations of popular government rested. It was not democracy—it was not equal rights, but absolute despotism. He felt it to be an imperative duty to resist in every manner the establishment of a system which he regarded as in the highest degree tyrannical and at war with the sentiments of the people of the state. He should therefore press the consideration of the resolution he had just offered.

Mr. KIRKLAND moved to lay the resolution on the table. Carried.

The Convention resumed the consideration of the judiciary article.

Mr. BROWN called for the consideration of his motion of reconsideration made last night, in relation to the election of judges by senatorial districts. The election of judges was at best but an experiment, and one to which a large portion of the people looked with great apprehension. If, however, a plan were to be tried, it should be one that would give satisfaction. The election of judges by single districts would put the elections in the power of one or other of the great political parties, which he desired to avoid. The judges should be the representatives of the entire people, and removed from all party considerations. He had heard the remark that the nomination of state officers

at Syracuse was a mere mockery, and he felt the full force of the observation; but he consoled himself with the reflection that a change was at hand. He had heretofore stated his preference for a general ticket if the judges were to be elected, but if he could not obtain that, he should desire judicial district elections, and not elections by senatorial districts. He was prepared to see the opposition which had met the judiciary committee at every step—not in this house, but out of it—rise up and triumph over the downfall of the scheme which had been perfected by the committee. He said the whole plan would have to be remodelled to suit it to this plan of election, should it be finally determined to let it remain. He appealed to the gentlemen from Kings, (Mr. MURPHY,) who he had almost said was the author of this mischief—but he ought not to say that perhaps, because he did not believe he desired to make mischief—to allow this question to be reconsidered, and then to modify his amendment by inserting the word “judicial” in the place of “senatorial,” which would present the question distinctly; and he would be satisfied with the result. He regretted that party politics were last night brought into this subject. He hoped it would be disposed of on its merits, and he appealed to gentlemen to come up and aid him in making a system that would be advantageous to the whole state.

Mr. RICHMOND said the gentleman from Orange had represented the vote taken last night as producing an inconsistency between the various sections of this article. If that were so, he suggested that the other sections should be made to conform to the section agreed upon last night, and the inconsistency would be remedied. He would not consent to a reconsideration of the single senatorial system of election of judges, who were as much the representatives of the entire state as senators were, who were elected by the same system. He desired to preserve this mode of election to prevent this combination of politicians and the election of one inefficient or improper judge by coupling him with others of character and ability. A bad judge might be smuggled in with four others, who could not be elected if he were to stand on his own merits.

Mr. KIRKLAND said he voted yesterday for the amendment of the gentleman from Kings, (Mr. MURPHY) providing for the election of a judge of the supreme court in each of the thirty two senatorial districts of the state. Having given this vote, he owed it to himself and others to state his precise position on this subject. As he had occasion to remark a few days since, there were in his judgment serious if not insuperable objections to selecting the incumbents of all your judicial offices from the highest to the lowest grade by means of election. These objections did not arise from any want of capacity, moral or mental, on the part of the people, to select suitable persons for these stations; on the contrary, his firm conviction was, that a choice made by the spontaneous, independent, impartial action of the electoral body of this state, would place in your judicial tribunals incumbents as well qualified as any that could be procured in any mode that had been or could be

devised. But we must look at facts as they exist and were likely to exist. All knew that nominations to these offices would be made, by party caucusses and conventions—that these assemblages, and the nominations they made, were very often the result of intrigue, of management, of personal and local arrangements and of the contracts and bargains of mere politicians. All understood well too, the iron rule of these caucusses and conventions; their decrees were despotic, and political death awaited him who refused to them passive obedience. The consequence was, that to one case where these decrees are disregarded, there are ninety nine where they are implicitly obeyed by all party men. Indeed, (continued Mr. K.) strict adherence to “regular nominations” is the watchword of all parties, and has come to be regarded as an essential article of party faith. Thus, the nomination by the party happening at the time to have the majority, is tantamount for all practical purposes to the *actual* election, and thus in fact the irresponsible members of a party convention, acting under no official sanction, and assembled for a day or an hour and then dispersing to meet no more, will in fact appoint your judges. I prefer for this purpose a more responsible appointing power. But objections of a still graver character arise out of the circumstances in which an elected judge would be placed, and the temptations to which he would be exposed. A judge is liable to the same passions, prejudices and influences with other men; his nature is not changed by his official character; judicial robes cover the same infirmities that are found under meaner garbs. Will not the judge be apt to remember the man who greatly promoted, perhaps secured his election? Will he forget him who opposed him with zeal and energy and perhaps intemperate heat? In view of re-election, will he be sure to do impartial and exact justice in a controversy between the powerful and the powerless? between him who may control many votes and him who can control none? In periods when the public judgment may be misled (and such periods sometimes happen,) will the judge disregard that erroneous public judgment or will he, to secure his re-election, yield to it, and at the hustings and in the public prints proclaim himself the advocate, if needs be, of repudiation, as has been done by the candidates for judge-ships in Mississippi? When there prevails some great popular excitement, as has several times during the last ten years occurred in extensive districts in this very state, will he stand manfully up against those excitements and administer justice with entire purity and impartiality? Especially, will he do this on the eve of an election, which is perhaps to determine whether he is to be consigned to the obscurity of private life, perhaps to penury, or whether he is to enjoy a competent salary and the honors of the ermine for another eight years’ term? Many other views of a similar kind might be presented; all deriving additional force from the shortness of the term (eight years) already determined on by a decisive vote of the Convention. Not one of these objections casts the least doubt on the intelligence and virtue of the people, or implies the slightest distrust of their capacity to select their own agents and of-

ficers. Such doubts and distrusts form no part of my political creed: they cannot be harbored in the bosom of any one, who believes with me, that “man is capable of self-government.”—But our constituents do not, as I believe, desire or expect this change. It is a mode unknown and untried in our sister states with a solitary exception—and I see it stated in the prints that the new Constitution of Missouri is just now rejected; and in part because it proposed the election by the people of a portion of the judiciary. But the objections to the election of the judiciary, which I consider so serious, are not so regarded by others. A majority of this Convention have doubtless decided that the judicial office shall be filled by election, and with that decision, so far as this body is concerned, I am not to quarrel. But, I was called on to vote on the mode of carrying out this decision; and when I gave my vote yesterday, I was persuaded as I still am, that the mode proposed by the amendment of the gentleman from Kings is the most safe, suitable and reliable manner of giving effect to the principle of popular election, and therefore I sustained and shall continue to sustain it, until some proposition for filling these offices less objectionable to me than that of election is presented. I supported this amendment, because in my judgment it will diminish in some degree the danger of corrupt intrigues and selfish bargains and combinations at nominating conventions; it will enable the elector to know better the character and qualifications of the candidate and thus more intelligently and more safely to cast his vote; it will create on the part of the elector a deeper sense of responsibility; it will exonerate him from being compelled to vote for those of whom he knows nothing and of whom perhaps he never heard; and in my view it is the only true and consistent mode of carrying out the principle of popular election, if it is to be applied to our judicial tribunals. I trust, for the reasons I have briefly stated, that some other mode of filling these offices than that of election may yet be adopted by the Convention—but if that is not to be, then I shall unwaveringly adhere to the vote I have already given.

Mr TALLMADGE was extremely embarrassed by his motion to reconsider. At the early part of the session he had been told over and over again, of the necessity of bringing the election of all candidates home to the people. And yet we were now asked by the same persons to unlearn all that we were then taught, and to take the contrary track. He was embarrassed by such a contrariety of views. He was proud yesterday to have voted for the motion which it was now sought to reconsider. He would adhere to that vote. He commented upon the corruptions which had been witnessed under the present system. He would send all these questions home to the single districts. But it was said, you would have an anti-rent judge, an anti-Mormon judge, an abolition judge. Let it be so. Make a single district and elect an anti-rent judge. His word for it, they would put up their very best man. But throw four of these judges into one district, and 1000 abolition or anti-rent votes might so hold the equipoise between the two parties, as to invite corruption, and thus secure the whole four. Besides, he was in favor

of a representation of the minority in all the departments of the government. He referred to the good effects of that principle in the election of inspectors of election. That secured the purity of the ballot box, because there was a spectator watching the acts of the majority. The present supreme court now came from one party, and this he believed had contributed more than any other cause to the public disfavor, in relation to that court. Elect your anti-rent judge and he will be a spectator of the acts of the other 31, and thus the public be better satisfied.—Mr. T. would hold on to this principle. He believed we should get better men. If the adoption of this section made the other portions of the report inconsistent with it, let us reconsider those sections and remodel them in harmony with this.

Mr. SWACKHAMER thought it due to himself to make an explanation, since he had voted for the district system yesterday, and intended to vote for a reconsideration. The idea that there was any principle involved here was all moonshine. The simple question was whether the judges should be elected by the people or appointed by the Governor and Senate. Gentlemen should not get up and say that unless their own plan was adopted, they would not vote for an election at all. For himself, he would go for an election in any way in which it might be presented—even to elect them at town meetings.—He should vote now for an election by judicial districts, because he preferred that method, and he believed there was a majority in this House who were in favor of this plan. He was ready to trust the people to the fullest extent—and all this talk about whiggism, abolitionism and anti-rentism was sheer humbug, and nothing else.—He defended the judiciary system of Mississippi, and said it was a false report which made that to be a judiciary recreant to the interests and faith of the state. They stood up against the acts of unfaithful agents who have brought the state into debt and dishonor; in favor of the yeomanry of the state, who were threatened with being ground to powder.

Mr. W. TAYLOR was in favor of the reconsideration, being desirous to vote for the judicial district system, though he was in favor of the general ticket system, because that would preserve the character of state judges. He however, yielded his own views to the expressed will of the Convention, because with the good of which that system would be productive, there were evils attendant on it. One of the evils was that the general ticket system would lead to the nomination of all the judges from one political party. But there was no system free from objection. Some gentlemen desired the election to be in small districts, that the candidates might be known by all the people; but this could not be secured even by county elections, while the elections by management and intrigue, would be more likely to occur than if the election was on a larger scale. Again, elections by judicial districts would give the constituents an opportunity to vote for four judges instead of one, and better judges would be secured.

Mr. LOOMIS desired to vote for these officers on the broadest possible scale, and he preferred

judicial to senatorial districts. He urged his views at some length.

Mr. HOFFMAN said, except from the necessity of having judges in this country to stand by the constitution against delegated power, he never would have asked for a change. But as the people were to be electors of judges, the elections should be by the whole people, for the idea of a representation of a district was a fallacy. The judges do not represent the public sympathies, but the settled general judgment as expressed in the law, and nothing else. They are men who are to speak the law as society has settled it, and therefore they could not be the representatives of localities. The fear which had been expressed of the nominating convention, was a partizan fear; but a judge so elected had the character of the state and sat firm, because he was supported by the state.—Such a judge would know when he was to come to the state for a re-election that a firm, manly, independent discharge of duty was his best recommendation. He objected to the district system. By it, his right to vote for the thirty-two judges was taken away and given to men who were not responsible to him. Men were thus disfranchised to the extent of 31-32 parts of their right. He would cast off the power to do that for others which it was unjust that others should do for him. The district system was called a system by which the elections were brought nearer to the people; but this he desired. If these judges were to administer justice in every part of the state, this system would give the 1-32d part of the state the power to elect judges for the other 31 parts, and hence the electives would be sent further from the people, rather than brought nearer to the people. The larger judicial, or the smaller senatorial districts, was but a choice of evils.

Mr. TILDEN said when he first saw the report of the judiciary committee, he felt some disappointment. He had hoped that it would be the pleasure of this Convention, to establish for the people a judiciary which might administer justice wisely and successfully throughout the land; but when he saw that plan he almost despaired, for he did not see in it the elements which it seemed to him were absolutely necessary for the success of the system it was proposed to constitute. He had voted for amendments to improve and perfect it, but when the fourth section was under consideration, he voted to reduce the number of judges to 16, and afterwards against the whole section, that motion failing. When he saw in this plan the idea of abolishing all the local judiciaries of the state, and the substitution in their place of one single system, he foresaw that it must lead us into endless mischief, and he feared final disappointment and defeat of the object of the whole system. He apprehended the proposition we were now discussing, had resulted necessarily from that plan. In his judgment, if it had been proposed to constitute local judiciaries, competent to do the business of the people, to answer the demands of the people, to carry justice to their own door, and then organized a state judiciary, small in number as it would have been, he did not believe that any gentleman would have risen on this floor and presented this monstrous proposi-

tion of electing the state judiciary—the judiciary which was to represent the justice of the state—by localities. It was a tyranny odious and unendurable, to send into one district a judge elected by another people. There was no responsibility to the people of any but one district with whom he would spend but one 32d part of his time. The analogy which had been quoted of assembly and senate representation in the legislature, was not a sound one. It had been objected that a senator for the 1st district could act on the interests of the 8th, but it must be borne in mind that this could only be done by a majority of the whole, according to a system to which all acceded. He illustrated his position, and stated other objections at great length, and said he should do all in his power to prevent judges from other parts of the state being sent to sit in judgment on the interests of the people of New York, to whom he owed no responsibility.

Mr. PATTERSON said the vote of last night, as he understood it, was upon the question of electing judges by single districts. On this simple motion he should not go into a discussion of the whole judiciary system, as his illustrious predecessor from New York had done. The only alternative presented to us last night was an election by general ticket or by single districts. He would have preferred a vote direct upon the question of appointment or election. But that was overrode by the amendment offered. When the alternative was presented to him, he voted for single districts, for he had always been in favor of that mode. In the judiciary committee it had been agreed upon to recommend an election by judicial districts. This was a compromise between those who favored an election by general ticket and by single districts, or appointment in some other mode. Upon the question of election by general ticket, he could say that the proposition received the vote of but one member of the judiciary committee. He was astonished to see a member of the judiciary committee—a gentleman for whom he had the highest respect—rising in his place and proposing an amendment to the report of that committee. That same gentleman had heretofore besought others, who desired to amend that report, to take notice of the effect which their propositions would have to disarrange the whole plan of the committee; and yet the amendment which he had proposed would have precisely that effect which he had appeared desirous to prevent. That gentleman had also said that he did not desire that the judiciary should be made a partizan establishment; he wished to have a balance of political influence upon the bench which would prevent its having a bias for either side. Again, his professions had been inconsistent with his practice in this respect; for he must be aware that an election by general ticket could not result in any thing else than a choice of partizan judges. It is known to all, that during the last twenty years, on a full vote, neither party had received more than 10,000 majority. What was that in so large a state as this? How easily might it be changed one way or the other? Thus a little management would secure this entire bench from one political party. To this he was opposed under every circum-

stance. He would have stood by the report of the committee, had not the prominent member alluded to by him, offered the amendment for the election by general ticket. When that was done, and the alternative was that of single districts, he felt bound to go for this last. He would not question the motives of that gentleman. He was happy to hear this morning that he was prepared to come back and support the plan of the committee. Mr. P. proceeded to answer some of the arguments of Mr. HOFFMAN. He believed the people of this state were in favor of the election of judges, and by small districts. The gentleman charged that those who supported an election by districts were influenced by party considerations. Without replying to this, Mr. P. would ask him if he had no political object in view, in proposing an election by general ticket?

Mr. HOFFMAN said he had not. He only insisted that the judges should be elected by the whole state.

Mr. PATTERSON had drawn such an inference from the readiness of the gentleman to charge political motives upon others. He pointed out the objections to the general ticket system. The people would be called upon to vote for candidates about whom they could know nothing. He asked Mr. H. or any other gentleman in this house, residing so far from his (Mr. P.'s) district as he does, who he would choose for a judge in the district composed of Chautauque and Cattaraugus counties. How could they decide intelligently upon the person living in that portion of the state who would be fit for a judgeship there? He denied that they would be able to make an intelligent and proper choice under such circumstances. And if he (Mr. H.) could not nominate such a man among his own political friends, how could the masses of the people here vote intelligently for a man nominated in that remote district? The more the election was brought home to the people, the better candidates would be chosen to occupy this high station. In all the districts of the state, there were men well qualified to occupy the bench of the supreme court. Not the severest party screws would be able to bring the people to vote for a person who was not competent, merely because he was of their own political opinions. They would feel an interest in this question far outweighing mere political considerations. There was much justice in the remarks of the gentleman from Herkimer (Mr. Loomis), that the only question asked by the people, when called to make choice of a Governor was, "Will he carry out our political views?" But there were other and more intimate matters to be considered when a local officer of this nature came before them. For the reasons which he had imperfectly presented, he should adhere to the decision made yesterday, in favor of an election by single districts.

Mr. MANN had come to the conclusion that there were many who were in favor of electing judges by judicial and not senatorial districts, and he desired to give them an opportunity to vote. He moved to lay the pending motion on the table.

A debate here ensued on a point of order, when, at the suggestion of Mr. CAMBRELENG,

Mr. M. varied the motion to one to postpone the reconsideration.

Mr. MURPHY:—Is that debateable?

The CHAIR replied that it was.

Mr. MURPHY:—Then I have a few words to say.

Several members appealed to Mr. MANN to withdraw his motion and allow the question to be taken at once on the motion to reconsider.

Mr. MANN said he was willing to do so.

Mr. MURPHY claimed the floor, and proceeded at length to explain his views in offering the proposition, which had been adopted last night. If judges were to be elected at all, he deemed the election by single districts the only safe mode, and the only way to secure good men. He should stand by his motion, which had been adopted by the Convention. He denied that the judges were to be the representatives of the people. They were to uphold the law. The only question that could arise, was, in what way will you get the best judges? He differed from Mr. HOFFMAN, that opposition to the election by general ticket was a distrust of the people. Mr. M. believed opposition to election by districts displayed that distrust. The gentleman would have the people vote, for whom? A man they knew? No! but for one they do not know. He (Mr. H.) relied upon the ignorance and not the intelligence of the people. That gentleman would have these judges nominated by a state Convention, and then swallowed because they were regular nominations. To use a phrase in a certain game of chance, this would be "going it blind." The way to get good judges by election, was to elect them in small districts, where the man would be known by those who voted for him. Then you must put up the best men, or they would be defeated. Mr. M. proceeded at length to advocate the proposition submitted. He concluded by reading a statement of the patronage which would be distributed by the next nominating Convention, provided the general ticket system should be adopted.—There would be the selection of eight judges for two years each, making an aggregate of sixteen years; eight for four years each, or thirty-two years; eight for six years each, or forty-eight years; and eight for eight years, or sixty-four years. Give these judges \$2500 each, and it would make a patronage of \$480,000, or \$60,000 to each judicial district. Politicians were but men, and he would submit whether such a patronage would be better distributed by one Convention, or by thirty-two different ones.

Mr. CAMBRELENG had all along been in favor of an election by the people—and as these judges were to be the judges of the law of the land and not of a district—in favor of an election by general ticket. This was his individual opinion and preference. But he was not so wedded to that opinion that he could not yield it, so far as should be necessary, to harmonize opinions and come to some result. The judiciary committee had had all these plans before it for weeks, and had discussed and maturely considered them all—and they had had to compromise their opinions, to give up their prepossessions, and to present to us a mixed system—and one which he trusted would be adopted—providing for the election by general ticket of part of the

highest court, and of the residue of the judges in districts. Mr. C. went on to speak of the proposition offered yesterday for single districts as a surprise upon him—as coming from an opponent of an election of judges—as supported by those who held the same position—and as having been voted against by many who advocated their election—and this because they were unwilling to abandon the report of the judiciary committee, and open this whole question anew, at this stage of the session—a system which up to this point they had sustained with great unanimity. He trusted that the same unanimity which had thus far prevailed would characterize our future proceedings, and that we should adopt no plan by a bare majority here, which was to go to the people for their ratification. Mr. C. went on to argue that whether you elected by senatorial or judicial districts, the mode of presenting candidates on both sides would be the same—and so if they were to be elected by general ticket. Conventions in either case would be held, and parties would put forth their strongest men or the people would not vote for them—and he ventured to predict that a judge who did his duty with ability and fearlessness, could not be displaced by any party machinery that could be brought to bear upon him. Mr. C. spoke of the principle of electing judges by the people as one as old as a century—as one that had been advocated by the champions of popular rights and public virtue, against an obstinate and stubborn prejudice—but which, so far as it had been carried out in this country, had more than justified their expectations. He alluded to its practical operation in Mississippi, through a period of thirteen years, as all that its advocates had predicted for it. He concluded by urging that we should come back to the compromise system adopted by the judiciary committee—and in the spirit and with the unanimity with which that system had thus far been sustained, carry out their plan—rather than adopt a new feature here that would make it necessary to go back and remodel the entire article.

Mr. COOK here moved the previous question, and there was a second, &c., and

The main question on passing over the section, was negatived, ayes 37, noes 68, as follows:—

AYES—Messrs. Angel, Bouck, Bowditch, Brundage, Cambreling, R. Campbell Jr., Clark, Cornell, Hoffman, Hochkiss, Hunter, A. Huntington, Hyde, Jones, Kemble, Loomis, Mann, Morris, Nellis, Nicoli, Powers, President, Sanford, Sears, Shaw, Sheldon, Stephens, Siet-on, Taggart, J. J. Taylor, W. Taylor, Tilden, White, Wi beck, Wood, Yawger, Youngs—37

NOES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Ba-com, Bergen, Brayton, Brown, Bruce, Bull, Burr, D. D. Campbell, Candee, Chambrlain, Conely, Cook, Crooker, Cuddeback, Dana, Dodd, Dorlon, Dubois, Flanders, Forsyth, Gardner, Graham, Harris, Harrison, Hart, Hawl y, Hunt, Hutchinson, Kennedy, Kernan, Kingsley, McVeil, Marvin, Maxwell, Miller, Murphy, Nicholas, O'Connor, Parib, Patterson, Penniman, Porter, Rhoades, Richmond, Rike, St. John, Salisbury, Shaver, E. Spencer, W. H. Spencer, Stanton, Stow, Strong, Swackhamer, Taft, Tallmadge, Townsend, Tuthill, Waterbury, Worden, A. Wright, W. B. Wright, Young—68

The question then recurred on reconsidering. Mr. STOW explained. He believed in none of the propositions before the house. But he was now driven to a choice of evils.

Mr. BROWN suggested that the gentleman should defer his remarks until after the vote to reconsider had been taken.

Mr. STOW hoped he should be able to convince gentlemen that it was not best to reconsider. He went on to urge that though the argument of Mr. HOFFMAN was conclusive against an election by districts, it was equally conclusive against an election by general ticket. Mr. S. examined and commented upon that gentleman's argument—urging that if the general ticket system was the only guaranty, as was contended for the maintenance of the constitution, we had that guaranty here in the election of the court of appeals by the people at large. In answer to Mr. CAMBRELENG, that the better opinion of all statesmen and philosophers was in favor of the election of judges, Mr. S. would ask where were Washington, and Franklin, and Jay, and Jefferson and Hamilton? Why had they never discovered this great principle, if it was so universally acknowledged? Why was it left for the repudiating, assassin, slave state of Mississippi to discover this principle? Mr. S. could go to no such model for his action.

Mr. CAMBRELENG interposed. The gentleman was too well informed not to know that the world was divided into two classes of philosophers and politicians—one of whom believed in the virtue and intelligence of the people and in their capacity for self government, in all its branches—whilst the other, at the head of which was one of the persons named by the gentleman, who believes in no such thing, but who distrusts the capacity of the people for self government. That was the distinction—and the two were as wide as the poles asunder.

Mr. STOW did not essentially misunderstand the gentleman. But he denied that there ever had been any difference of opinion among the patriots and statesmen of this country, as to the safety of reposing power in the people. He insisted that the doctrine of electing judges was a fallacy—and that in attempting to carry it out into practice, its fallacy was demonstrated. Its advocates, to be consistent, must go to the extreme of electing by the people at large—and that was entirely unendurable. He contrasted the opposite views of the gentlemen from Herkimer and Suffolk as to the party complexion which would be given to the bench by an election of judges—the one repudiating party views entirely as an element in the election, and the other insisting that parties must and would and ought to divide on these questions. The gentleman from Suffolk would no doubt find himself compelled to vote for a party judge because nominated by his party, and against the candidate of the opposite party.

Mr. CAMBRELENG said he should vote for no judge unless he thought him competent.

Mr. STOW replied that competency nevertheless would depend in a great degree on partisanship. Mr. S. continued to urge his objections to the general ticket as well as district system for electing all judges. He believed he had indicated an amendment yesterday which would secure a representation to the minority, give confidence to the tribunal among the people, and yet would ensure generality and stability. The plan, as it now stood, had neither. One thirty-

second of the state would elect a judge for the whole state. He warned the Convention against making the elective franchise too cheap, lest we should be reduced to the condition of degraded Rome, when electors had to be hired to go to the polls. The propositions for special elections to choose these judges was decidedly objectionable. But few of the agricultural population would go to the polls, and thus the controlling influence would be exercised by the large cities and villages. And if you throw this into the general elections, did not gentlemen know that some man, of overshadowing popularity at the head of the ticket, would carry all the rest with him? Was not this so in relation to Gen. Jackson and Gen. Harrison? Was it to be expected that the election of judges would be an exception to all others? Mr. S. denied that the people had called for the election of judges. He would rejoice if this question could be calmly and dispassionately passed upon by the people. They were satisfied with the present mode. True, in a few petty caucus conventions, resolutions had been passed in favor of the election of judges. Petty writers, here and there, had favored the project. But he denied that this was any more the sentiment of the people than the screeching of birds over the Niagara was that mighty cataract itself. Mr. S. proceeded at further length in explanation of his views. He should vote against a reconsideration. If the motion was reconsidered, then the only question left would be to elect by judicial districts. Let this be so, and then as each district would be composed of four senatorial districts, to each four judges, he knew that each district would claim its own judge. The effect then would be the location of judges in each district, while a different form would be adopted. If we were to have district judges, he preferred much to allow each senate district to choose its own judge, than to throw four into a larger district, while the same sub-division would still be carried on. As between the two propositions, he preferred the election by single districts.

Mr. KINGSLEY explained his vote, but his remarks were inaudible at the Reporter's desk.

Mr. CLYDE explained that he voted yesterday in favor of the single district system, not because he preferred that system, but because he liked it better than the antagonist proposition then pending. His choice was the election by judicial districts, as proposed by the judiciary committee, and he should vote to reconsider in order that he might vote for his own plan.

The motion to reconsider was here put and carried—ayes 56, noes 48, as follows:—

AYES—Messrs. Angel, Brown, Brundage, Cambreleng, D. D. Campbell, K. Campbell, jr., Clark, Clyde, Conely, Cornell, Cuddeback, Dana, Dubois, Gardner, Graham, Greene, Hart, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kennedy, Kernan, Kingsley, Loomis, Mann, McNeil, Maxwell, Morris, Nellis, Nicoll, Powers, President Mc John, Sanford, Sears, Sheldon, Stanton, Stephens, Stetson, Swackhamer, J. J. Taylor, W. Taylor, Tilden, Tuthill, White, Willard, Witbeck, Wood, Yawger, Youngs—56.

NOES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Br.yton, Bruce, Hull, Rurr, Cancee, Chamberlain, Cook, Crooker, Do'd, Durlon, Flanders, Forsyth, Harris, Harrison, Hawley, Marvin, Miller, Murphy, Nicholas, O'Connor, Parish, Patterson, Penn-

man, Porter, Rhoades, Richmond, Riker, Salisbury, Shaver, Shaw, E. Spencer, W. H. Spencer, Strong, Taggart, Tallmadge, Townsend, Vache, Waterbury, Worden, A. Wright, W. B. Wright, Young—48.

Mr. WORDEN moved to adjourn. Lost.

Mr. WORDEN protested against forcing a vote on so important a question with so thin a house. If gentlemen insisted upon that course, he should feel it to be his duty to submit some remarks.

Mr. WHITE asked the gentleman to yield, and moved a recess, and

The Convention took a recess.

AFTERNOON SESSION

Mr. BROWN withdrew his amendment heretofore offered, and moved to amend so that the section would read as follows:—

§ 12 The justices of the supreme court shall be elected by the electors of the respective judicial district of the state, at such times as may be prescribed by law.

Mr. MURPHY moved to strike out "judicial" and insert "senatorial."

On these questions Mr. MANN moved the previous question.

Mr. WORDEN had leave to explain. He said he was not inclined to have this question, although of great importance, take up the time of the Convention by its discussion, nor did he wish that the question should be taken just before the time of adjournment. As the question stood at that time there was a direct issue between an election by general ticket or an election by single districts, as moved by the gentleman from Kings. He had something to say upon the question of election by general ticket, if the question had remained in that shape, and he believed he should have been able to show to the gentleman from Orange and others who had advocated that system, that such a mode would prove most pernicious. But since the gentleman from Orange had withdrawn his first motion, and modified it to a proposition to elect by judicial districts, he trusted that the question of a general ticket election would not again be insisted upon. He was desirous that this question should not consume time by debate, but as there were now but about 81 members in the house, he trusted that gentlemen would be willing to allow this section to be passed over until to-morrow morning, with the understanding that the question should be taken at 10 o'clock.

Several members cried "no, no."

Mr. WORDEN: Well, then I will renew the motion for the previous question.

Mr. GRAHAM had leave to state that he had voted for the single district election yesterday, because he regarded it the only alternative between such an election and one by general ticket. He preferred the judicial districts, and should therefore vote for the motion of Mr. Brown, which, without this explanation, might appear inconsistent with his former vote.

The previous question was seconded, 61 to 14, and the main question was ordered to be put.

The amendment of Mr. MURPHY was rejected as follows:—

AYES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bergen, Bull, Burr, Candee, Cook, Crooker, Dodd, Flanders, Forsyth, Harrison, Hawley, Kirkland, Marvin, Maxwell, Miller, Murphy, Nicholas,

O'Connor, Parish, Patterson, Penniman, Porter, Rhoades, Richmond, Salisbury, Shaver, E. Spencer, W. H. Spencer, Stow, Strong, Swackhamer, Taft, Tallmadge, Townsend, Vache, Waterbury, Worden, W. B. Wright, Young—48.

NOES—Messrs. Angel, Bascom, Bouck, Brown, Brundage, Cambreleng, D. D. Campbell, K. Campbell, Jr., Clark, Clyde, Conely, Cornell, Cuddeback, Dana, Dorlon, Dubois, Graham, Greene, Hart, Hoffmann, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kennedy, Kernan, Kinsley, Loomis, Mann, McNeil, Morris, Nelis, Nicol, Powers, President, Riker, Ruggles, Stetson, Sanford, Sears, Sheldon, Simmons, E. Spencer, W. H. Spencer, Stanton, Stephens, Strong, Swackhamer, Taft, Taggart, J. J. Taylor, W. Taylor, Tilden, Tuthill, White, Willard, Witbeck, Wood, A. Wright, Yawger, Youngs—60.

The motion of Mr. Brown prevailed, as follows:—

AYES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Bascom, Bergen, Bouck, Bowdish, Brown, Brundage, Bull, Burr, Cambreleng, D. D. Campbell, K. Campbell, Jr., Clark, Clyde, Conely, Cook, Crooker, Cuddeback, Dana, Dodd, Dorlon, Dubois, Flanders, Forsyth, Graham, Greene, Hart, Hawley, Hoffmann, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Jones, Kernan, Kinsley, Loomis, Mann, McNeil, Marvin, Maxwell, Miller, Morris, Nicholas, Parish, Patterson, Penniman, Porter, Powers, President, Rhoades, St. John, Salisbury, Sanford, Sears, Shaver, Sheldon, Simmons, E. Spencer, W. H. Spencer, Stanton, Stephens, Strong, Swackhamer, Taft, Taggart, J. J. Taylor, W. Taylor, Tilden, Townsend, Tuthill, Waterbury, Willard, Witbeck, Wood, Worden, A. Wright, W. B. Wright, Yawger, Young, Youngs—86.

NOES—Messrs. Angel, Connell, Harrison, Kemble, Kennedy, Kirkland, Murphy, Nelis, Nicoll, O'Connor, Riker, Ruggles, Stetson, Stow, Tallmadge, Vache, White—18.

Mr. MURPHY gave notice of a motion to reconsider the last two votes.

Mr. NICOLL moved to add to the section as amended, "but not within ninety days before or after the general annual election."

Mr. RICHMOND objected to the expense and trouble of a special election. Besides, there would not be half the voters out at a special election. He believed the people would act as wisely upon this subject at a general election as at one held specially for the purpose of electing judges. The people would all be out then, and at other times they would not be so likely to give their attention to this subject, and the whole control would be thrown into the hands of those who were most interested in the choice made.

Mr. PERKINS also opposed the amendment.

Mr. W. H. SPENCER said if the elections should take place ninety days before the general election, the farming community would be in the midst of their harvesting, and could not be expected to give their attention to an election. He moved to amend by making it forty days instead of ninety, hoping that both would be voted down.

Mr. PENNIMAN thought by holding a special election, the means of making a selection of judges would be given to the hands of intriguing, designing demagogues.

Mr. NICOLL spoke of this fear of demagogues as rather late in coming over some gentlemen. He believed there was quite as much danger to be apprehended from demagogues at a general as at a special election.

Mr. STRONG hoped the election would be held at the general state election. He had no fear that the people would not at any time take care of their own interests. This was, how-

ever, properly a matter of legislation, and should be left there entirely.

Mr. NICOLL accepted the proposition of Mr. SPENCER.

Mr. COOK moved to amend the amendment by inserting after "but," "the first election after the adoption of this constitution shall be held."

Mr. NICOLL accepted this amendment.

Mr. HOFFMAN suggested that the election for 1847 should be held at least forty days before the annual election, because the judges should be ready to take their seats in January.

Mr. NICOLL assented to this modification also, and the amendment as thus modified, reads as follows:—

"But the first election after the adoption of this constitution shall be held at least forty days before the general annual election of 1847."

This amendment was adopted, 56 to 47.

Mr. WORDEN suggested that the judges of the court of appeals should be chosen at the same time—but

Mr. LOOMIS objected. The judges of the court of appeals had better be chosen at the annual election.

Mr. WORDEN then moved to amend so that it should read, "but the first election of judges of the supreme court, after the adoption," &c. Agreed to.

Mr. CROOKER thought the section did not express the real intention of those who desired to elect by districts. If the whole state voted by general ticket would not the election be by districts?

Mr. CONELY moved to amend by changing the phraseology, as follows: "The justices of the supreme court shall be elected in the respective judicial district by the electors thereof," &c. Lost.

Mr. HUNT moved to add to the section,—"They shall exercise jurisdiction only in the districts in which they shall be elected. Lost."

Mr. W. H. SPENCER moved to insert "of the judges of the courts of appeals" after "election." He thought unless the judges of the appellate court should be selected at the same special election with the judges of the supreme court, the object of a special election would be in a great degree lost.

This amendment was negatived.

Mr. MANN moved to strike out the first clause of the section, and insert as follows:—"The justices of the supreme court to which each district is entitled, shall be elected in the respective judicial districts by the electors thereof." Lost.

Mr. PATTERSON moved to add at the end of the section, "The judges of the court of appeals shall be elected at the same time." Lost, 32 to 42.

Mr. SIMMONS having been absent when several of the last votes were taken, and had therefore had no opportunity of giving his views upon the question of an election of judges, desired to give his reasons for the vote which he was about to give in favor of this section. He explained that he was in favor of electing judges of local courts, and if we were to have nothing but common pleas courts, the judges ought to be elective. He considered the court estab-

lished by this system, though not precisely common pleas courts, yet as approaching nearer to them than to supreme courts or courts of chancery. The judges would not be of the grade of judges that we had had, and ought to have, and whom he would not vote to elect by the people. But they were precisely the class of judges, from their number and constitution, that should be elected by the people—and he should prefer to elect them in town meeting, rather than in any other way. His favorite plan was to have had sixteen judges having general jurisdiction, appointed, and 16 elected with local jurisdiction, and thus gradually come to the point proposed by this plan, yielding to the growing demand for the restriction of this power to the people, rather than undertake to interpose obstacles to it, until it acquired such a lead as to burst all barriers. But from the peculiar constitution of this court, he was authorized to go for the election of all of them. Nor should he object to the election of judges of the grade we had had, provided their terms had been longer. At the same time, in going for the election of judges under these circumstances, he reserved to himself the right, if in his power, to defeat the whole plan.

The 12th section, as amended, was then adopted, ayes 75, noes 22.

Mr. BROWN proposed the following additional section:—

§ The legislature may provide by law for the election by the electors of the judicial district composed of the city of New York, of associate justices of the supreme court therein, who shall have power within such district to hold circuit courts, to preside at courts of oyer and terminer, and to act as associate justices, with one or more justices of the supreme court, in holding general terms of said court, and to exercise and perform all the powers and duties of a justice of the supreme court at chambers. They shall be compensated in like manner as the justices of the supreme court, and shall hold their offices for the term of eight years, and shall be subject to the disabilities imposed by the 7th section of this article upon the justices of the supreme court.

Mr. BROWN explained briefly the object of the section.

Mr. MANN asked if the effect of this section would be to abolish the superior court and county court?

Mr. BROWN replied that that was a matter which could be provided for when we came to the 13th section. The local wants of the city, the delegation could judge of better than he.

Mr. STRONG wanted to insert the city of Rochester.

Mr. NICOLL suggested the propriety of referring so much of this section as related to the city of New York to the delegation.

Mr. STRONG went on to advocate the claims of Monroe to some special provision for her judicial business, which he predicted could not be done under this system—especially in the absence of any county court of original jurisdiction.

Mr. STOW suggested Buffalo also, as requiring some special provision.

Mr. RICHMOND suggested Batavia also.

Mr. STOW proposed to make special provision for the district in which Albany, Utica, Rochester and Buffalo were situated.

Mr. MORRIS suggested a general provision authorizing the legislature, from time to time,

as the business exigencies of any judicial district might require, to provide for the election of one or more associate justices of the supreme court in such district, who would have all the powers of the justices of the supreme court, except sitting in banc and in the court of appeals.

Mr. STRONG said that would be some better; but he objected that the city of New-York would have the advantage over other districts, if this matter was left to the legislature. And if New-York was to form associate justices, at the expense of the state, he had no idea of turning off other counties with local courts at their own expense.

Mr. WORDEN was satisfied that we must

take into serious consideration the question of supplying a greater judicial force for the city of New-York—and of local tribunals in the several counties—and with a view to the organization of local tribunals in the city and country, he suggested that this matter should be specially referred to the judiciary committee.

Mr. STRONG proposed the amendment suggested by Mr. STOW.

Messrs. KENNEDY and MURPHY had leave to record their votes against the twelfth section, as amended.

Mr. HARRIS laid on the table a motion to reconsider the vote on the ninth section.

Adj. to half past 8 o'clock to-morrow morning.

THURSDAY, SEPTEMBER 3.

Prayer by the Rev. Dr. POHLMAN.

Mr. J. J. TAYLOR, from the select committee of five, reported abstracts of returns of clerks of the court of chancery, supreme court, &c., together with a schedule. The report and schedule were ordered to be printed.

THE JUDICIARY.

The Convention resumed the consideration of the judiciary report.

The pending question was on the amendment of Mr. BROWN, submitted last night, in relation to the judicial force of New-York city.

Mr. STRONG moved to amend by adding, "and of the judicial districts in which the cities of Albany, Utica, Rochester and Buffalo are situated."

Mr. PERKINS said the amendment of the gentleman from Monroe was evidently right, if the amendment itself should be agreed to, and the number of requisite judges would be not less than the number of members of assembly, for equal justice would be required for all parts of the state. By the addition of four judges for New-York, making the number of judges forty, the bar would be enabled to have their bills taxed and other business done by these judges, which elsewhere must be done by supreme court commissioners on the payment of fees. In this there was an inequality which ought not to be tolerated. He then entered into an examination of the proposed judicial system, comparing it unfavorably with the existing system. He advocated the giving to the legislature the power to erect subordinate courts in all the counties of the state. He did not believe that any form of county courts which the Convention would consent to adopt, in connection with the superior courts already established, would succeed at all. He predicted that in five years at the most, the whole system would fail. While this was the fact, he could not agree to further extend the number of the judges of the supreme court, but would leave to the legislature the duty of erecting such inferior tribunals as the exigencies of the times may require.

Mr. WATERBURY said when he considered what they had done, the number of judges they had agreed to have, and other details which it

was conceded they must have, he was disposed to "cut short the work in righteousness." [Laughter.] He wanted the Convention to go right on, do its business, and go home. They had been here long enough. Three-quarters of the work done in all the state would necessarily be done in the local courts, and so we were told when we were fixing these higher courts—the mayor's court must be preserved here, and in other cities. He was disposed, therefore, to go on and perfect the plan presented, and then leave the question of local tribunals to the legislature; this was the fourth week, and he hoped time would be economized.

Mr. CROOKER moved that this matter be passed over for the purpose of reaching the section on the subject of local courts. Lost.

Mr. TOWNSEND called for the reading of a memorial sometime since presented from the city convention of New-York on the subject of chartered rights, &c.

The Secretary read it accordingly.

Mr. TOWNSEND proceeded to read a document in relation to the same subject

Mr. BROWN: Oh give us the marrow of it.

Mr. TOWNSEND: It is so long it is difficult to get at the marrow of it. (Laughter.)

Mr. CROOKER: Then it is too long a document to read now.

Mr. TOWNSEND proceeded to read, it and to state its purport. He also pointed out the necessities of New-York which required this additional aid to dispose of its legal business, and he hoped the subject would be passed over as suggested by the gentleman from Cattaraugus, that it might be seen what local courts the Convention was willing to sanction, before this proposition was finally disposed of.

Mr. NICOLL thought the proposition of the gentleman from Orange could be made acceptable by an amendment to limit the number of these judges to three, and to require the locality to pay for all judges above that number that its business might require. He moved so to amend the amendment of the gentleman from Monroe, by adding thereto the words, "not exceeding three in number therein," and also a provision to require the district to pay all judges above the number.

Mr. BROWN accepted the part of the amendment of the gentleman from New-York, which limited the number to three.

Mr. MURPHY would not consent to any distribution in favor of New-York which was not enjoyed by other cities. All were entitled to the same rights and privileges. He alluded to other attempts to retain to New-York royal franchises and privileges, long enjoyed, to which he was uncompromisingly opposed. He would give to every part of the state all the judges that were requisite, but they should be state judges and paid by the state, and not by particular cities. There had been read here this morning a report from the Convention in the city of New-York, claiming the preservation of the local courts in that city on account of the antiquity of their charters, some of them extending as far back as Gov. Montgomery. He (Mr. M.) could not agree to recognize as sacred any franchise of this nature. He was willing to grant to New-York city all that she could claim in common with other towns and cities of the state, and no more.

Mr. CAMBRELENG did not wish to engage in this war between New-York and Brooklyn.

Mr. MURPHY said the gentleman from Suffolk did him injustice, he had not made nor did he invite a war with New-York city in favor of his own or any other city. He could not consent to be charged with such motives.

Mr. CAMBRELENG had not intended to do the gentlemen injustice. He could tell him however, that he granted altogether too much to the city of New-York. Four weeks had been occupied in the discussion of this judiciary question, and professional gentlemen of great ability had engaged in the debate; and what had been the great complaint against our present system? It was that all our courts were blocked up with business. And one-quarter of all this business comes from the city of New-York, while the agricultural portions of the state are obliged to pay for disposing of it. It was generally conceded that the twenty-eight judges provided for the agricultural districts were not needed; but the business in the cities alone made this force necessary. He was willing to give to those cities as many courts as they desire, provided they will pay their expense. He insisted that there should be some means by which the civil business in our courts, which were merely questions of property, should be paid for at the expense of the parties interested, instead of being saddled upon the state. The criminal business was another thing.

Mr. BROWN replied briefly, saying that his own preference was for the plan of courts presented by Mr. CROOKER, and hoping that the question would be taken at once upon the propositions now before the Convention.

Mr. BRUCE should vote against this section and he must express some surprise that this proposition should come from the gentleman from Orange.

Mr. BROWN said everybody that had spoken for the last month, had expressed his surprise at his course. He could not help it.

Mr. BRUCE continued. The gentleman said the other day that if lawyers and judges would do in New-York as in the country, and work as

many hours, there would be a sufficiency of judiciary force. And yet this morning he brings in this singular proposition to give additional judges. Mr. B. would vote for no proposition that gave privileges to the city of New-York, that were not extended to the whole people.— We had had enough of this special legislation heretofore, and it could never meet his sanction.

Mr. HUNT referred to the amount of taxes paid New-York contending that they were entitled to this extra judicial force.

Mr. STRONG, since he and others had been driven to a vote on this gigantic scheme of the judiciary committee, before a county court was provided for, was now for holding those gentlemen to their project, and if it failed, on them be the responsibility not on him. That the proposition of the gentleman from Orange might stand on its own merits, he would withdraw his amendment. Let the Convention pass its solemn judgment whether the farmer of the country was to be taxed for the litigation of New-York city. He trusted this proposition would be voted down, and then be left to sleep the sleep of death.

Mr. MORRIS said we who were here for the purpose of forming a Constitution should bear in mind that whatever provisions it contained would affect every citizen of the state, whether he resided where the ocean wave washed his feet, or on the top of the loftiest mountain. He had been alluded to by one of his colleagues, as one who always voted with the majority, in speaking of a proposition heretofore presented in reference to the city of New-York. He was happy to admit that he did usually vote with the majority, because that majority expressed a decision in accordance with his views of what was right. The proposition referred to he had opposed merely because it was a provision applied to a certain locality only, and he should always oppose any attempt to make distinctions of this sort. After some allusions to the remarks made in the course of debate, he offered the following substitute for the proposition of Mr. Brown, which would give additional force to any district, without establishing a distinctly organized court, having the same jurisdiction with the supreme court:

"The legislature shall have power from time to time, as the business exigencies of any judicial district shall require, to provide by law for the election of one or more assistant justices of the supreme court in such district, who shall have all the powers of a justice of the supreme court, except sitting in the court in banc and the court of appeals."

Mr. BROWN said, as his proposition seemed to meet with no favor from any source, he would withdraw it.

Mr. WORDEN remarked that he thought the gentleman from Madison (Mr. Bruce) had not done justice to the remarks of the gentleman from Orange, or of the chairman of the committee, in reference to the business of New-York city. There was but little doubt but that additional force was necessary there. He hoped the Convention would come immediately to a vote.

Mr. HARRIS felt a deep interest in the success of this judiciary system. He believed it to be a good one, and that if it had a fair chance it would work well. But he was satisfied that the force provided for the city of New-York was

not sufficient, and he desired to supply the deficiency now, if it could be done. He concurred mainly in the proposition submitted by Mr. MORRIS, but he had drawn a section, which he deemed unobjectionable and which at the same time would provide all that the city of New-York needed. He read the section as follows:

Insert after 'legislature' in Mr. MORRIS' amendment, "may provide by law for the election, by the electors of any judicial district, of one or more associate justices of the supreme court, who shall hold his office for the same term and have all the powers within such district, and be subject to the same disabilities as a justice of the supreme court; provided however, that the salary of such justices shall be provided for in the law authorizing their election, and shall not be made chargeable upon the treasury of the state."

Mr. H. said that this would give such a flexibility and expansibility to the system as would enable it to meet the exigencies that might arise. A fixed rule might endanger the system. This was not drawn for the exclusive benefit of New-York. The whole state was interested in the speedy and satisfactory disposition of litigation in that city. He hoped the section would be well considered before the vote was taken.

Mr. W. TAYLOR objected to the amendment. The means taken to get rid of the pay of the judge was an objection to the whole proposition. The judge by being paid by a locality would become exclusively a district judge and thus the harmony of the system would be destroyed.

Mr. LOOMIS would not have said a word if it had not been that the gentleman from New York (Mr. MORRIS) had come up to the rescue of this section with his plausible proposition with the aid of his ally from Albany. (Hear, hear, from Mr. SIMMONS.) He then entered into an argument to show that the business of New York was in part business in which the people of the country were interested and hence the county judges might with propriety go there to aid in its dispatch; and then if the New York judges would take example from the country and rise a little earlier, the whole might be done by the number of judges proposed. He was opposed to the amendment and the amendment to the amendment also.

Mr. HUTCHINSON moved the previous question and it was seconded, &c.

Mr. HARRIS called for the yeas and nays on his amendment.

There were yeas 30, nays 77; so the amendment to the amendment was rejected.

Mr. MORRIS demanded the yeas and nays on his amendment.

There were yeas 27, nays 81; so the amendment was lost.

Mr. LOOMIS said it must be obvious that no provision was made for filling a vacancy. [A voice, "oh, they never die."] He had therefore drawn a section to provide for supplying vacancies, as follows:—

In case the office of any judge of the court of appeals or justices of the supreme court shall become vacant, before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor until it shall be supplied at the next general election of judges, when it shall be filled by election for the residue of the unexpired term.

Mr. TALLMADGE moved to amend by striking out the words "it shall be supplied at," so

as to make it imperative to elect a successor at the next general election, and deprive the Governor of the power to fill by default.

Mr. LOOMIS explained his object to be to keep the office filled until the votes were counted and the elected judge installed.

Mr. TALLMADGE withdrew his amendment.

Mr. PERKINS moved to amend so as to provide that the Governor may supply the vacancy to the end of the term of the person whose place is to be supplied. This would prevent any confusion in voting for persons for different terms. Lost.

Mr. BASCOM moved to amend so as to give the legislature power to supply the vacancy.—Lost.

Mr. STOW moved to add to the words giving the power to the Governor to make the appointment "by and with the consent of a majority of the senators of the district." Lost.

The amendment offered by Mr. LOOMIS was then agreed to, 58 to 16.

Mr. CROOKER offered the following proposition for county courts, as an additional section, and called for the yeas and nays:

§13 There shall be elected in each of the counties of this state, except the city and county of New York, one county judge who shall hold his office for four years, and who shall hold the county court, perform the duties of the office of surrogate, and such other duties as shall be prescribed by law.

Mr. SWACKHAMER asked why exempt New York?

Mr. CROOKER explained that one judge would not be sufficient for New York, and he intended to make provision for such cities in a subsequent section.

Mr. BERGEN moved to amend so as to exempt the city of Brooklyn. It was impossible that the surrogate could do all that business there.

Mr. CROOKER said he should make provision as intimated by a subsequent section, to meet the objection of the gentleman.

Mr. MARVIN asked if the gentleman from Cattaraugus by the last words intended to constitutionalize the powers of these courts so as to prevent any alteration by the legislative power.

Mr. CROOKER suggested a modification so as to meet the objection, by leaving power with the legislature to regulate by law the duties.

Mr. SWACKHAMER entreated his colleague to withdraw his amendment.

The amendment was negatived.

Mr. RICHMOND again reiterated that the committee on the judiciary had given them assurances that the system of which the 32 judges were a part, would be complete and ample for the despatch of all its business. He had not entertained that opinion, and consequently he moved to strike down one-half of those judges, with the intention of getting county courts, but he was unsuccessful; and now additional courts and judges were pressed by those very gentlemen who said the 32 judges would be sufficient. This afforded proof either that those gentlemen did not believe the 32 sufficient, or that a pension system was to be provided by creating judges with no judicial duties. He examined the existing and the proposed systems, and ob-

jected to the creation of an overgrown supreme court when there were to be so many common pleas judges to do the business. He should, therefore, oppose this amendment until he could get the number of the supreme court judges reduced.

Mr. W. TAYLOR proposed to amend by substituting as follows:—

There shall be established in each county a county court consisting of one judge, or more than one, according as the business and population shall require; but not to exceed in the number of judges the number of members of assembly to which such county may be entitled; and not to exceed three in any county; such judges shall be elected by the electors of the respective counties, and shall hold their offices for four years respectively.

Mr. MANN was opposed to any thing which would tend to increase the expense of the judicial system, especially after the assurances they had received from the judicial committee that ample provision was made.

Mr. BRUCE remarked that the judiciary committee believed the 13th section, if adopted, would provide abundantly for such county courts as might be needed. If the Convention were of the same opinion, they would sustain the call which he now made for the previous question.

There was a second. The main question was ordered, and the question recurred on Mr. W. TAYLOR's amendment.

Mr. RICHMOND called for the yeas and nays, and there were yeas 18, nays 80.

So the amendment was lost.

The yeas and nays were called on Mr. CROOKER's amendment, and there were yeas 37, nays 66, as follows:

AYES—Messrs. Baker, Burr, Cambreleng, R. Campbell, jr., Chamberlin, Clark, Clyde, Conely, Cook, Crooker, Dodd, Greene, Hart, Hawley, Hotchkiss, H. de Jones, Kembel, Kernan, Kingsley, Loomis, Marvin, Maxwell, Morris, Munro, Nellis, Nicholas, Nicolai, Patterson, Porter, Sanford, E. Spencer, J. J. Taylor, W. Taylor, Townsend, Waterbury, Willard, Wood, Youngs—37.

NAYS—Messrs. Allen, Archer, F. F. Backus, H. Backus, Bascom, Bergen, Brown, Bruce, Brundage, Bull, D. D. Campbell, C. Campbell, Cuddeback, Dubois, Forsyth, Gardner, Hoffman, Hunt, A. Huntington, Hutchison, Kennedy, Kirkland, Mann, McNeil, Miller, Nicholas, O'Connor, Parish, Penniman, Perkins, Rhoades, Richmond, Riker, Russell, St. John, Salisbury, Sears, Shaver, Shaw, Sheldon, Simmons, W. H. Spencer, Stanton, Stephens, Stetson, Stow, Strong, Swackhamer, Taft, Taggart, Tilden, Tutill, Warren, White, Worden, A. Wright, W. B. Wright, Yawger, Young—63.

So the amendment was lost.

Mr. HARRIS then offered the following section, remarking that it provided for the only county court that he wanted:

There shall be elected in each of the counties of this state, except in the city and county of New York, a judge who shall hold his office for four years. He shall receive an annual salary to be fixed by the board of supervisors, which shall not be increased or diminished during the term for which he shall have been elected. He shall have appellate jurisdiction of all cases from justice courts, but shall have no original civil jurisdiction. Such judge shall also perform the duties of surrogate.

Mr. H. said he should not vote for the 13th section authorizing the legislature to establish county courts, or for any county court with original civil jurisdiction. All we needed was such a limited jurisdiction as this provided for.

Mr. FORTSYTH moved the previous question, and it was seconded.

The main question was ordered, and there were yeas 49, nays 57, as follows:

AYES—Messrs. Archer, Baker, Bouck, Brayton, Burr, Cambreleng, Candee, Clark, Clyde, Conely, Cook, Crooker, Dodd, Dorton, Flanders, Graham, Harris, Harrison, Hart, Hawley, Hotchkiss, Hunter, Kingsley, Loomis, McNeil, Marvin, Maxwell, Miller, Morris, Munro, Nellis, Nicholas, Nicolai, Patterson, Porter, Powers, Sears, Shaver, Shaw, E. Spencer, Stephens, Taft, Townsend, Waterbury, Wood, A. Wright, W. B. Wright, Young, Youngs—49.

NAYS—Messrs. Allen, Ayrault, F. F. Backus, H. Backus, Bascom, Bergen, Brown, Bruce, Brundage, Bull, D. D. Campbell, R. Campbell, Cuddeback, Dubois, Forsyth, Gardner, Hoffman, Hunt, A. Huntington, Hutchinson, Jones, Kennedy, Kirkland, Mann, O'Connor, Parish, Penniman, Perkins, President, Rhoades, Richmond, Riker, Russell, St. John, Salisbury, Sanford, Sheldon, Simmons, W. H. Spencer, Stanton, Stetson, Stow, Strong, Swackhamer, Taggart, J. J. Taylor, W. Taylor, Tilden, Tutill, Vache, Warren, White, Worden, Yawger—57.

So the section was lost.

Mr. CROOKER then offered the following section:

§—There shall be elected in each of the assembly districts of this state, one county judge, who shall hold his office for four years, and who shall within his district hold a court for the trial of petty offences, perform the duties of surrogate, and such other duties as shall be required by law. Such county judge shall have appellate jurisdiction from justices' courts, and such criminal jurisdiction as shall be prescribed by law, but shall have no original civil jurisdiction.

Mr. BROWN contended that the 13th section was all that was needed.

Mr. COOK said it was very evident that it was determined to hand us over to the tender mercies of the legislature for all the reform that was to be made to this 32 wheeled machine. To get at this catastrophe as speedily as possible, he moved the previous question.

There was a second, and the section was rejected, yeas 3, nays 102.

Mr. CROOKER did not offer his proposition for the purpose of having it adopted, but that an opportunity might be given for a few minutes' sober discussion of this question of county courts. He believed it was important if not necessary that some skeleton of a county court should be set up by this Convention. He moved a reconsideration of the vote upon his proposition.

Mr. McNEIL offered the following:

§—There shall be in every county a county court having the same jurisdiction which the surrogate now has, subject to regulation by law; and exercising such other civil, criminal and equity jurisdiction as may be prescribed by law, subordinate to the jurisdiction of the supreme court. Said county court shall be held by a judge to be called the first judge of the county, and who shall be elected for five years. The legislature may, if two-thirds of all the members elected to each of both houses shall deem it necessary, pass a law authorizing each county to elect one, and not to exceed two county judges, who shall hold their offices for the term of four years; any one or all of whom may hold said county court. The number of judges in each county to be determined by the supervisors of such county. The first judge and the county judges shall be compensated by fixed salaries, which shall not be increased or diminished during the term for which they were elected, and they shall not receive any fees or perquisites of office for their own use.

Mr. HOTCHKISS moved the previous question, and the section was rejected.

Mr. MARVIN moved the following:

§—Any of the justices of the supreme court may hold the courts of common pleas in any county.

Mr. M. briefly explained the proposition.

Mr. TAGGART moved to strike out the words "common pleas" and insert "county courts."

Mr. MARVIN assented.

The debate was briefly continued by Messrs. LOOMIS and BASCOM.

Mr. BRUCE:—I congratulate the house on its progress in business this morning, and move the previous question.

There was a second and the section offered by Mr. MARVIN was rejected, yeas 27, noes 71.

Mr. BASCOM offered the following, being the proposition matured by Mr. STEPHENS and himself, for conciliation courts:

§ — The same may be established in the city of New York, one or more tribunals of arbitration and conciliation, each to be composed of three arbitrators, or conciliators; one of whom shall be clerk thereof. They shall be paid a reasonable compensation, to be fixed by law; and all fees received by them, shall be paid into the public treasury. The legislature may provide for similar tribunals in other localities of the state, if it shall be deemed expedient; and may afford parties inducement to submit their differences to the arbitration or conciliation, of such tribunals, by regulation as to costs in their courts.

Mr. STEPHENS said it would be seen that the proposition had been so far varied as to make it permissive instead of mandatory on the legislature. And this he was mainly induced to assent to from the apprehension that the legislature, on whom it would devolve to carry out the scheme, might be unfavorable to its success, and he might namber it with provisions that would render it odious. He therefore desired to leave the project where it would be taken up by a legislature friendly to it, and made what it was intended to be.

Mr. STEFSON called attention to, and read from the Revised Statutes, in relation to arbitration, as providing substantially for the same thing.

Mr. MANN proposed to amend so as to provide that one of the three conciliators should be a legal man—the other two laymen.

Mr. BROWN: A legal man! [A VOICE: "the other two illegal men!"]

Mr. MANN intended a man belonging to the legal profession.

Mr. RICHMOND remarked that arbitration was not binding on the parties—but both must agree to go into it.

Mr. NICOLL enquired if the gentleman intended a forcible reconciliation.

Mr. RICHMOND would compel parties to go there first as was proposed by some regulation as to costs in other courts.

Mr. STEPHENS opposed Mr. MANN's amendment, preferring to leave all matters of detail to the legislature. As to the provisions of the R. S. in regard to arbitrations, he was not ignorant of them, as the gentleman from Clinton seemed to suppose. On the contrary his proposition for conciliation courts was drawn out by the complicated forms which arbitration required, and which had rendered the provisions first read almost a dead letter.

Mr. WATERBURY feared this matter was treated too lightly. In the Danish Islands, as he was informed, these courts were enabled to settle four fifths of all the litigation, without their going into the courts of law.

Mr. KIRKLAND thought the proposition entitled to more consideration than was likely to

receive now; and he was surprised that the gentleman from Seneca had taken so unpropitious an occasion to introduce it. The house was evidently not in the humor to listen to much argument in its favor. His proposition, which was imperative and more extensive than this, providing for the erection of such tribunals in all the towns of the state, he preferred to this permissive grant, which might result in nothing. At present, however, he suggested that the matter be passed over.

Mr. NICOLL hoped this experiment might be tried. He doubted if it would be successfully carried out in this country, whatever may have been its success in the Danish Islands. But he would not make it imperative on the legislature to say what was admitted to be an experiment. He regretted to see an amendment offered which reflected on the profession of the law—and he could say that so far as the profession in New York was concerned, they were pacificators, and their influence had been salutary in suppressing litigation.

Mr. SWACKHAMER regarded the amendment as one of the smallest kind, as manifesting a silly prejudice; and he was sorry to see a proposition so worthy of the age, attempted to be ridden down by such an amendment. He hoped it would be voted down unanimously.

Mr. MANN replied, that whether his amendment was a small one or not, it was practically the rule in arbitrations now. But his object was to prevent the small class of lawyers from monopolizing this tribunal. They would promote rather than prevent litigation.

Mr. NICHOLAS opposed the amendment as making an invidious distinction between classes of citizens which ought not to appear in a constitution. He was in favor of the proposition itself, believing that it could do no harm, as it was not obligatory on the legislature; but only authorized it to establish this court in towns where the inhabitants desired it, and he had no doubt such a court would exert an excellent influence in preventing litigation.

Mr. MANN's amendment was lost.

Mr. BRUCE moved to strike out the words "city of New-York," and insert "any county."

Mr. HAWLEY moved to insert "in any town or ward."

Mr. BASCOM said this would give the court the settlement of the petty suits before a justices' court. He desired to give it a larger scope, and relieve this supreme court.

Mr. TALLMADGE believed if you would provide that in case a party should refuse to go into one of these courts, he should recover no costs in the higher courts, that nine-tenths of the litigation would be there disposed of. He deemed this one of the most important courts that had been proposed.

Mr. BRUCE would like to have the legislature empowered to make it obligatory in the first instance to go before this court.

The amendment of Mr. HAWLEY was negatived and that of Mr. BRUCE was agreed to.

Mr. KIRKLAND offered the following substitute for the whole section:

§ — Tribunals of conciliation shall be established by law. Such law shall be general and of uniform operation throughout the state.

Mr. A. W. YOUNG enquired if the legislature could abolish these courts under this obligatory clause, if they should not be successful.

Mr. STEPHENS entreated the Convention, if they desired to see the experiment of these courts fairly tried, not to make it mandatory on the legislature to establish them. If this should be done, he should regret ever having had any thing to do with it.

Mr. BURR thought if the section was mandatory the legislature could not abolish these tribunals.

Mr. BASCOM deprecated the adoption of such a provision. It needed no such aid. His word for it, if the legislature were empowered to establish such courts the people would have them.

Mr. KIRKLAND was willing to strike out the word "shall" and insert the word "may."

Mr. BASCOM still opposed that feature of the amendment which contemplated their extension at once throughout the state. They were wanted at particular points, where the great pressure of business was, but not in every town in the state, or in every county.

Mr. KIRKLAND, rather than embarrass the proposition, withdrew his amendment.

Mr. HUNT suggested that we had better not fix the number of conciliators.

Mr. TAGGART suggested "not exceeding three."

Mr. BASCOM accepted that suggestion, and struck out also "one of whom shall be secretary."

Mr. PATTERSON spoke of the patronage which would be conferred on the Governor and Senate, if these conciliators were to be thus appointed, as exceeding all the patronage of all branches of the government put together.

Mr. NICHOLAS suggested that they should be chosen at town meeting.

Mr. PATTERSON replied that this would imply that there was to be such a court in every town. We had better first abolish justices of the peace.

Mr. NICHOLAS suggested that the mode of appointment be left to the legislature.

Mr. PATTERSON objected further that there was to be no limit to the jurisdiction of these courts, and yet parties were to be compelled to go there, and without jury or counsel, have their controversies settled.

Mr. NICHOLAS suggested another amendment, to the effect that their arbitration should not preclude the right of trial by jury.

Mr. PATTERSON replied that if you hitched a jury to it you would then have a court with law and equity powers to any amount.

Mr. STEPHENS insisted that there was nothing compulsory proposed here. No man was to be compelled to go there or to waive a trial by jury.

Mr. PATTERSON replied that if there was to be no compulsion about it, then it was a mere arbitration—if there was compulsion then it was not an arbitration, but a court, which must have a jury.

Mr. FORSYTH opposed these conciliation courts in any form, as unsuited to the genius of our people, however well adapted it might be to the Danish people. Our people were capable

of managing their own business. But if this court was to be of any use, its jurisdiction must be general—and if he had a note of \$1,000 against his neighbor, he must resort, he supposed, to a court of conciliation to cause him to pay it, before he could resort to the compulsory process of law.

Mr. BASCOM said such cases were expressly excluded from these courts.

Mr. FORSYTH: What does it embrace?

Mr. BASCOM: Said it embraced all cases not specifically excepted.

Mr. FORSYTH remarked that if cases of assumpsit were excluded, the residue, which was small, might well remain in the ordinary channels through which justice was sought.

Mr. MURPHY spoke of this scheme as no new importation from the Danish Islands. There was similar provision in the old constitution, but it had been abandoned in the new—and it was preposterous, as had well been remarked, that before a man could enforce a right he should go into some preliminary court and attempt coax his opponent into a settlement.

The motion to postpone was lost.

The amendment of Mr. NICHOLAS, providing for the election of the conciliators as the legislature might direct, was agreed to.

Mr. NICOLL move to strike out the last three lines of the section.

M. E. SPENCER moved to adjourn. Lost, 39 to 56.

Mr. YOUNGS moved the previous question and it was seconded.

The amendment of Mr. NICOLL was rejected.

The section for such courts was then adopted, as follows:—

AYES—Messrs. Angel, Archer, H. Backus, Baker, Bascom, Bowditch, Bruce, Burr, Cambreleng, R. Campbell, Jr., Clark, Conely, Cornell, Dubois, Flanders, Greene, Harris, Harrison, Hunt, Kemble, King, Kirkland, Mann, Miller, Morris, Nellis, Nicholas, Nicoll, Peniman, Richmond, St. John, Salisbury, Sears, Sherer, Shaw, Sheldon, Stanton, Stephens, Strong, Swackamer, Taft, Taggart, Tallmadge, W. Townsend, Wren, Waterbury, White, Willard, Worden, Yawger, Young—53.

NAYS—Messrs. Allen, Ayrault, F. F. Backus, Bergen, Bouck, Brayton, Brown, D. D. Campbell, Cook, Crookes, Forsyth, Graham, Harr, Hawley, Hoffman, Hotchkiss, Hunter, A. Huntington, Hutchinson, Hyde, Loomis, Maxwell, Murphy, O'Connor, Parish, Patterson, Porter, President, Rhoades, Riker, Russell, Sanford, W. H. Spencer, Tuthill, Vache, Wood, A. Wright, W. B. Wright, Youngs—39.

Mr. HAWLEY moved to reconsider. Table. The Convention then took a recess.

AFTERNOON SESSION.

Mr. J. J. TAYLOR had leave to record his vote in favor of the proposition for conciliation courts—Mr. E. SPENCER against them. Mr. RHOADES had leave to change his vote to the affirmative—Mr. STRONG to the negative. Mr. DANA who voted "no," had leave to have that vote recorded, being omitted by mistake.

The 13th section of the judiciary report was read:

§ 13. Inferior courts of civil and criminal jurisdiction may be established by the legislature, and appeals and writs of error therefrom may be brought to the supreme court or court of appeals as shall be provided by law.

Proceedings upon this section was waived by consent, to allow Mr. LOOMIS to offer as a sepa-

rate section, a provision declaring that the tribunals authorized by the last section, (conciliation courts,) shall not have power to render judgments obligatory on parties; but that their power shall be advisory only.

Mr. BASCOM said this repealed one important part of the section establishing courts of conciliation.

Mr. LOOMIS thought there would be nothing to prevent the legislature from creating courts of common pleas under the title of courts of conciliation. He proposed to have these courts just what they purported to be and nothing more.

Mr. STOW took the same view.

Mr. BROWN: I should like to hear the thing read.

Mr. CROOKER: Which thing? [Laughter.]

Mr. BROWN: Both things. [Laughter.]—[The section and the proposition of Mr. Loomis were read.] Mr. B. said he supposed the rewards to be offered to bring persons into these courts, would operate to draw litigants there, so long as the rewards held out. But he said, we had been talking of the danger of giving the legislature power to create inferior courts, as a matter out of the question; and yet here was a proposition authorizing them to create as many courts as they pleased, and to pay them what they pleased. [A voice—"And they are not to proceed according to the common law or any law."] No, but to proceed directly against the course of the common law.

Mr. BURR said he thought he should vote to retain this "thing" just as it was. It appeared that we were not to have any other county courts, not even the bull-frog system of the gentleman from Cattaraugus, and he should at all events vote to keep this as a sort of substitute. We had at last, after going through with the report of the judiciary committee, concluded to wind up with this "thing." Yesterday, we had got as far as the 13th section, and all this morning we had been tantalized with various propositions for the establishment of county courts, and finally had produced this "thing." Let us then make sure of so much.

Mr. PATTERSON thought it would be wise to decide what kind of jurisdiction these courts were to have. There was nothing which made them subordinate to either the supreme court or the court of appeals, nor to declare that their proceedings should be in accordance with the forms of the common law. Nor, if every thing was to be under the original section, did he see that we should want any other court in the state. We had better define in the constitution whether the powers of these courts should be obligatory or merely advisory.

Mr. BASCOM proceeded to describe the organization and powers of these courts as they existed in Denmark, at some length.

Mr. NICOLL, believing this subject was sufficiently understood, moved the previous question, and there was a second.

Mr. LOOMIS asked consent to change the word court—to substitute the word tribunal.

Mr. MURPHY objected—and Mr. L.'s section, as offered was adopted, 52 to 40 as follows:

AYES—Messrs. Allen, Angel, Ayrault, H. Backus, Bergen, Brown, Brundage, Bull, Cambreleng, D. D.

Campbell, Cook, Cuddeback, Dodd, Dorlon, Forsyth, Gardner, Graham, Harrison, Hawley, Hoffman, Hotchkiss, Hunter, A. Huntington, Hutchinson, Hyde, Kennan, Kingsley, Loomis, Maxwell, Munro, Murphy, Nellis, Nicoll, Parish, Patterson, Porter, Powers, President, Riker, Russell, St. John, Sanford, E. Spencer, W. H. Spencer, Stetson, Stow, Strong, J. J. Taylor, Townsend, Wood, W. B. Wright, Youngs—52.

NAYS—Messrs. Archer, F. F. Backus, Baker, Bascom, Bowdish, Bruce Burr, R. Campbell, Jr., Clark, Conely, Cornell, Dubois, Flanders, Greene, Hunt, Kemble, Kennedy, Kirkland, Mann, McNeil, Miller, Nicholas, O'Connor, Penniman, Rhoades, Richmond, Shaver, Sheldon, Stanton, Stephens, Taft, Taggart, Tallmadge, W. Taylor, Warren, Waterbury, White, Worden, Yawger, Young—40.

Mr. RICHMOND moved a reconsideration.

Mr. BASCOM moved a reconsideration of the vote upon the section establishing conciliation courts. It might perhaps be further perfected hereafter.

Mr. WATERBURY laid on the table a section authorising the legislature to establish courts of conciliation, whenever asked for by a majority of the electors of any town, city or county, the expense thereof to be paid by fees. The Convention then returned to the 13th section.

Mr. CAMBRELENG moved to amend by inserting after "Legislature" the words, "in any county at the expense of such county."

Mr. TAGGART moved to amend by inserting "city or" before "county."

Mr. CAMBRELENG assented.

Mr. STOW moved to strike out "city or."—He could not agree that expensive courts in cities should be chargeable altogether upon the cities. Arrangements had always been made between cities and the county in which they are located, to divide the expenses of the county.

Mr. BAKER moved that the 10th and 16th sections of the report of the judiciary committee be referred to a select committee of one from each Senate district to determine what plan, if any, should be adopted for the organization of local courts.

Mr. PERKINS moved to amend by recommending the whole subject of the organization of the judiciary committee and the amendments thereto.

Mr. FORSYTH moved the previous question on both these propositions, and there was a second.

Mr. PERKINS demanded the ayes and noes, and the amendment was negatived, ayes 14, noes 86.

The motion of Mr. BAKER was also lost, ayes 48, noes 54, as follows:

AYES—Messrs. Angel, Archer, Ayrault, Baker, Branton, Bull, Burr, R. Campbell, Jr., Ca-dee, Crocker, Dana, Dodd, Dubois, Forsyth, Gardner, Graham, Hawley, Hoffman, Hotchkiss, Hutchinson, Kennedy, Kirkland, Mann, Murphy, Nicoll, O'Connor, Penniman, Porter, Russell, St. John, Sanford, Shaver, E. Spencer, A. H. Spencer, Stephens, Stetson, Stow, Taft, Taggart, Tallmadge, J. J. Taylor, Townsend, Warren, White, Willard, Worden, A. Wright, Young—48.

NOES—Messrs. Allen, F. F. Backus, H. Backus, Bascom, Bergen, Bowdish, Brown, Bruce, Brundage, Cambreleng, D. D. Campbell, Clark, Conely, Cook, Cuddeback, Dorlon, Flanders, Greene, Harrison, Hunt, Hunter, A. Huntington, Hyde, Jones, Kemble, Kennan, Kingsley, Loomis, McNeil, Maxwell, Miller, Morris, Munro, Nellis, Nicholas, Parish, Patterson, Perkins, Powers, President, Rhoades, Richmond, Riker, Sears, Shaw, Sheldon, Stanton, Strong, W. Taylor, Tutbill, Waterbury, Wood, W. B. Wright, Yawger, Youngs—54.

Mr. BROWN said he should have voted for the proposition just rejected, if he could have been assured that the committee would have reported to-morrow morning; and he renewed the proposition, including in it the two sections in regard to the courts of conciliation, and directing the committee to report at 10 o'clock to-morrow morning.

Mr. CAMBRELENG did not think it at all probable that any committee would be able to report any thing which the Convention would agree to any more than they would to the proposition made this morning by Mr. CROOKER, which came within seven votes of being adopted. He did not believe the business of the Convention would at all be advanced by the method suggested. But go on and perfect, so far as we could, the report, and then let the gentlemen consult together in groups, and come in to-morrow morning ready to settle this question definitely.

Mr. KEMBLE moved to include also the 12th section.

Mr. A. W. YOUNG thought the Convention had gone to work in the wrong way, in attempting to establish a judiciary system without some form of county courts, and he would be glad to see the motion prevail, in the hope that this fault might be corrected.

Mr. RICHMOND was opposed to any new committee—and for the important reason that when that committee reported, experience had shown that it would be utterly impossible to amend it. We had been here three or four weeks trying to amend the report of a committee of 14; and here was one of 8 proposed—which was only a little smaller. Indeed the committee of 13 had found it impossible to amend their own report. He went on to say that there was only one difficulty about county courts, and that was that you had made your supreme court too large, and members were unwilling now to vote for an additional court, though it seemed to be conceded this 32 wheeled court could not do all that was pretended they could do. He concluded by moving to refer the entire article to this committee of 8, to remodel it.

Mr. HOFFMAN had witnessed with pain, the free use of the previous question to-day.—He begged the Convention to see to it, that they did well what they undertook to do. An omission at this point, might prove fatal—infamously fatal. He entreated the Convention, having been patient thus far, during this protracted debate, not to precipitate themselves on a fatal error. He went on to oppose sending this whole matter back to a committee. The difficulty in his judgment was, that the judiciary committee had not reported some plan for county courts. But were the Convention to abandon the attempt, on that account? Should the Convention

therefore make its last will and testament, devise the power to make a county court to the legislature, and die? He predicted that unless this matter was referred to a committee, the Convention would have done that. He urged the Convention, rather than leave this vast residuary power to the legislature, to give a committee the opportunity, between this and to-morrow morning, to agree on a plan for county courts. After what he had seen here, he would not vote to give the legislature the unbounded power to create as many courts, with as many judges and as high salaries as they pleased, to reward followers, or to secure local majorities here and there in the state. He might be compelled to do it, but he would not do it to-day.

Mr. RICHMOND withdrew his proposition.

Mr. BROWN, in reply to Mr. RICHMOND insisted that the people would be large gainers in point of economy by the judiciary committee—and he repudiated the idea that the Convention had gone against county courts, because they had voted with great unanimity for this 32 wheeled supreme court.

Mr. RICHMOND insisted that many had voted for such a court, under the belief that it would do all the business.

Mr. BROWN argued that this could not be so, for notwithstanding the strong support which this report of the majority of the judiciary committee had received, it would not be doubted that an equally large majority were in favor of county courts in some form. The difficulty was as to what that court should be; but he ventured to predict, that if this matter was referred to this committee of eight, we should come to some agreement on the subject.

Mr. KEMBLE withdrew his motion.

Mr. BRUCE moved the previous question—but there was no second.

Mr. SWACKHAMER moved to amend so as to exclude the section relating to conciliation courts, from the reference. Lost.

The debate was further continued by Messrs. WORDEN, BROWN, SWACKHAMER, PATTERSON, NICHOLAS, BAKER and RICHMOND, when

Mr. Brown's resolution was adopted.

Mr. HARRIS gave notice of a motion to reconsider the vote upon his substitute for the 13th section.

Mr. PERKINS gave the same notice in relation to the vote on the 4th section.

The PRESIDENT announced the following committee in pursuance of Mr. Brown's resolution:—

MESSRS. BAKER, BRUCE, FORSYTH, R. CAMPBELL, CAMBRELENG, TOWNSEND, STOW, W. TAYLOR.

The Convention then adjourned to half past 8 o'clock to-morrow morning.

FRIDAY, SEPTEMBER 4.

Prayer by the Rev. Dr. POHLMAN.

The PRESIDENT laid before the Convention a memorial from the inhabitants of Whitehall, Washington county, in favor of free schools.—

Referred to the appropriate committee of the whole.

Also a report from the clerk of the 5th chancery circuit, in relation to the moneys deposited

in that court. Referred, together with similar returns, heretofore furnished, to a select committee of three.

CANALS AND REVENUES.

Mr. CHAMBERLAIN presented the following proposition in relation to the state debts, revenues, and canals:—

§ 1. The aggregate debt of the state at the time of the adoption of this constitution shall not be increased, except to repel invasion or suppress insurrection; nor shall the credit of the state in any manner be given or loaned to or in aid of any individual, association or corporation.

§ 2. The auction and salt duties and all receipts into the treasury, not appropriated to other funds or specific objects, shall be appropriated to the use of the general fund.

§ 3. The tolls collected on all the canals and railroads, the use of water and all the proceeds of property belonging to the canals, shall constitute the canal fund and shall be appropriated as follows:

§ 4. After paying for all expense of superintending, collecting and ordinary repairs, justly chargeable to the canal fund, \$1,500,000 shall be appropriated in each fiscal year, commencing 1st July 1846, for twelve years as a sinking fund, and after that, \$2,000,000 in each fiscal year to pay the interest and redeem the principal of the whole debt of the state, until it shall be fully paid, and shall not be diverted to any other object whatever.

§ 5. The remaining revenues, after complying with the preceding section, shall be applied to the enlargement of the Erie canal; the completion of the Genesee Valley and Black River canals, and the Oneida river improvement, as shall be directed by law.

§ 6. Provision may be made by law to make temporary loans to meet any deficits or failures in the revenues or for expenses not provided for; but the aggregate of such temporary loans shall not exceed \$1,000,000. Beside such temporary loans the legislature shall not create a debt which in the aggregate shall exceed \$2,000,000, except it be to repel invasion or suppress insurrection; and every law authorizing a loan of money, except for temporary purposes, shall provide a fund from available sources, for the payment of interest on such loans and the extinguishment of the principal in twenty-five years from the time of contracting such loans; and the fund thus provided for the payment of interest and principal shall not be diverted to any other purposes whatever.

§ 7. If any state stocks out-standing shall fail due, and the fund herein provided shall not be sufficient to meet the same, the legislature shall provide for such payment by authorizing the issue of new stock, payable at the shortest period, which shall enable the sinking and provided in the fourth section of this article to meet the same.

§ 8. The tolls on the other state canals shall not be reduced until the debts of the state are paid or provided for; except with a view to increase the revenues thereof.

§ 9. All the state canals, finished and unfinished, shall forever remain the property of the people of this state, and shall not be leased or otherwise disposed of.

NOTE.—The foregoing sections are based upon a debt of \$22,261,083 78, excluding the contingent debt (which is believed to be amply secured), and by actual calculations at a rate of 84 per cent interest will pay the whole debt of the state in less than 24 years, and in less than 12 years complete the unfinished works of the state.

Mr. C. said this was a plan of his own, and was the result of long consideration. He believed by this plan all our debts could be paid and our canals completed within twelve years. He moved that it be printed. Agreed to.

Mr. J. J. TAYLOR presented the following plan for the reorganization of justices' courts which he had received from a gentleman from Allegany county:—

1. Abolish our present justices courts.

2. Let the boards of supervisors divide each county into such a number of judicial districts that one man may be able to try all the causes, civil and criminal,

recognizable before a justice within each district, say two or three to each member of Assembly.

3. Elect one justice for each district, either by the electors of the county at large or by the voters in each district.

4. Let the clerk of each town be a clerk of the justices courts.

5. Let the process be issued by the clerk and issues be joined before him.

6. Let a list of the legal jurors in each town be kept by the clerk, and one or two days previous to the term, let the clerk draw and the constable number twelve persons to attend, out of which jurors of six may be drawn for each cause.

7. For the purpose of facilitating collections, allow a plaintiff in actions on contract, with the first process to have a declaration served and bill of particulars of his demand, and of the credits he is willing to allow the defendant, and unless the defendant put in a plea within six days, and swear to a defence, let judgment be entered by the clerk by default.

8. Let the justices have power to set aside or correct judgments improperly entered by the clerk.

9. Let a gross amount of justice's fees on each trial be paid by the plaintiffs and recoverable of the defendant, and let such fees be paid into the county treasury.

10. Let each justice be paid a competent salary out of the county treasury.

11. Let one or more justices be elected in each town as conservators of the peace, with power to issue warrants and hold criminals to trial, &c.

It was read and laid on the table.

THE JUDICIARY.

Mr. BAKER from the select committee of 8 appointed last night made the following report:

§ 10. Surrogates shall be elected for four years. They shall be compensated by fixed salaries, and they shall not receive to their own use any fees or perquisites of office. The surrogate may be made a judge of any inferior court which may be established in any county.

§ 13. Inferior courts of civil and criminal jurisdiction may be established by the legislature in any county upon the petition of its board of supervisors, at the expense of the county, and appeals and writs of error therefrom may be brought to the supreme court or court of appeals, as shall be provided by law. But the judges or justices of all such courts shall be elected by the county, city or town for which they shall be chosen, shall hold their offices for four years, shall have no power of appointment to office, and shall be compensated by fixed salaries.

§ — There may be established in any county one or more tribunals of conciliation, each to be composed of not more than three conciliators, to be elected as the legislature may direct. They shall be paid a reasonable compensation to be fixed by law, and all fees received by them shall be paid into the county treasury. The legislature may afford parties documents to submit their differences to the conciliation of such tribunals by regulation as to costs in other courts.

§ — The courts by the last section authorized, shall have no power to render judgment to be obligatory upon the parties, except the parties voluntarily submit their matters in difference, and agree to abide the judgment or assent thereto in the presence of the court in such cases as shall be prescribed by law.

§ 16. The court for the trial of impeachments and the correction of errors, the court of chancery, the supreme court, and the county courts as at present organized, are abolished.

Mr. CROOKER offered a substitute for the report of the committee. [See below.]

Mr. C. said he had no desire to consume a moment of the time of the Convention, but he appealed to the Convention to agree upon one principle and he should be satisfied, for he was unwilling to leave the power to the legislature to fasten upon us the old and odious system of five judges. If they would give the people county courts with one county judge, he should be satisfied; but there were 295 of these judges scattered throughout the state—so many in short that the very title became obnoxious. If the

members of this Convention were called by their titles, how often would they hear, 'judge' this or 'judge' that. [Mr. MORRIS—"There are a few 'generals'"] [Laughter.] Yes, and the title of 'general' was as objectionable as 'judge.' He hoped the Convention would not leave such a power to the legislature as would enable it to fasten the old rotten system upon the people by which such cattle as many of these judges were, were placed on the bench. Numbers of such judges did not add strength or efficiency to the court. It was constituted by a judge at the head, and a fool at each side; and strange spectacles were sometimes witnessed in courts so constituted. To one he would advert. A judge, an intelligent and learned man, who was presiding in such a court with two such judges to aid him, once, probably without consulting them, made a decision, as the opinion of the court. When he had concluded, one of the side judges rose, and drawing himself up to his full length exclaimed—"Such may be the opinion of the court, but it aint mine by a damn'd sight." The other judge then rose and added—"By the great Jehovah God! nor mine." The judge then quietly remarked, "Gentlemen, I am overruled." Now he asked the Convention if it would perpetuate a system which would put such men on the bench, and continue a system which was but a mere mockery of justice. [Mr. KENNEDY—"are they not elected."] No, they were put there by the mighty appointing power of the Governor and Senate; and there was nothing of party in it, for he believed the two judges he alluded to were of opposite politics. Perhaps the gentleman from Allegany, (Mr. ANGEL) could tell the locality where this scene was laid.

The PRESIDENT said there was no question before the Convention.

Mr. HOFFMAN said the report of the select committee was first in order, and it was taken up accordingly.

The Secretary read the tenth section of the report of the judiciary committee, as follows:

"Surrogates shall be elected for four years. They shall be compensated by fixed salaries, and they shall not receive any fees or perquisites of office."

The report of the select committee proposed first to amend by adding after the word "fees," "for their own use."

Mr. PATTERSON suggested that the Convention should take up that part of the report of the select committee in relation to county courts; for if that were agreed to, surrogates might be unnecessary.

The Convention, acting upon the suggestion, took up the thirteenth section, giving to the legislature power to establish inferior courts of criminal jurisdiction.

The report of the select committee proposes to amend first by inserting the words "in any county at the expense of the county."

Mr. F. F. BACKUS moved to amend the amendment by adding after the word "county," the words "upon the unanimous petition of the board of supervisors."

Mr. TALLMADGE moved to strike out the word "unanimous" and insert "majority."

A long conversation ensued, and then the amendment was agreed to—53 to 41.

Mr. HUNT moved to amend the section as reported by the select committee, by striking out the words "at the expense of the county," and inserting at the end of the section the words, "but no such court shall be a charge on the state treasury."

Mr. BRUCE obtained unanimous consent to present a plan of county courts, which was read by the secretary, as follows:—

§ — There shall be elected in every county of this state (except the city and county of New York) a county judge, who shall hold his office for four years. Said judge shall hold a county court and perform all the duties of surrogate for said county.

§ — Such county court shall have appellate jurisdiction in all cases tried in justices courts, and shall have original jurisdiction as hereinafter provided.

§ — The county judge, with two justices of the peace, (to be annually elected by the board of supervisors) shall hold courts of general sessions for the trial of all offences punishable by imprisonment in the state prison for a term not exceeding ten years, and shall perform such other special duties as may be required by law.

§ — The county judge shall receive an annual salary, to be fixed by law and paid from the county treasury; and all money received by him as surrogate or judge shall be paid into the county treasury.

§ — In every county having a population of 10,000, or more, the legislature may, by a majority of all the members elected, authorize the election of one or two associate judges, and may confer upon such courts such original jurisdiction as may be necessary. After two years from the adoption of this constitution, the legislature may, by a majority of all the members elected, confer upon the court of any other county, such original jurisdiction as the business thereof may require.

A long conversation then ensued on Mr. HUNT's amendment, which was agreed to.

Mr. COOK moved to amend by adding at the end of the section the words—"No county, unless it contains 50,000 inhabitants shall be entitled to more than two judges, one of whom shall discharge the duties of surrogate." On that amendment he called for the yeas and nays.

Mr. CROOKER moved to strike out "two" and insert "one, who shall be surrogate."

Mr. HARRIS thought this section should find very little favor with the Convention.

Mr. VAN SCHOONHOVEN contended that one judge in these county courts was as good as, or better than five; he therefore was opposed to the amendment, because it left the legislature to make a numerous bench in counties with a population exceeding 50,000.

Mr. BROWN said if the Convention intended to work out a county court system without recourse to the legislature, they would be disappointed; he therefore hoped the question would be taken. He then proceeded to express his objection to the amendment which had been adopted by which the supreme control over this subject was given to the boards of supervisors.

Mr. BASCOM briefly debated the amendment.

Mr. RUSSELL expressed his preference for the plan of Mr. CROOKER, but if that should fail, he would take the plan of the committee of eight. The boards of supervisors were directly responsible to the people, and were the best judges of the public sentiment, and he therefore could not understand the distrust of those boards which some gentlemen felt. He thought two judges were necessary in a county of less than 50,000 inhabitants, but one should be the surrogate. Three might be necessary in other coun-

ties, but there could be no danger of leaving that to the legislature with the concurrent action of the boards of supervisors.

Mr. FORSYTH would not vote for any plan that shall not be uniform throughout the state.

Mr. BAKER explained the action of the committee of eight on the subject of these courts.

Mr. CROOKER withdrew his amendment to Mr. Cook's amendment.

Mr. WILLARD proceeded to show the various representations made by members of the judiciary committee, that the thirty-two supreme court judges would be sufficient to despatch all our business; and he asked where was the necessity for these county courts?

Mr. WATERBURY took the same ground.

Messrs. COOK, SWACKHAMER, CAMBRELENG, BASCOM, CROOKER, and others, entered into some explanations.

Mr. Cook's amendment was negatived, 38 to 44.

The question then recurred on the 13th section, as amended by the select committee.

Mr. CROOKER again offered his substitute for that section, as given above.

Mr. MURPHY wished to provide an amendment of the last clause of the amendment, by adding, "and such courts, except in the city of New-York, shall have an uniform organization and jurisdiction."

Mr. CROOKER accepted the amendment.

Mr. HARRIS made a motion, which had been suggested by Mr. NICHOLAS, to give the boards of supervisors power to fix the salaries of these judges.

Mr. STETSON supported the amendment.

Mr. LOOMIS opposed it, and contended that it should be left with the legislature.

Mr. HARRIS withdrew his amendment.

Mr. STETSON objected to these courts having appellate jurisdiction in cases from justices' courts, as here provided, but was willing to leave it to the legislature to say how these cases should be carried up.

Mr. CROOKER accepted an amendment, based on that suggestion.

Mr. HARRIS renewed the proposition which he withdrew a few minutes ago, to vest in the board of supervisors the power to fix the salaries of the judges.

Mr. CROOKER objected to the amendment. He feared favoritism would influence the boards of supervisors, and that a desire to be economical in fixing salaries might prevent the employment of competent men.

Mr. VAN SCHOONHOVEN was in favor of the board of supervisors having this power.

Mr. SALISBURY advocated the amendment.

The yeas and nays were then called on the amendment, and there were yeas 93, nays 14.

Mr. MURPHY moved to add the words "in such cases," so as to limit the appeals to civil cases.

Mr. CROOKER objected to the decision of the county judge being final in any case.

Mr. PERKINS pointed out the items of expense of these county courts. In St. Lawrence county five days was sufficient, but even for that time, 50 jurors at \$1 a day each, would be \$250.

Mr. CROOKER said in Cattaraugus the court sits 10 or 12 days.

Mr. PERKINS:—Well, then the expense would be greater. There were also the fees of various officers which he pointed out, and all this expense was to be incurred for no practical utility.

Mr. MURPHY withdrew his amendment.

Mr. STOW moved to exempt Erie from the operation of this provision as well as New York.

Mr. MURPHY opposed all exceptions. New York was an anomalous case, the jurisdiction of the city extending over the county, but it was not so elsewhere.

Mr. RUSSELL was disappointed with the details of the plan of Mr. CROOKER. It excluded all civil jurisdiction, with some trifling exceptions, and this he regretted. He desired to strike out the words which prevented these courts exercising civil jurisdiction, and he also wished the legislature to have power to extend their civil jurisdiction if they shall be found to work well. He was opposed to the amendment of the gentleman from Erie, because he desired a general system.

Mr. STOW defended his amendment. The courts in Erie county determined cases in which great amounts were involved, hence it was a matter of great importance to them to have good courts. He was of opinion that the courts they now had were superior to those that were proposed.

Mr. HOTCHKISS moved the previous question and it was seconded, and the main question ordered.

Mr. Stow's amendment was rejected.

Mr. CROOKER's substitute was agreed to, yeas 52, noes 44, as follows:—

AYES—Messrs. Ansel, Archer, Baker, Bergen, Bowditch, Burr, Cambreleng, Clark, Cook, Crooker, Dodd, Dorton, Flanders, Forsyth, Graham, Harris, Harrison, Hart, Hawley, Hotchkiss, A. Huntington, Hyde, K. Mable, Kernan, Kingsley, Loomis, McNeil, Maxwell, Miller, Morris, Munro, Murphy, Nellis, Nicholas, Patterson, Porter, Powers, Rhoades, Sears, Shaver, Shaw, Stetson, Swackhamer, Taggart, W. Taylor, Townsend, Van Schoonhoven, Warren, Waterbury, Witbeck, Wood, Youngs—52.

NOES—Messrs. Ayrault, F. F. Backus, H. Backus, Bouck, Brayton, Brown, Bruce, Brundage, Bull, D. D. Campbell, Candee, Conely, Dana, Dubois, Greene, Hunter, K. Huntington, Hutchinson, Parish, Penniman, Perkins, President, Richmond, Riker, Ruggles, Russell, St. John, Salisbury, Sanford, Simmons, E. Spencer, W. H. Spencer, Stow, Taft, Tallmadge, J. J. Taylor, Tutthill, Ward, A. Wright, W. B. Wright, Yawger, Young—44.

The substitute is as follows:—

§ 13. There shall be elected in each of the counties of this state, except the city and county of New-York, one county judge, who shall hold his office for four years. The county judge shall hold the county court, perform the duties of the office of surrogate, and do all other duties as shall be prescribed by law. The county court shall have such jurisdiction of causes arising in justices court as shall be prescribed by law; but shall have no original civil jurisdiction except in special cases to be prescribed by law.

The county judge, with two justices of the peace, may hold courts of sessions with such criminal jurisdiction as the legislature shall prescribe, and perform such other duties as may be required by law.

The county judge shall receive an annual salary, to be fixed by the board of supervisors, which shall be neither increased nor diminished during his continuance in office. The justices, for services in courts of session, shall be paid a per diem allowance out of the county treasury.

In counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.

The legislature may confer equity jurisdiction in special cases upon the county judge. Appeals shall lie from the county court and court of sessions to the supreme court in banc.

Inferior local courts of civil and criminal jurisdiction, may be established by the legislature in cities and incorporated villages; and such courts, except for the city of New-York, shall have an uniform organization and jurisdiction in such cities and villages respectively.

Mr. J. J. TAYLOR laid on the table a motion to reconsider.

The question then recurred upon the section as amended.

Mr. A. HUNTINGTON said he did not get hold of the question decided by the last vote.—He voted against the proposition which he had just before voted to sustain. He desired to change his vote.

Leave was given, and the question recurred on Mr. CROOKER's substitute for the 13th section.

Mr. TALLMADGE said: I have taken, Mr. President, very little part in the debate the last two days, on the subject of a county court, a court of common pleas, or by whatever name a court in every county in the state, intermediate between the justices' court and the supreme court, may be called. The Convention being now about to take the final vote on the thirteenth section, and, as it seems, to adopt the substitute as amended, I feel it incumbent on me to submit a few remarks on this very interesting subject.

In the early proceedings of this Convention, I avowed myself the advocate of a county court, or a court intermediate between the justices and the supreme court. I rise now to re-assert my belief in the expediency and the necessity of establishing such a tribunal. I have, on a former occasion, taken part in the debate on the "New Judiciary System" now under discussion, and explained my views and expressed a decided opinion against the plan proposed by the committee, which is, in substance, to abolish the county courts, and to establish a supreme court, with thirty-six judges, (and the right to increase the number,) and to be charged with all the business of the state, in law and equity, and down to the justices' courts. It never will work well. It cannot satisfy the public desire. If you will have a high and dignified court, you must pay for it, and command the talent of the state, and assign to it a corresponding order of business. But if you require it to descend to the justices' court in the details of small county business, it must and will sink in its character to a corresponding grade. For such an order of business the public will not bear its burthens, and the court must lose its character of elevation.

But sir, it is not my purpose now to reargue this important question. Enough has been said. I rose only explain the peculiar predicament in which, in common with other friends, I find myself placed on this interesting question. From the beginning to the end, we have been the avowed advocates for the establishment of county courts, with appropriate civil and criminal jurisdiction, and yet we appear as voting in the negative, upon almost every proposition which

has been submitted, and we intend now, to vote in the negative on this final question. We impute no blame to others. It shall be called honest difference of opinion among the friends of a common measure. It is our pleasure to say there is not a visible opponent on this floor—not a voice yet raised against the establishment of county courts.

All are unanimous in an evident and ardent desire to accomplish this common object. It is accidental, and the merest accident in the world, that there is such an honest difference of opinion among the friends of this measure of county courts—that they cannot agree upon any thing.

We all remember a portion of these friends, on the formation of the supreme court, would have 36 judges—and said they would do all the business of the state above the justices' court—and that county courts were not needed. The other portion of those friends had insisted upon only 12 judges of the supreme court, as adequate to the business of the state, with county courts to do the lesser class of civil and criminal business.

Yet now we are all happily here in favor of county courts. All united in one effort for this common object. We have spent the last three days in *bona fide* endeavors to fix upon the details—every possible variety of amendments have been moved—one to cut off its civil jurisdiction—and another to limit its criminal powers—a third to restrict its jurisdiction to special cases and to a single judge, and to stay its going into operation for two years—and another to commit its fate, and its pay, and formation, to the will of the boards of supervisors, &c., &c. We were a little time since about to have taken a final vote upon the 13th section, as amended, and which would have been available for some good—but then a "substitute" for the whole section was moved and accepted. The clerk had not breathed after reading this model substitute for a new court, when instantly new amendments were sent in from five persons, all written out—then came the previous question—to stop other amendments—and now the main question is to be put upon the whole as amended. To a by-stander, unskilled in legislation, this might look like preconcert to defeat the object in view, while to those who understand the matter it looks like extra zeal to accomplish the object of county courts, for which we are all so unanimous. We have already taken the division of the house about a dozen times on amendments to a county court, while we cannot get a question on a county court alone, or to leave it to the legislature. It must be coupled with matter to secure its defeat, by the vote of its friends.—

"Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition, by making it bear a sense different from what was intended by the movers; so that they vote against it themselves."—2 Huls. 79; Clark's Manual, 146.

Our case is much like the one of a fond parent, who had long desired an addition to his household; and when at length the little blessing came, and by which the inheritance of many expecting and anxious relations was cut short, yet all assembled to join in the family joy, and lend their willing aid to amend and make the little innocent more perfect. All had plans for

its improvement. It was too long for one, and he moved to shorten it a foot—another would have its hand taken off—a third would clip off its nose, and a fourth put out its eyes—a fifth and a sixth disliked exceedingly its pallid complexion, and the one wished to give it the small pox—another thought leprosy would be far better—while one, yet more willing to be useful, moved a “substitute,” that had no vitality, or power, and thus he would better promote the common welfare. To this all agreed, and to evince greater honor to this rising hope, it was unanimously named after a Russian leader of great renown called KUT-US-OFF!

We are entangled, Mr. President, in a net of forms, and bound so tight by rules of our own making, and cords of our own tying, that we are constantly baffled in the very objects in which we are all agreed; and yet, even the “responsible majority” of this house cannot relieve us. Fears are entertained, that the unlearned and suspicious public will not appreciate the queer dilemma in which we are placed, and may not only doubt the fairness of our motives, but may even accuse some of the younger members as intending, by adopting the 36 judge system, to provide good places for ourselves. The only possible remedy which I can suggest against these impending evils, is, that we add a clause to this constitution, declaring any member of this Convention to be ineligible to take office under this constitution for the term of three years from its adoption.

We have heard described in this discussion in glowing colors, the fall and the degraded condition of the present county courts as a reason why we must not amend and re-establish the county courts. Some have even described particular cases, and stated one in which a presiding judge gave the judgment as of the court, whilst the other two judges protested in violence and language which my friend near me (Mr. DANA) has objected to, as too profane and indecent to be admitted even in a recital. Several gentlemen near me, say they know all the particulars of the case—that the disorder did not arise from the judges—that it all came from Justice Alcohol! which had been infused too freely into the court. We now give the right of election to the county; such cases will hereafter depend upon the choice of the county. I remember with satisfaction the old county court of Dutchess county, in which it was my pride once to practice—a Brooks, a Johnston, an Emott, and a Pendleton, were in succession the presiding judges, with associates worthy of such principles—all gentlemen of intelligence and integrity—and for many years held an elevated county court. Other counties may look back, with the same proud result. In those days, those judges served for the distinction and the honor, and they were well paid. In latter times, and since it has been discovered, to use a word I have learned on this floor, to be “undemocratic” to have an office without pay, and which thereby the poor man cannot afford to hold. The legislature have provided two dollars a day, and have opened the road of this profit and promotion to the village justice and the bar-room politician. The result, the character and condition of the court, are before us.

The county court requires only to be repaired, and made efficient for the medium business of the state, and then twelve judges for the supreme court would only be required, or could find business for their employment. It is certain the thirty-six judge and the county courts cannot exist together. If the former is adopted, it must end in multiplied commissioners and a swarm of petty officers to do the local business. Since the adoption of the system for the supreme court, with its thirty-six judges, it seems a difficult matter to get a hearing for the county court, and every effort to present the question of a county court has been amended to its utter ruin.

Gentlemen express surprise that in a measure where there is no opposition, and to which all are agreed; yet every effort to advance is constantly defeated by amendments, to make the thing more perfect—until there is not a friend left for it. Some have said they are lost in the labyrinth of rules, and questions of legislative usages; and that such a case of confusion never before existed. Will those gentlemen allow me to differ from them, and to state that a like case existed, in all its features, in the legislature of 1824? It was my lot to have been a member of that body. The memorable question of the electoral law, proposing to give the choice of the electors to the people, came before that legislature. That legislature, like this Convention, had no ulterior party politics in it. All were agreed in the proposition; but each one wished to render it more perfect by some slight amendment. All was confusion, from the collisions of these honest efforts. The session thus passed away. An extra session was called by the Executive; and that too passed off, and no electoral law. The confusion of amendments, rules, orders, committees and references, was such, that the honestest members of the house could not tell how, why, or when the electoral law was lost. But lo and behold, the people understood it! and there was a day of ample retribution. This created “the immortal seventeen!” Will not the friends of this system of thirty-six judges, and the necessary clerkships, subaltern officers, and commissioners for local business—take warning and learn a lesson of wisdom from the past? Thirty-six judges, with expected salaries of \$3000 each, and \$500 for traveling expenses, with the consequent retinue of needy dependants, will be one very rank slice of party patronage. May it not be mistaken for a company of California volunteers? I hope it may be submitted to the people at the next election as a separate article. I fear the people will not take it off our hands, and that the vastness of the scheme will have defeated its own consummation. True, we have provided for the election of the judges by the people; but will this be satisfactory? At the beginning of this Convention, we were told that the elections must be all brought home to the people. The old senate districts were too large—and the counties have been cut up into single assembly districts, that the electors may know the particular candidate. Yet when we come to the election of the judges, the thirty-two single senate districts are too small for thirty-two judges.

es. They must have a judicial district provided; embracing several large and distant counties—with an election of four judges at one time—and to elect only once in four years—will this redeem our pledge for single districts and to bring the elections home to the people?

Mr. W. TAYLOR desired to offer an additional section, but it was ruled out of order.

Mr. BROWN urged that Mr. TAYLOR's amendment should be received—saying that he voted against the proposition just adopted, because it did not give the legislature power to confer on the county courts original civil jurisdiction, which he desired to give.

Mr. CROOKER said he had a section drawn which he preferred to the one adopted.

Mr. BROWN continued, saying that he and others desired to give the legislature the power, instead of confirming this jurisdiction in the constitution.

Mr. W. TAYLOR said his proposition was in substance that which Mr. PERKINS proposed to offer—providing that the county court should have such jurisdiction of causes arising in justices' courts, and such original civil jurisdiction as might be prescribed by law.

Unanimous consent being necessary,—Mr. RICHMOND objected.

Mr. W. TAYLOR then asked unanimous consent to offer a proposition, conferring on the legislature, by the vote of a majority of all elected, to authorize the election of one or two associate judges, in counties having a population of 50,000, and to confer original civil jurisdiction; and after two years, to confer on any other county courts the like jurisdiction, if necessary.

Mr. WATERBURY objected—and the question still recurred on the 13th section as amended.

Mr. RUSSELL opposed the section—urging that it would be monstrous injustice to confer on local courts in cities and villages, powers that were denied to a county court, no matter what the population of the county.

Mr. VAN SCHOONHOVEN insisted that, under this clause, except in special cases, original civil jurisdiction might be conferred.

Mr. RUSSELL urged if that was the construction, the language was deceptive. The prohibition meant nothing. If that was the intention, it should be made plain.

Mr. BROWN thought this difficulty might be got over—if, as he believed, there was a majority here in favor of giving the legislature power over this subject. At all events, the gentleman from Genesee should not block up business here, if such was the fact. To test the sense of the body, he moved to re-commit this section to the committee of eight with instructions to make this exception cover any case where the legislature might see fit to confer this jurisdiction—and that they report instant.

Mr. RICHMOND justified his course, as the only one left him in order to get such a system as he desired, and such as the people desired. He wanted to save them some \$60,000 a year, and give them a better system, which he believed could be done. The difficulty in the way of a county court, he repeated, was this overshadowing supreme court—and his object was to compel gentlemen to take the back track on that

subject. But, under the circumstances, he withdrew his objection.

Mr. HOFFMAN then urged a recommitment, with instructions so to amend as to give the legislature power to confer on this one-man court such jurisdiction as would make him a judge—and to give more extension to the court should the necessity of the particular case require it.—They should have power to increase the number of judges according to the increase of population.

Mr. CROOKER asked how two judges could do more business than one?

Mr. HOFFMAN replied that it was because four-fifths of the business devolving on them would be local chamber business.

Mr. STETSON asked if the gentleman supposed there was anything in this article prohibiting the appointment of supreme court commissioners?

Mr. HOFFMAN said there was, as he understood it. But if local judges were to be appointed in the shape of commissioners, he preferred that they should be put into service as local judges, and try causes as well as serve at chamber. He objected also to the power to erect courts of inferior jurisdiction in incorporated villages and confine them to cities having a certain population.

Mr. CROOKER urged that a single judge was enough to try issues of fact—and that if other officers were needed for chamber business, he would have them appointed—not make them county judges, to take part of the pay and thus belittle your county judge. He was himself in favor of a larger county court than this section provided—and yielded his opinion to suit others, and in order to get something in aid of this supreme court, which, he believed, could not discharge the duties thrown upon them. He should be willing to have this section reconsidered, and have the sense of the house taken on a larger county court. He read a section he had drawn with this view—to the effect that the legislature then might establish a county court to be held by a single county judge, and courts of session to be held by the county judge and two justices of the peace—the county judge to be elected, to be surrogate, and to have special duties to be prescribed by law—the legislature to prescribe the duties and powers of the county judge and court of sessions. This was as far as he would go into detail—but to suit conflicting views, he had been obliged to entangle his amendment, before offered, with many details that ought not to be there. He urged conciliation and concession on this subject—saying that he was willing to compromise and yield his own opinions to secure something like harmony in our action. He hoped the section would be reconsidered—and then he would withdraw it, if in his control, and offer the proposition he had indicated—that gentlemen might have the opportunity to record their votes for or against a good, strong, common pleas court.

Mr. MURPHY said he should vote to reconsider, though with the feeling rather of the disciplined soldier, who must obey the word of command, though his own judgment might be the other way. He confessed that he was originally opposed to this plan of a judiciary system.

as too large and expensive contrasted with the benefits to result from it. He was in favor of dividing the labor which was proposed to be thrown upon this supreme court, by establishing local tribunals. But he was told by the experienced generals who took the lead on this question, that these judges would go into the counties and do up all the local business, and that thus we should get rid of a great local charge, and have justice of the highest order cheaply and promptly administered. Under these circumstances, he came into the support of the plan, though rather an awkward recruit, after having succeeded in making an amendment to carry out more thoroughly and consistently the plan itself. Having done this, he enlisted under its champions and leaders, and determined to fight the battle under them. But when we came to the actual conflict, when all of us had our bayonets fixed and stood ready for the word to charge—we found our leaders deserting us, and forcing us to retreat.

Mr. CROOKER had taken no lead, nor had he deserted his post, if the gentleman meant him.

Mr. MURPHY did not. He referred to the gentleman beyond him, the distinguished major general from Orange (Mr. Brown), who had taken this plan under his particular protection. That gentleman told us in the opening of this discussion, that we would not want these local courts—but that this supreme court would do up all the business. But now that gentleman proposed to adopt these local courts, and thus, as Mr. M. thought, to break down this plan which the majority here had agreed to sustain. Were he an enemy of this plan of a judiciary system, he would go for this proposition—for in his judgment it must fall if we adopted these local tribunals. The people never would consent that the enormous expense of these high tribunals should be cast on them, and at the same time submit to the additional expense of a county court. He thought the two were incompatible, and that when the gentleman from Orange and others assented to this, they sounded the requiem of their own plan.

Mr. J. J. TAYLOR was no admirer of county courts, as now constituted. But he knew that there were duties that this supreme court could not perform—local duties requiring a local judge, and which these perigrinating judges could not do. He enumerated certain statutory duties to which he alluded—among other things, the duties under the non-imprisonment act.—Without supreme court commissioners, and without a county judge, there would be no one to perform these duties.

Mr. SIMMONS asked if it was necessary to have a court to do chamber business?

Mr. J. J. TAYLOR replied that the difficulty was, that a supreme court commissioner, with nothing else to do, would not be the competent officer that was required. The legislature could remedy the difficulty, if we gave them the power. He preferred not to undertake to do this in the constitution—and if gentlemen would dismiss the propensity to go into detail, we could agree on something in the shape of a county court, which would administer justice properly, and add no manner of expense to the

county. And Mr. T. went into the expense of such a system as might be desired, contrasted with the expense of the present system, to show that the appeal made to this body on the score of expense was an unworthy appeal. If the expense of the county tribunal should be a little more than the present, he would rather diminish the expense of the higher courts than go without it.

Mr. CROOKER now moved to amend the motion of Mr. Brown, so as to recommit with instructions to report the following sections:—

§ —. The legislature may establish a county court to be held by a single county judge, and courts of sessions to be held by the county judge and two justices of the peace. The county judge shall be elected for four years, and shall perform the duties of the office of surrogate and the special duties prescribed by law. The board of supervisors may fix the salary of the county judge, and the legislature may prescribe the power and jurisdiction of the county court and court of sessions.

§ — Inferior and uniform local courts of civil and criminal jurisdiction may be established by the legislature in cities. In counties having a population of 50,000, the legislature may provide for the selection of a separate officer to perform the duties of the office of surrogate.

§ — The legislature may prescribe the number and time of election of commissioners in the several counties to perform certain duties of a judge at chambers which shall be specified by law.

Mr. FORSYTH opposed all these motions to recommit. We had been trying for three days to get up some system that would suit the majority. We had at last got one; and now gentlemen who were dissatisfied with it, sought to put us at sea again. Among these was a very distinguished gentleman, who had favored nearly all the plans that had been proposed, and yet voted against them all.

Mr. BROWN. (in his seat):—Who is that?

Mr. FORSYTH:—Yourself, sir. Mr. F. went on to say that the gentleman from Orange no doubt would be glad to escape from the predicament in which he had placed himself when on the 4th section, relating to the supreme court, by placing others in the same predicament in regard to county courts. Mr. F. had originally been opposed to all courts of common pleas—on the ground that these thirty-two judges would be adequate to do all the business. But he and others had so far yielded their opinions, as to adopt this plan. Now the proposition was to recommit, and change the whole character of this plan. This would be a fraud on all those who had voted for it. He hoped we should hold on to what we had got.

Mr. STETSON went into the statistics obtained since the Convention came together, in regard to the amount of original causes actually disposed of by the common pleas in the year 1845. He showed from the returns, that they could not have exceeded two hundred and twenty-seven, that year. Yet there were appeals enough, and certioraris, to overwhelm your supreme court, if thrown in there. He insisted that, without some local tribunal to dispose of this class of business, your system would be a failure.

Mr. BRUCE opposed a recommitment; but if that was to be done, he preferred the proposition he had before read, and which he would

now offer as an amendment to the pending proposition. [See above.]

The Convention then took a recess.

AFTERNOON SESSION.

Mr. BRUNDAGE spoke of the plan of the majority of the judiciary committee as a well matured and skilfully wrought work—and one which he had all along sustained in its material features, in the spirit of concession in which it originated—for there were some features in it that he did not approve. But he had always reserved to himself the right to oppose this 13th section. That point he could not concede. The great evil now complained of was the multiplicity of courts rising in gradation one above another, and the delay and expense which grew out of pursuing controversies from one to the other up to the highest. A diminution of the number of courts, and consequently the number of appeals, was the relief which was sought. But if we fastened to this system a county court, we should have the same system which we had now, except with a differently constituted court of errors. He was opposed to these local courts. He would have but one court to try all issues. We had created such a court, of 32 judges, supposed to be sufficient to discharge all the judicial duty of the state—and with the expansibility of which it was susceptible, no doubt equal to it, with supreme court commissioners in the counties to do the chamber business. With such a system as this, to which should be added an elevation of the justices courts, and the abolition of the useless forms of the common law, and he should be satisfied with the system. But he trusted we should be consistent—strike out the 13th section and insert nothing in place of it—but go back and allow the legislature to supply any deficiency that might be found to exist.

Mr. LOOMIS remarked that there was one leading feature and principle running through the plan of the judiciary committee, and that was that we should have only one single court that should do the duty and have the jurisdiction now exercised originally by all the courts of record in this state—the court of chancery, the supreme court, and the court of common pleas. We had undertaken to employ an adequate force to do all this. Members of the judiciary committee, in making their explanations when the report came in, apparently succeeded in convincing this body that the number of judges and the organization of that tribunal would be sufficient—and he had been exceedingly gratified to see the perseverance with which the Convention had resisted all temptations to depart from that principle. To establish a county court having original civil jurisdiction, or to grant to the legislature power to establish them would be an entire departure from this principle. If we believed that the force provided here was not sufficient, then we could not be excused for making the judges so numerous.—He had not changed his opinion on this subject; and he asked, if under the demonstration made by the gentleman from Clinton, that there were but 227 causes tried by the common pleas, originating in that court, the last year—making four to each county, except the city of New-York—whether gentlemen were prepared, in

order to get these four causes in each county tried, to endanger the execution of the system we had thus far projected? With four circuits a year in each county, under this system, for the trial of issues of fact and in equity, what were we to gain by having another court of original jurisdiction, with all its machinery and expense of jurors and witnesses, &c., under the name of a county court? He conceded the necessity for some local officers to discharge special and local duties, such as supreme court commissioners and county judges, and perhaps masters and examiners had been charged with. But they need not be charged with any duty contemplated in this report. Unite the duties of surrogate and those he had enumerated, and they would have ample employment, and the fees paid to the surrogate would pay them. He urged the Convention to adhere to the principle of this plan, and not to confer on the legislature the power to give these tribunals original civil jurisdiction. If we did so, he feared the legislature would at the start organize such courts—and then we should have thirty-two judges half employed, half paid, and of course not half qualified. For one, he was willing to conciliate and compromise differences, but he could not give up the leading principle of the report—that the supreme court was intended to try all issues of fact.

Mr. W. TAYLOR wanted a vote on the proposition of Mr. BRUCE, which he regarded as a sort of compromise on which the friends of different propositions might meet. He regarded it as the most simple and economical plan, and hoped it would be adopted.

Mr. CROOKER asked wherein it differed from his own plan?

Mr. W. TAYLOR stated one or two particulars in which they differed—among them, the provision in regard to incorporated villages.

Mr. BROWN desired to strike out incorporated villages. He proceeded to vindicate himself and the committee, from the strictures made upon both. The charges of inconsistency and fraud, he could not receive in silence. The part he had taken in this debate was not of his own seeking. The gentleman from Ontario (Mr. WORDEN) at an early stage of the debate, turned his back upon this report. The gentleman from New-York (Mr. O'CONNOR) did not like it, and had said little in support of it. The gentleman from Seneca had been incessant in his attacks upon it. The gentleman from Columbia (Mr. JORDAN) had been called away by professional business—and the chairman (Mr. RUGLES) had been struck down by sickness. He, therefore, with the gentleman from Herkimer, (Mr. LOOMIS) had stood almost alone in defence of this report. As to his own course, he denied that he was committed on the mode of appointing judges, and in proposing the general ticket system, advocated opinions which he had in no way compromised. And in regard to this thirteenth section, he could say that he assented to it from no belief that the force provided here was inadequate, but because of the fears entertained and expressed in other quarters that it was not. Mr. B. went into a review of the proceedings and course of debate on this plan from the beginning—glancing at the objections which had been made to the report, particularly

at what had been said of this "army of judges"—insisting that from the statistics before us, if anything had been proved here, it was that this system was greatly superior to the present inefficient system, and much cheaper. Indeed, a worse system could scarcely be devised than the present. All that the committee asked for this plan was, that this Convention would provide for supplying deficiencies in it, if in the progress of time, and the increase of population and business, deficiencies should be found in it. And under either of the plans proposed by Messrs. CROOKER and BRUCE, such deficiencies might be supplied, without entailing any additional expense upon the counties. The fees of the surrogate would be ample to meet all its requisitions. In his own county and in the adjoining county of Dutchess, these fees amounted in the aggregate to some \$5,000 annually.—Either of these two propositions would suit him, and some such section we should adopt, if we intended to give full effect and a fair trial to this system. It might prove to be absolutely essential to its effective working. And he called upon the gentleman from Kings, (Mr. MURPHY) if he had really enlisted under his banner, to follow him to the end of the war and not to stop short at the "Palm Ravine," as if all had been done, that was yet to be accomplished.—He insisted that the legislature should be empowered, as a matter of precaution—as a sort of safety-valve to this system, to create a court of small original jurisdiction.

Mr. PERKINS thought the gentleman from Orange had maintained his consistency about as well as any of us. He insisted that if our eight circuit judges were relieved from chancery powers, they, with the three supreme court judges, five chancellors, with examiners and masters—in all sixteen—could do all the business, except that of the court of appeals. He went on to urge that some power must be left to the legislature, even though these provisions should be adopted, to relieve this system—expressing his belief that this court of thirty-two judges, having chancery and law powers, and no examiners or masters, would need the aid of the legislature in the establishment of inferior courts.

Mr. HOFFMAN spoke of Mr. BROWN's defence of the judiciary committee and himself, as perfect—at the same time, a vindication of either was entirely unnecessary. As to the judiciary committee, they had told the convention plainly, that they did not regard this system as perfect, whatever might be the view of his colleague, without the organization of other tribunals; and this was the fair import of this 13th section. Nor, when gentlemen were individually pressed on this point, did they pretend that this supreme court was to try all the petty assaults and batteries, and the paltry slander suits of the common pleas courts. Power must then be given to the legislature to confer this jurisdiction on inferior courts. And though the statistics showed that but two hundred and twenty-seven causes were disposed of in these county courts in one year—even those causes, with their twenty, thirty, and even fifty witnesses, would of themselves constitute no small share of the business of this court. The expense of

such a system as he had indicated, though it had been conclusively shown to be less than the present, he regarded as a matter of small importance compared with the end to be attained by it. He urged the plan of Mr. BRUCE, saying that having adopted that, it would be well, for more abundant caution, to grant a power something like that in this 13th section.

Mr. FORSYTH next addressed the Convention in reply to Mr. BROWN, contending that he (Mr. B.) had not acted with consistency or with good faith towards those who voted for the plan presented by the judiciary committee, in now moving instructions to a committee to report a plan for inferior courts. He reviewed the action of the committee, and recited the propositions which they had made, sweeping away every vestige of the present judicial system, and in its place setting up a court of 32 judges, which was to perform all the judicial business of the state. It was now contended that this force was insufficient, and the gentleman from Orange himself urged a proposition which was again to establish courts of common pleas, in all respects like the old system, with the exception that in place of five incompetent and ignorant judges, we were to have one or three, as the case may be. Mr. F. was willing to yield so far as to allow the creation of these courts, provided they had no original jurisdiction and were confined to hearing appeals and writs of error from justices' courts. Such a plan had been drafted by the gentleman from Cattaraugus, and had been adopted here; and now the gentleman from Orange turned round and moved to recommit with instructions to report the proposition afterwards presented by the gentleman from Madison, (Mr. BRUCE.) It was this he protested against as a fraud upon himself and those who had voted for the proposition recommended by the judiciary committee, and thus far adopted. As to the number of original causes now tried in the common pleas courts, he could not state the amount. Gentlemen who had examined the statistics in regard to it had done so, and it was not necessary for him to do it. So far as regarded the county which he represented, however, he did know, that for the last ten or fifteen years, not five original causes had been brought there. The reason arose from the simple principle that where there were superior and inferior courts established, suitors would prefer to bring their causes in the best court. They would always decide between courts whose judges were ignorant and those of the highest ability. Whatever difference might be made in costs, so long as their superior character attracted suitors, so long would the advocates go there.

But this question had been debated sufficiently, and he did not intend to pursue it at length. He rose more for the purpose of explaining in what respect the gentleman from Orange had acted with bad faith and inconsistency.

Mr. PERGEN moved the previous question, and it was seconded.

The amendment of Mr. BRUCE was negatived, yeas 28, noes 77.

Mr. CROOKER withdrew his amendment.

The question then recurred on the motion of Mr. BROWN, to recommit with instructions to

amend, as moved this morning, and it was negatived, ayes 30, noes 72.

Mr. CAMBRELENG asked consent to move to strike out the words "incorporated villages" in the proposition as it stands.

Mr. PATTERSON inquired if the section would still be open to amendment?

The PRESIDENT replied in the negative, unless by unanimous consent.

Mr. PATTERSON said unanimous consent could not be given unless another change was made. There was a phrase "in special cases" which was interpreted differently by different gentlemen—one saying the legislature under it could not give original jurisdiction to these courts, while another contended that it could be given to any extent. He must have words that at least *we* could understand.

Mr. TALLMADGE followed on the same side.

Mr. LOOMIS moved to recommit to a committee of one, with instructions to strike out the words "incorporated villages," and report forthwith.

Mr. PERKINS moved to adjourn. Lost.

Mr. STETSON moved the previous question, and the motion of Mr. Loomis was agreed to.

Mr. LOOMIS, who was appointed said committee, immediately reported.

The 13th section as amended (heretofore given) was then carried, as follows:—

AYES—Messrs Angel, Archer, Baker, Bowdish, Brayton, Burr, Cambreleng, Conely, Cook, Crooker, Dorton, Flanders, Forsyth, Graham, Harris, Hart, Hawley, Hoffman, Hutchkiss, A. Huntington, Hyde, King, McNeil, Maxwell, Morris, Powers, President, Rhoades, Sears, Shaver, Shaw, Shelton, Stetson, Taggart, W. Taylor, Townsend, Waterbury, Wood, Youngs—40.

NOES—Messrs Ayrault, F. F. Packus, Bouck, Brown, Bull, Cornell, Cuddeback, Dana, Dubois, Green, E. Huntington, Hutchinson, O'Connor, Parish, Patterson, Penniman, Perkins, Porter, Richmond, Riker, Russell, St. John, Salisbury, Sanford, Simmons, W. H. Spencer, Stow, Swackhamer, Taft, Tallmadge, J. J. Taylor, Tuthill, Ward, White, Willard, Worden, A. Wright, Yawger, Young—39.

Mr. AYRAULT moved to reconsider.

Mr. SHEPARD had leave of absence for four days.

The Convention then adjourned to half past 8 o'clock to-morrow morning.

SATURDAY, SEPTEMBER 5.

Prayer by the Rev. Mr. SCHNELLER.

The PRESIDENT laid before the Convention the report of the clerk of the 8th chancery circuit, containing an account of the funds deposited in that court.

THE JUDICIARY.

Mr. LOOMIS presented the following sections, which he supposed all must agree to be necessary to perfect the judiciary article as thus far adopted. He moved their reference to a select committee, with instructions to report in one hour:—

At the time when this constitution shall take effect, all suits and proceedings then pending in the court for the correction of errors; and all suits and proceedings then pending in the court of chancery, in the supreme court, and in the court of common pleas, shall be deemed pending in the supreme court hereby established.

The chancellor and justices of the supreme court shall continue to have and exercise the powers, duties and compensation of their respective offices in respect to all causes and proceedings in their respective courts when this constitution shall take effect, and then ready for hearing before them respectively until said causes and proceedings have been adjudicated and finally disposed of in said courts; but such time shall not in respect to the courts of chancery exceed two years, and in respect to the justices of the supreme court one year from the time this constitution takes effect.

Any causes or proceedings pending in the court of chancery and in the supreme court and ready for hearing before the chancellor or before the justices of the supreme court may, notwithstanding the last section, be heard and determined in the supreme court by the consent of parties; and all causes and proceedings pending in the court of chancery or in the supreme court, when this constitution shall take effect, shall be subject to the appellate jurisdiction of the court of appeals in like manner as if originally commenced in the supreme court by this constitution ordained.

The chancellor, vice chancellors and assistant vice chancellors, the justices of the supreme court and circuit judges are hereby declared to be severally eligible to the office of judge of the court of appeals, or justice of the supreme court within the districts in which they may reside.

Any vacancy in the office of chancellor within two years from the time this constitution shall take effect, or in the office of justice of the supreme court within one year from the time this constitution shall take effect, shall be filled by appointment by the Governor with the advice and consent of the Senate.

Mr. SIMMONS would never be willing to vote for any extraordinary commissioner to settle up this business. If the 36 judges should have nothing else to do than the mere business, they would have but little to do for a year, and the arrears of business might be transferred to them and done up in six months.

Mr. LOOMIS: There are a thousand causes on the calendar.

Mr. SIMMONS said the arrears could be readily disposed of. The chancellor had informed him that in his court there were no more arrears than the present chancellor received from Chancellor Jones, and all could be done up in 90 days, if no new business came in to obstruct the disposal of it.

Mr. RICHMOD opposed the proposition of Mr. LOOMIS.

Mr. SIMMONS said it would be respectful to ask the judges of the courts what amount of arrears they had; and such information might aid the Convention.

Mr. STOW moved a change of reference, so that these propositions which were almost as long as a constitution, should go to the original judiciary committee; but he would not require them to report in an hour, or in any such time.

Mr. LOOMIS assented to the change of reference.

Mr. BROWN was not sure that the judiciary committee could be got together, as many of

them were absent. Besides, in two minutes the Convention itself could make provision to transfer all arrears to the new courts.

Mr. RHOADES said the two minutes which the gentleman spoke of would be like one of his two minute speeches, which he sometimes rose to make. It had better go to the judiciary committee.

Mr. WATERBURY desired that the Convention should go on regularly and dispose of the business before it, and not obstruct all progress by these frequent motions professing to be intended to save time.

Mr. SIMMONS said certain information was necessary in regard to the amount of arrears, before they could decide upon these propositions.

Mr. HAWLEY moved to lay on the table.—Lost.

Mr. NICHOLAS said he thought this proposition should be referred to the judiciary committee, as it referred to subjects which had already been examined by that committee. The gentleman from Orange (Mr. BROWN) objected to this reference on account of the absence of several members of that committee. Mr. N. thought this, so far from being an objection, was an inducement to thus refer this question. That committee of thirteen had been inconveniently large, and a report from a bare quorum would be quite as judicious, and be more promptly made than by the whole committee.

Mr. LOOMIS made some explanation respecting the length of his propositions, which had been referred to.

Mr. STOW moved to amend so as not only to refer these propositions to the judiciary committee, but also the subject matter to which they relate, except the report on codification.

Mr. LOOMIS withdrew the section relating to the codification of laws, not being aware that such a committee existed.

Mr. SWACKHAMER moved to refer all these propositions to the committee of the whole having in charge Mr. WHITE's report on codification. Lost.

Mr. LOOMIS accepted Mr. Stow's amendment in these words—"and the subject matter to which they relate."

Messrs. WORDEN, RICHMOND, and VAN SCHOONHOVEN, urged that this would refer the whole judiciary article, and relieve the Convention of all further trouble.

Mr. LOOMIS modified his proposition, with Mr. Stow's consent, so as to read, "the subject matter of them"—namely of the propositions—not of the whole judiciary report.

Mr. CAMBRELENG moved to strike out those words.

Mr. HOFFMAN urged they ought to be stricken out.

Mr. STOW explained, and withdrew his amendment.

The reference to the judiciary committee was carried, 44 to 23.

Mr. BASCOM offered the following, for the purpose of having it referred to the judiciary committee.

The Governor may require the judges of the supreme court to perform duties without the judicial districts to which they belong, and a sum equal to their travel-

ing expenses, besides their salaries, may be allowed the judges while on such service.

Mr. WORDEN moved to lay it on the table.

Mr. BASCOM:—The gentleman had better look at the provisions adopted first.

Mr. WORDEN:—Well, I withdraw it; but our committee will want four weeks, if we can be got together again.

The reference to the judiciary committee was lost, 33 to 40, and the proposition itself laid on the table.

Mr. A. W. YOUNG moved that the Convention this day hold an afternoon session, and continue in session until the judiciary report is disposed of.

Mr. CAMBRELENG suggested to the gentleman to substitute a motion to terminate debate on it at twelve o'clock to-day.

Mr. WORDEN made some remarks, in the course of which he was called to order for irrelevancy, by Mr. CHATFIELD.

Mr. RICHMOND said the resolution involved the whole question.

Mr. WORDEN thought so; and he continued his remarks, in which he detailed the judicial system he desired to see adopted. He concluded by moving to strike out all after the word resolved, and insert a provision to refer the whole subject to the judiciary committee, with instructions to report complete.

Mr. HAWLEY enquired if the gentleman had embraced in the proposition his (Mr. W.'s) minority report.

Mr. WORDEN replied that he had taken the proposition of Mr. CROOKER as the basis of his plan, and incorporated the principles agreed upon by the Convention.

Mr. BROWN said it was now 10 o'clock, and therefore he called for the orders of the day.

The PRESIDENT announced the question to be on the 10th section of the judiciary report as amended by the select committee:—

§ 10. Surrogates shall be elected for four years. They shall be compensated by fixed salaries, and they shall not receive to their own use any fees or perquisites of office. The surrogate may be made a judge of any inferior court; which may be established in any county.

Mr. CROOKER moved to strike out the whole section. Agreed to.

Mr. HARRIS offered the following additional section:—

§ 14. The preceding section shall not be construed to authorize the legislature to confer upon any county courts original jurisdiction in actions at law.

Mr. RUSSELL opposed the proposition. If the Convention desired the rejection of the constitution by the people, it should be adopted, but not otherwise.

Mr. STETSON raised a point of order as to the admissibility of Mr. HARRIS's proposition.

The PRESIDENT ruled the proposition out of order.

Mr. O'CONOR offered the following as an additional section:

§ — The judgment, decrees and decision of inferior local courts in cases shall be subject to review in the supreme court or court of appeals, as may be prescribed by law.

Mr. W. TAYLOR enquired if the residue of the report of the select committee was not in order? If so, this section was out of order.

Mr. O'CONOR said his amendment was de-

signed to remedy a defect in the report of the select committee, and therefore was in order.

The PRESIDENT decided otherwise, and the amendment was not entertained.

The SECRETARY read the next portion of the special committee's report—the section in relation to conciliation courts.

Mr. PATTERSON proposed to amend by striking out the two sections and inserting "courts of conciliation may be organized by the legislature." He thought there was too much legislation in the sections as they stand.

Mr. W. TAYLOR thought this proposition was too broad. Under it, the legislature might make such courts of conciliation as they pleased, whereas in the original proposition such courts were defined and limited.

Mr. WATERBURY expressed his astonishment that such a motion should be made, and went on to oppose it.

Mr. YOUNGS moved to add the words "without cost to parties," to the amendment of Mr. PATTERSON.

Mr. HUNT moved to strike out the words, "they shall be paid a reasonable compensation to be fixed by law, and all fees received by them shall be paid into the county treasury," which being part of the select committee's report, took precedence of the other motions.

Messrs. TOWNSEND, SWACKHAMER, CHATFIELD, YOUNG, WATERBURY, DANA, LOOMIS, VAN SCHOONHOVEN, and W. TAYLOR, continued the discussion—when Mr. HUNT withdrew his proposition.

Mr. HART renewed it.

Mr. SIMMONS explained the details of a plan for a court of conciliation which he had received from a member of the society of Friends, and commented on its provisions.

Mr. RHOADES moved an amendment to provide that the decisions in such courts shall not be binding without the consent of the parties.

The PRESIDENT decided the amendment to be out of order, an amendment to the amendment being pending.

Mr. MORRIS intimated a desire to amend the section.

Mr. CHATFIELD spoke at length in opposition to conciliation courts.

Mr. YOUNGS moved the previous question.

Mr. CORNELL asked if a call of the house was in order?

The PRESIDENT (Mr. CAMBRELENG) said a call of the house was always in order.

The call for the previous question was then put, and there was a second, &c.

Mr. CORNELL moved a call of the house, but after some conversation withdrew it.

The yeas and nays were then called for on the motion of Mr. HUNT, renewed by Mr. HART, and it was adopted, yeas 69, noes 20.

The next question was on the motion of Mr. YOUNGS, to add "without cost to parties." Lost 33 to 47.

The question then recurred on the motion to strike out the whole provision and insert "tribunals of conciliation may be organized by the legislature."

Mr. PATTERSON called for the yeas and nays, and there were yeas 29, nays 53.

The question now recurred on the first section as amended.

Mr. MORRIS inquired what had become of his amendment which was in these words,—"such tribunals shall be governed, by the law of the land and the evidence in the case." He handled it up to come in when in order.

A conversation ensued on the propriety of entertaining it at this time, and Mr. MORRIS intimated that he would offer it hereafter. It was therefore withdrawn.

The yeas and noes were then taken on the section authorizing conciliation courts, and there were yeas 42, noes 43, as follows:—

AYES—Messrs. Allen, Angel, Archer, Bascom, Burr, Cambreleng, R. Campbell, jr., Conely, Cornell, Dubois, Flanders, Greene, Harris, Hart, Hoffman, Hunt, Kemble, Kernan, Kinsley, Miller, Morris, Nellis, Nicholas, Pennington, Rhoades, Richmond, Salisbury, Sears, Shaw, Sheldon, Stephens, Swackhamer, Taggart, Tallmadge, W. Taylor, Townsend, Warren, Waterbury, White, Worden, Yawger, Young—42.

NOES—Messrs. Ayrault, F. F. Backus, Bonck, Brayton, Brown, Bull, Chatfield, Clark, Cook, Crooker, Cudeback, Dana, Dorlon, Gardner, Hawley, Hatchkiss, Hunter, Hutchinson, Hyde, Loomis, McNell, Munro, O'Connor, Parish, Patterson, Porter, Powers, President, Riker, Russell, St. John Sanford, Shepard, Simmons, W. H. Spencer, Stetson, Strong, Ward, Witbeck, Wood, A. Wright, W. B. Wright, Youngs—43.

Mr. MILLER gave notice of a motion to reconsider, to lie on the table.

The next question was on the second section.

Mr. LOOMIS contended that the second fell with the first section.

The PRESIDENT so decided.

Mr. BASCOM enquired if it would rise with the other, if that should be reconsidered?

The PRESIDENT (Mr. CAMBRELENG) said the resurrection of both would take place at the same time. [Laughter.]

Mr. STOW desired to vote on the first section.

Mr. WARD objected, as the gentleman was not present when the vote was taken.

The sixteenth section, as reported by the select committee, was then read—being the same section reported by the judiciary committee, as follows:

"The court for the trial of impeachments and the correction of errors; the court of chancery; the supreme court, and the county courts, as at present organized, are abolished."

Mr. O'CONOR suggested that this section was unnecessary, and would be a very improper step. All the courts not retained by this constitution, would be brushed away as a matter of course, if the new constitution was adopted.

Mr. J. J. TAYLOR suggested that this section had been recommitted to the judiciary committee.

Mr. O'CONOR was going to say that it had been substantially recommitted and should be.

Mr. BROWN assented to that, saying that it was intimately connected with the propositions referred back this morning.

The section was recommitted.

The fourteenth section was then read and adopted, as follows:

§ 14. The legislature may reorganize the judicial districts at the first session after the return of every enumeration under this constitution in the manner provided for in section four, and at no other time; and they may at such session increase or diminish the num-

ber of districts, but such increase or diminution shall not be more than one district at any one time. Each district shall have four justices of the supreme court, but no diminution of the districts shall have the effect to remove a judge from office.

Mr. SWACKHAMER offered an additional section that there should be but one appeal in civil causes, unless the judgment of the court appealed from be reversed, in which case an additional appeal may be allowed.

Mr. LOOMIS thought this too important a proposition to be passed upon without debate.

Mr. BROWN: It will be voted down.

Mr. SWACKHAMER: You don't know that.

Mr. BROWN: I only say I hope it will be voted down.

Mr. SWACKHAMER: I don't like to hear such remarks by that gentleman on every proposition that he does not like.

Mr. BROWN: Keep cool now! There is no use in getting out of humor.

Mr. O'CONOR agreed with the gentleman from Herkimer that this was too important a proposition to be acted on without a remark.—And he disliked to hear remarks that indicated that the votes of this house were in the hands of any one man, or that it lay in the power of any one man to say how a question must be disposed of, if no remark was made on it. However badly he might think of this proposition, he could not regard it as so very monstrous that it might not receive the support of some, and perhaps of a majority; he must be permitted to say a few words against it before the vote was taken. That there was a strong disposition here to check appeals there could be no doubt. Under the present system there might be three appeals and five hearings. Under this system there would be but one appeal in cases of great magnitude, originating in the supreme court, and three for the petty causes originating in justices' courts—that is, the poor man would have his three appeals, and the rich man one—with this difference, that the poor man would have his appeal in the first instance to a one man court, whilst the rich man would have his appeal to the highest court. In this point of view the proposition was objectionable, as it would give the poor man but one appeal and that from one man to one man.

Mr. BROWN said he expressed the opinion, when this was offered, that it would be voted down, because, in the first place, it was purely a matter of legislation, and next, because it was wholly inconsistent with the action of the Convention last night, on two occasions, and by very strong votes. If this proposition was adopted it would virtually repeal the two sections adopted last night. As to the remark that he assumed to hold the judgment of the Convention in his hand, it was one that it neither became him to receive in silence, nor the gentleman from New York to make.

Mr. O'CONOR did not say so.

Mr. BROWN, then, had no more to say, ex-

cept that he could not rest under such an indignity offered to him.

Mr. O'CONOR said his remark was the gentleman from Orange did not hold the judgment of the Convention in his hand.

Mr. STETSON remarked that the object of the mover had been anticipated by the legislature—and he quoted from the last revision, to show that in cases appealed from justices' courts to the highest court, the appellant had to pay his own costs.

Mr. TAGGART remarked that the law alluded to was repealed in 1844.

Mr. STETSON was not aware of that. At all events, he found the law in the last edition of the R. S. At all events, cases seldom found their way from justices' courts to the court of errors—and when they did, it was proper that they should go there, if, as was likely, they settled a principle which prevented many other cases going there.

Mr. STRONG followed, saying that he hoped all the speeches made over his desk would not be reported for him—for he should be sorry to own them.

Mr. STETSON:—Will the gentleman allow me a word of explanation?

Mr. STRONG:—Not a word. Mr. S. went on to advocate Mr. SWACKHAMER's motion, saying that he was not afraid to stand before the people whom he represented, as having voted for it.

Mr. TALLMADGE followed in an animated speech in favor of the proposition.

Mr. CROOKER replied, in opposition to the amendment—saying that he ventured to assert, you could not find ten cases originating in justices' courts, that had found their way to the court of errors, since 1821—perhaps not five.—He went on to urge the injustice of such a rule as this for small causes, and another and a more liberal rule, in fact, for large ones.

Mr. LOOMIS opposed the amendment, chiefly on the ground of the effect it would have upon a judge, whose decisions it would place beyond the contingency of being overhauled.

Mr. TAGGART remarked, that if we were going to legislate here he had a section which he thought preferable to this. He read it, as follows:—

"There shall be no appeal from justices' court, but causes may be removed by certiorari from such courts after judgment therein, to the county court. The court to which such cause shall be removed, shall receive the proceedings and decision of the justice, and render such judgment as ought to have been rendered before the justice. But if by reason of the exclusion of evidence, or inability to procure the evidence before the justice, a new trial ought to be granted, such court shall order a new trial before the county court, or before a justice, and in such manner as shall be provided by law."

This was debated by Messrs. TAGGART, CROOKER, SIMMONS and HOFFMAN.

The Convention then

Adj. to 8½ o'clock on Monday morning.

MONDAY, SEPTEMBER 7.

Prayer by the Rev. Mr. SCHNELLER.

THE WEATHER vs. BUSINESS.

At eight minutes past the regular hour of meeting, there were twenty-four members present, and they were rapidly dissolving. By the close of the prayer and the reading of the minutes, the number had slightly increased.

Mr. STRONG called for the yeas and nays on agreeing to the minutes as read, for the purpose of seeing who were present. [A voice—"And who have melted down into their boots?"]

Mr. HOFFMAN seconded the call.

The yeas and nays were ordered and taken accordingly, and a few more members came in languidly as the roll was being called, making the sum total fifty-eight. The absentees were next called, and by nine o'clock a quorum was found to be in attendance, for by a vote of sixty-nine, the minutes were approved.

THE JUDICIARY.

Mr. O'CONOR presented the following proposition to accomplish the object contemplated by Mr. Loomis on Saturday, whose propositions were referred to the judiciary committee:—

§ 1. That part of this constitution which relates to the supreme court shall not take effect until the first day of June, 1847, excepting so much thereof as directs the election of justices of the said court; and the first election of the said justices and of the judges of the court of appeals shall be had on the first Tuesday of May, 1847.

§ 2. The legislature shall at its first session in 1847 provide for organizing the court of appeals established by this constitution and for transferring to it the business pending in the present court for the correction of errors, and for bringing to the said court appeals and writs of error from the decrees and judgments of the present court of chancery and the present supreme court, as well as from the judgment and decrees of the courts that may be organized under the provisions of this constitution.

§ 3. The legislature shall at the same session make provision for assigning so many of the justices of the supreme court elected as aforesaid, who are not designated to be members of the court of appeals, as may be necessary to the duty of hearing and deciding all causes and matters pending in the present court of chancery and in the present supreme court which shall not have been argued before the chancellor or before the justices of the present supreme court previous to the first day of June, 1847: and for that purpose such of the said justices as shall be assigned to hear and determine causes and matters pending in the court of chancery, and the justices so assigned to hear and determine causes and matters so pending in the supreme court, shall possess all the powers and authority and be subject to the restrictions and regulations conferred and imposed by law upon the present court of chancery and upon the present supreme court, and shall hold terms of the said courts at such times and places as shall be prescribed by law. Clerks of the said courts and the necessary officers to attend their terms and sittings shall be provided in such manner as the legislature shall direct.

§ 4. The remaining justices of the supreme court to be elected as herein provided, not designated as members of the court of appeals, and not assigned to the hearing and determining of causes pending as aforesaid in the court of chancery and the supreme court shall hold circuit courts and courts ofoyer and terminer, and shall perform such other judicial duties as shall be prescribed by law.

§ 5. The present supreme court and the court of chancery shall continue under their existing organization and with the powers and authority now vested in them, until the first June, 1848, for the purpose of deciding such causes and matters as may have been argued before them respectively previous to the first June, 1847, and for the purpose of hearing and deciding

any causes or matters that may be brought before them according to law, excepting such as shall be pending and not argued on the first June, 1847, and the hearing and determination of which are herein before provided for. In case any vacancy should occur in the office of chancellor or of a justice of the present supreme court the duties of the office so vacant shall be performed until first June, 1848, by such justice of the supreme court hereafter elected as shall be designated for that purpose by the governor.

§ 6. The office of circuit judge, of the vice-chancellors and the assistant vice-chancellor shall expire and be abolished on the first June, 1847: and all causes and business then pending undetermined before the vice-chancellors, before the circuit judges as vice-chancellors, and before the assistant vice-chancellor shall be transferred to the courts organized by the legislature under the provisions of this constitution, or to any of the justices of the supreme court to be elected hereafter, as may be directed by law.

§ 7. After the first June, 1848, the causes and business which may then be pending undetermined in the present court of chancery, in the present supreme court, and in the courts organized under the 3d section of this article, shall be transferred to, and determined by, the courts permanently constituted under the provisions of this constitution.

Referred to the same committee, and ordered to be printed.

The Convention resumed the consideration of the judiciary article.

The pending question was on the amendment of Mr. TAGGART to the amendment of Mr. SWACKHAMER. Mr. S.'s amendment was as follows:—

There shall be but one appeal in civil causes tried before the courts of this state, except the decision of the court appealed from be reversed, in which case one additional appeal may be allowed.

Mr. TAGGART's amendment was as follows:—

There shall be no appeal from justices courts; but causes may be removed by certiorari from such courts after judgment to the county court. The court to which such cause shall be removed shall review the proceedings and decision of the justices and render such judgment as ought to have been rendered before the justices. But if by reason of the exclusion of evidence or inability to procure the evidence before the justice, a new trial ought to be granted, such court shall order a new trial before the county court, or before a justice, and in such manner as shall be provided by law.

Mr. HOFFMAN said the amendment was strictly a piece of legislation. He hoped the Convention would not restrict the legislature as this amendment proposed. It was not safe to restrict them in the means which they may think proper to adopt, to secure a safe and pure administration of justice.

Mr. TAGGART replied and sustained his proposition.

Mr. HUNT moved to amend by adding as follows:

"When the decision upon any appeal or review shall confirm the original decision, all costs occasioned by any further appeal shall be paid by the appellant."

Mr. H. remarked that it was said here on Saturday, by some of the ablest lawyers among us, that the sections of the article on the judiciary already adopted, confer upon litigants an almost unlimited right of appeal—that we have already authorized any man who is dissatisfied with the decision in a justices' court to carry his suit first to a county court—thence to the circuit court—thence to a banc court, and thence to the court of appeals. The practical operation of this will

be, to place every litigious rogue above the law entirely, so long as he practices his frauds upon the poor and feeble only, or those who have not both money enough and fortitude enough to run the gauntlet of all the courts of the state. The section proposed to obviate this evil by the gentleman from Kings, was opposed on the ground, first, that it conflicted with various sections already adopted; and second, that it would be unjust to the poor to prevent them from carrying their small suits into the highest courts of the state, and obtaining all the justice to be had in all our courts. The first of these objections cannot be brought to bear against my amendment; and to the second I would say, that while I am deeply grateful for the friendship manifested for the class to which I have the honor to belong, and which I mainly respect—for the greater part of the people of the city of New-York are poor men—yet, as the benefit sought to be conferred on us, we would respectfully decline it, or rather decline it with all our might. I believe the Anglo Saxon race have enjoyed this high privilege, as the gentleman from Herkimer (Mr. HOFFMAN) esteems it, ever since they came under the Norman yoke; and I am certain that the people of New-York have possessed it, as they think, quite long enough. I have never yet seen a poor man, who was at the same time an honest man, who would not gladly surrender his chance of a trial in five or six courts for the certainty that when he had won his cause twice his trials should cease. Thousands of poor men have been forced to submit to the frauds and wrongs of cheats and oppressors in silence, not because there was any doubt that they had good cause of action, but because they had not time and means to follow the wrong-doer through all the courts, and knew that they would be ruined by law expenses and thus forced to drop their suit before they could bring it to an end. Talk of the poor man's right to have his cause tried five times over! Why a man who would not be ruined by winning his cause only twice even, cannot be very poor, and should not be admitted to the honors of poverty. All really poor men should repudiate him as an impostor. It was assumed by one or more of the speakers on Saturday, that the justice to be obtained in our higher courts would be a very superior article to common justice. I know not how this may be, but fear it may sometimes be very different. However, common justice and common sense are "good enough for poor folks," and I hope we shall soon have no other. The greatest lawyer does not always make the best judge. Lord Bacon was convicted of taking bribes ranging from £50 to £2000 in more than twenty cases, and sometimes from both parties to a suit, which was not only wrong but imprudent. Sir Edward Coke, too, severely punished a man for petitioning the King in relation to Bacon's injustice, though it was afterwards proved and confessed by Bacon himself, that he had received a bribe of £100 from the party opposed to the petitioner. Coke, in one of his famous law writings, asserts that it is utterly illegal to put suspected persons on the rack to compel confession; yet he affixed his name to at least one warrant for that purpose, which is still in existence. I am aware that there have been

some changes of fashion since the year 1620, but human nature still is pretty much the same.—"Put not your trust in princes," even the princes of the law. Though always unpleasant, it is often useful to reflect, that the strongest minds are weak, the strongest bodies mortal. Our high courts, like our subordinate courts, will be constituted mostly of every-day men—the creatures of circumstances and of habit. There are not enough of truly great men to fill the bench of our higher courts, though there may be more than enough who think themselves great, and who may, perhaps, bring the multitude pro tem to the same opinion. My amendment is too simple to need explanation, and it seems to me too just to require any further argument. I shall therefore, say no more.

Mr. SWACKHAMER said he had hoped that a proposition so correct in itself, and one which had been so clearly demanded by popular sentiment, and was so necessary for the promotion of the public interest, would not have occasioned any discussion here. It was universally admitted that the present system of appeal was one of the most certain means of defeating justice, and he was pained to find the members of the judiciary committee and others who had heretofore conceded the policy and justice of this principle, now at this late day denouncing it in unmeasured terms. He had discovered three ways of defeating important measures of reform in this Convention—one was to allow a number of speeches to be made against it—then to move the previous question, not even giving an opportunity to repel personal attacks—another was to resist it at the outset as silly, visionary, inadmissible and not worthy one moment's consideration—and the last and generally most successful plan, was to coax the mover to withdraw, and at the same time shower upon him all kinds of compliments respecting his integrity, his desire to do right and other nice things. The two last mentioned plans of attack had been adopted in the present case, the first of which he entirely disregarded, and with the second he did not feel much flattered. Gentlemen would find it a very difficult matter to satisfy the people of the fallacy of the proposition however anxious they might be to reason themselves into that belief. He insisted that not more than one appeal could be necessary under an enlightened and proper judiciary system, and the objection that this section would conflict with one previously adopted was the best possible reason why that should be so amended as to make it harmonize with this. It was argued that very few appeals would occur under the proposed system. This was a mistake, as he would shew that nearly the same evils could grow up with the new system as have so long afflicted the community through the old. The new plan provided for a court of appeals, a supreme court, county courts and justices' courts; it also authorized the legislature to establish additional courts for cities, and left the courts already existing there remain. He did not know how matters stood in other cities, but in New York there were some half dozen courts, with diversity of jurisdiction, different modes of proceeding, without uniformity or system. But it was said that the delegation from that city would take

care of her interests. This was no doubt true, but as a friend to that city he should insist on uniformity in the administration of justice there and throughout the state. He would admit that there were local regulations necessary for cities, which country districts did not require, but the administration of justice should be uniform through the state. In view of these considerations, he submitted to the Convention whether there was any relief from this obnoxious and oppressive system except in the section he had proposed. He did not claim that it was perfect, but if the principle was right then it would be amended, if necessary, to meet the approval of all its friends. If, on the contrary, the Convention was willing to perpetuate a practice, cunningly devised, to delay and defeat justice, then he was ready to relinquish the last remaining hope of the reform in the judiciary, which had until now stimulated him in his efforts to assist in improving this branch of our government. It had been said that great injustice would be done under this restriction, by ignorant and dishonest judges in the lower courts. To obviate this objection, if there was any force in it, an appeal could be allowed to go from what gentlemen were pleased to call the lowest to the highest court, or at least to a competent and honest court. Why compel the litigants to stop and starve on every step of this judicial ladder until they reach the topmost, when in all human probability their funds will be exhausted and their strength fail long before they get there? For the only fair deduction to be drawn from the reasoning on the other side was that justice was not likely to be secured until a decision should be had by the last tribunal, which they appeared to think could not err. He regretted the necessity for this section as much as any one could—the judiciary system should have been so framed as to produce no more than one appeal; but this was not the case, they had adopted the miserable graduation plan which characterized the present judiciary of this state; and which provided one grade courts for the redress of small wrongs and another for large ones, one kind of justice for little rogues, and another for big swindlers. His sense of right would induce him to give the same security that justice should be done in a controversy involving ten dollars, as one upon which ten thousand depended; for the first mentioned sum was as much for some men as the last was for others—good courts should be provided and strict justice administered in all cases. But this kind of reasoning gentlemen would no doubt say was a renewed evidence that he was deficient in a knowledge of the law. He did not however rest on his own limited experience in this matter. He was sustained by disinterested and able members of the legal profession—men who had retired from business, and could have no other object in view than the promotion of the public interest. Among them he would mention Gen. Root, and the gentleman from Dutchess (Gen. TALLMADGE). The learned gentleman from New York (Mr. MORRIS) was also an advocate for this principle; and he would call the attention of members to the opinion of D. D. Field of New York, a gentleman who stood at the head of his profession, and who had written most ably on this subject. He would

not detain the Convention by reading his views at large, but he would give a brief extract:—

"When a case is once heard, and the facts and arguments on both sides are compared by one well-stored and well-balanced mind, there is scarce a case in ten in which either party would appeal. In this tenth case they would appeal, whether it had been decided by one judge or by several. It appears to me, therefore, that one is sufficient in all cases, except in an appellate court."

Should more than one appeal be allowed? There seems to be no good reason for it, and many reasons against it. One appeal, by which I mean appeal technically so called, and writ of error, ensures two hearings of a cause, sufficient always for its being thoroughly argued by counsel, and considered by the courts. Where a second appeal is allowed, the first is as much as thrown away. The first hearing puts each party into possession of the other's case, and of all the facts, and gives an opportunity for a full examination by the counsel and the judge. After his decision, and a second examination of the whole cause before several judges, what more can be desired?"

While it seems to be generally admitted that the measure is correct, it is claimed that the legislature will attend to it, and that it had done so already. The act alluded to, which passed the legislature some years since, and designed to remedy the evils of repeated appeals, was shortly after repealed under false pretence, the title representing it to be for an entirely different purpose than the one to which it was applied. This should serve as an answer to leaving this matter to future legislation. He would proceed briefly to notice some objections urged against the proposition on Saturday, by several members of the legal profession, for the amendment offered by his friend from New York (Mr. HUNT) and his own were substantially the same. The gentleman from New York (Mr. O'CONOR) he understood to be in favor of the measure—although he concluded his remarks by saying he would vote against it. The argument of the gentleman from Orange (Mr. BROWN) consisted in denouncing it as out of the question, inadmissible and not worthy of one moment's consideration. The gentleman from Cattaraugus (Mr. CROOKER) ditto, with the addition that it was a wild and impracticable notion. The gentleman from Clinton (Mr. STETSON) had reasoned the question fairly, but what he said seemed to be against the shape in which the section was presented, and not against the principle. The case alluded to, where an action for the collection of sixpence involved a ferry charter worth several thousand dollars, could easily be provided for, if the continuation of such monopolies must be sanctioned by the Convention, by an amendment authorising the appellant to choose the highest court for a final hearing. Indeed this could be done in all cases involving any other considerations than the amount for which the suit was brought. The gentlemen from Herkimer (Messrs. LOOMIS and HOFFMAN) had not succeeded in changing his opinion, tho' the latter gentleman had attempted to prove that the appeal system was for the benefit of the poor man. He (Mr. S.) appealed to every member of the Convention, whether it was not the reverse of what that gentleman labored so hard to demonstrate. The gentleman from Genesee (Mr. TAGGART) considered it purely a matter for legislation, and had accordingly introduced a substitute as long as the moral law, while the amendment was comprised in one line

and a half, and he thought if the whole instrument was as concise, no one would complain.—Then, there was his friend from Essex (Mr. SIMMONS), who had proven entirely too much. He had demonstrated by the book, perhaps Blackstone on appeals, that cases might arise where the parties should be allowed several appeals. His book shows a clear necessity for six, and then, as though he was tired of enumerating them, he makes one mighty leap and assumes that fifty might be necessary. Now, the gentleman seemed to have overshot the mark, for if his argument was worth anything, it could not be exhausted until it had completed the graduation system by providing for forty-five additional dissimilar courts, that suitors could be favored with the blessings of fifty appeals and never-ending litigation. The gentleman was also surprised that members should come here, the professed advocates of the poor, and yet make a proposition fatal to their interests. He did not come here the professed friend of any particular class of our citizens, but the advocate of the rights of all. If it was his fortune to represent a majority of poor men, he could assure gentlemen that they never asked any thing for themselves which they would not freely concede to the rich. He hoped no one would get alarmed at this strange attempt to conceal the real objection to this proposition. He begged members to prove how it could operate against the interest of the poor—why not give us argument for assertion, reason for declamation? Was it not a very common and a just saying amongst working men, that they might as well abandon any attempt to secure their rights, under the present judiciary and miserable appeal system, as to go to law with the view of obtaining them? He had no fear but that the members of the bar, who had opposed this measure, would learn sufficiently early the opinion of the people on this subject. Other arguments than those used here would be necessary to convince them that a complicated, ambiguous, expensive and tedious judiciary was for their interests, and not that of the profession. It would require something different from the logic used here to make the people believe that a litigious constitution could subserve their interest or promote the public good.

Mr. RICHMOND protested against the practice which he said prevailed here, of attempting the defeat of measures of real reform, by declaring it a mere matter of legislation. And again, when there was a fear that the legislature would be ready to grant relief, they prevented such a result by restrictions in the constitution. He advocated the proposition of his colleague, (Mr. TAGGART.)

Mr. RHOADES opposed the adoption of either proposition, believing it to be a mere matter of legislation.

Messrs. BASCOM, CHATFIELD and SALISBURY continued the debate.

Mr. SALISBURY moved to amend the amendment of Mr. HUNT, by adding: "No court shall grant more than one new trial in any cause which shall be pending in such court." Mr. S. then moved the previous question upon the several propositions pending; and there was a second.

This cut off his own proposition.

The amendment of Mr. HUNT was negatived, ayes 28, noes 50

The amendment of Mr. TAGGART was also rejected, ayes 20, noes 61.

Mr. SWACKHAMER asked unanimous consent to accept the modification of Mr. HUNT, making the trial upon an appeal at the cost of the appellant when the former decision was confirmed.

Objections were made, and no amendment could be entertained.

The proposition of Mr. SWACKHAMER was rejected, ayes 21, noes 52.

Mr. STOW offered the following additional section:—

§. Nothing contained in this constitution shall be construed so as to impair the powers or jurisdiction of any court of record (other than courts of equity), now established by act of the legislature in any city of this state.

Mr. RUSSELL moved to lay it on the table. Lost.

Mr. STOW said he supposed it was not intended by the constitution to affect the municipal courts already existing in cities; but from the wording of some of the sections in the judiciary article, he was led to think there might hereafter arise some doubt upon this question, and he had therefore introduced this section to render all safe.

Mr. RUSSELL thought it manifestly unjust and absurd, that while the recorder's and mayor's courts in the cities, having civil and criminal jurisdiction, were by this section perpetuated beyond the power of the legislature to abolish them, the local courts in large counties, having the same jurisdiction, were abolished by the provisions of this article.

Mr. STOW said he did not propose by any means to take from the legislature the control of those courts. He only wished to prevent their abolition by the constitution. Why should not the cities be allowed to have these courts, which were carefully established with particular reference to their wants?

Mr. RUSSELL:—Why should not our county have courts of the same description?

Mr. STOW:—Had the gentleman been here for the last three weeks, he would have known that I advocated the establishment of just such courts in the several counties.

Mr. SWACKHAMER moved to amend the section, by adding:—

The courts now established in cities and such as may hereafter be instituted therein under this constitution, shall have a uniform organization and jurisdiction in such cities.

Lost.

Mr. LOOMIS thought these courts should be reorganized, because their mode of appointment was now unlike, and their jurisdictions dissimilar.

Mr. STOW said it would be just as proper to prescribe an uniform dress for all the people of the state, without regard to age or sex, as to make the jurisdiction of these courts uniform. In some cities, they had a maratime jurisdiction, and this was not needed in Schenectady.

Mr. LOOMIS suggested that this section should be referred, together with the 16th, to the judiciary committee. The two had like relations.

Mr. STOW acceded to this, for the sake of accommodating the gentleman from Herkimer, and the reference was accordingly made.

Mr. RUSSELL offered the following, which had the same reference:—

The legislature may establish similar courts in counties having a population exceeding 40,000.

Mr. SIMMONS offered the following new section:—

The legislature may provide, that the judges, if not more than three, of the adjacent counties may be associated with any county judge, to hold the terms in banc of such county courts.

Mr. S. believed that this would give satisfaction to suitors in civil cases, and prevent appeals in a great degree. He knew of a case in his own county, where a suit had been long pending upon an appeal. The judge was a very respectable young gentleman, but the parties were not willing to abide by his decision, as the case involved very nice questions of law; but could there be associated with that judge two or three from the neighboring counties, they would be as well contented as if the decision of the supreme court or chancellor had been had upon their cause. He followed his idea at some length.

Mr. RHOADES said the gentleman from Essex had characterized the judges of the county courts to be established by this article, as broken-winded, spavined, wind-galled, ring-boned, halt politicians. Did he intend to establish a hospital of broken down politicians?

Mr. SIMMONS replied that the gentleman might remember from his examination of testimony in the court of errors, that the coincidence of testimony by three men whose oaths could not be regarded as truth, made the circumstance sworn to the truth, in the consideration of the court!

Mr. CHATFIELD:—That is, three lies make one truth.

Mr. SIMMONS said the mere coincidence—the stumbling of these three men upon the same fact—made the evidence good; because error jostles, disagrees and is incongruous. Coincidence in any fact by several witnesses makes evidence of truth.

Mr. RHOADES supposed then that it was intended by this new section that when one scoundrel makes a decision upon a case, the union of two other scoundrels, who shall agree to the same, is to make the decision correct.

Mr. SIMMONS: Yes, if there has been no previous consultation between them.

Mr. HOFFMAN opposed the adoption of the section.

Mr. BURR said the judges of these county courts were called bull-frogs. He feared that by the union of several of them there would be too great a croaking. He should oppose the section.

Mr. SIMMONS had not expected to find opposition to this section. He was willing to endeavor to make the constitution to be established here as acceptable as could be, although he should vote against its adoption, and try to have it “kicked where it came from,” as Governor Yates said he would do to the Republican party. It might however be adopted by the people, and he was therefore willing to make it as good as circumstances would admit of.

Mr. STRONG: Would the gentleman vote for the constitution if this new section of his were adopted?

Mr. SIMMONS: That would be one reason for my doing so, because it would prevent the establishment of a one man court, to which I am at all times opposed.

The section was rejected without a division.

The 15th section was then read, as follows:

§ 15. The electors of the several towns shall, at their annual town meeting, and in such manner as the legislature may direct, elect their justices of the peace. Their term of office shall be four years. Their number and classification may be regulated by law.

Mr. HARRIS moved the following substitute:

§ 15. Justices of the peace in the several towns shall be elected by the electors of such towns at their annual town meetings. Justices of the justices courts in any city or village in which a justices court is now or may hereafter be established by law, shall be elected by the electors of such city or village at such time as may be provided by law.

The term of office of such justices shall be four years, except when otherwise provided by law. Their number and classification may be regulated by law.—Police justices in cities and villages shall be appointed by the common council or the board of trustees of such cities or villages.

Mr. SALISBURY moved to amend by making the justices elective by the county instead of the city or village.

After some desultory conversation, Mr. CROOKER suggested that the substitute be withdrawn, to allow the question to be taken upon section 15. Provision for cities might be made in another section.

Mr. HARRIS assented.

Mr. STRONG offered an amendment to the section, extending the exclusive jurisdiction to \$100, and concurrent to \$250, and providing for a new trial upon appeal in the same town or in one adjoining. Mr. S. advocated his proposition, and reviewed and replied to the objections which had been urged against it.

Mr. CHATFIELD urged that this matter of jurisdiction should be left to the legislature where it always had been, and without complaint. He did not believe the people were dissatisfied with the present regulations in regard to justices' courts—especially since their jurisdiction had been increased. Nor did he believe their interests and convenience would be consulted by giving the justice exclusive jurisdiction to \$100. He illustrated his position by a case of a debtor having removed beyond the jurisdiction of the justice, and owing a little less than \$100. At all events, he protested against fixing the jurisdiction of justices' courts by an iron rule in the constitution. It was a matter which should be left within the control of the legislative body, that it might be adapted from time to time to the wants and wishes of the people.

Mr. STRONG said the gentleman from Otsego talked very fair—and the Convention might infer from his remarks that he was inclined to favor the principle of this amendment. But unless the gentleman had changed essentially his views since 1840, when he resisted and voted against legal reform, he was hostile to the principle of this amendment. The important feature of it—which was to bring justice home to neighborhoods and localities, the gentleman had entirely overlooked. Mr. S. went on to object

to turning over this matter to the legislature, and dwelt upon the difficulties encountered by the friends of legal reform in 1840, when there was more excitement on this subject than ever before or since, in getting through the bills designed to effect this reform, during that session. He remarked that the legal profession went almost in a body against them—and especially against the bill increasing the jurisdiction of justices to \$100. The gentleman from Otsego himself voted against that bill.

Mr. RICHMOND ventured to say that the gentleman from Otsego had about as much confidence in the disposition of the legislature to reform abuses and correct evils, as he himself had—and had expressed himself, in reference to other matters, quite as strongly in distrust of the legislature. But Mr. R. asked, if gentlemen really reposed such entire confidence in the legislature, why did they not leave the details of the organization of these courts to the legislature? Why was it that they were so ready now to leave to the legislature the regulation of these justices courts, which were admitted on all hands to be of as much importance as any other courts in the state. We might have saved some three or four weeks, by taking that course, and following the precedent, in some degree, of the Convention of '21. As to the pending proposition, he spoke of it as one which was eminently called for, if for no other reason, to prevent the sharks in the legal profession from throwing small suits into the Supreme Court, and enhancing costs, when ample redress could be obtained in a justice's court.

Mr. RHOADES remarked, that attempts had been made without success, in the legislature to extend the jurisdiction of justices to larger amounts—and the reason why they had not been successful, was that the people did not ask it. He believed that they did not desire it now, as these courts were organized. Hence, he would leave the matter to the legislature, who would be found always ready to accede to any demand in this direction, which the people should unequivocally demand. He would have but one justice in a town of 500 inhabitants, and he would pay him a salary. Then he should have no objection to increasing his jurisdiction. Your justices courts would then be courts of conciliation. We had now too many of these courts—there were some 3,600 in the state—and their character had not been improved by the increase of jurisdiction already made. It was beginning at the wrong end to increase their jurisdiction, when it was conceded that their organization was defective. Better leave it to the legislature, first to improve their organization, and then to increase their jurisdiction. Mr. R. went on to speak of Mr. STRONG as standing at the head of his profession in justices courts, (a laugh) and as possessing great tact and influence before a justice's jury—and he urged that the gentleman should exercise a little forbearance towards his opponents, in their suits, rather than attempt to make the judgments of justice's courts and juries final and conclusive.

Mr. CAMBRELENG called for a division of the question.

Mr. CROOKER opposed the proposition of Mr. STRONG, as fixing an iron rule in regard to

the jurisdiction and practice of justices' courts; and urged that as these courts needed improvement more than any other, the legislature should have the regulation of the whole matter, both in respect to organization and jurisdiction.

Mr. STETSON opposed the amendment. He characterized it as the first attempt to regulate through the legislature or through a Convention, the jurisdiction of these courts, in the manner and form here proposed. He urged that the whole matter should be left to the legislature.

Mr. DANA said that as justices courts were now organized, he would not vote to increase their jurisdiction. He regarded this as purely a matter of legislation, and all such cases he was opposed to making subjects of constitutional law. He would leave all such matters to the legislature, and in regard to what had been said of the difficulty of getting through the legislature measures of legal reform, he had this to say, that the people, if so inclined, could as well elect a majority of the legislature favorable to these reforms, as a majority of this Convention.

The question was here taken on the first branch of Mr. STRONG's amendment, and it was lost—ayes 26, noes 44, as follows:

AYES—Messrs. Allen, Archer, Burr, Cambreleng, Cook, Hart, Hotchkiss, A. Huntington, Hutchinson, Hyde, Kernan, Kingsley, Miller, Penniman, Richmond, St. John, Salisbury, Sears, W. H. Spencer, Strong, Townsend, Waterbury, Witbeck, Yawger, Young, Youngs—26.

NAYS—Messrs. F. F. Backus, H. Backus, Bascom, Brayton, Chatfield, Clark, Conely, Crooker, Cuddeback, Dana, Dubois, Flanders, Gardner, Greene, Hawley, Hoffman, Hunter, E. Huntington, Jordan, Loomis, McNeil, Munro, Nellis, O'Connor, Parish, Patterson, Perkins, President, Rhoades, Riker, Russell, Shaw, Sheldon, E. Spencer, Stephens, Stetson, Stow, J. J. Taylor, W. Taylor, Waid, Wood, Worden, A. Wright, W. B. Wright—44.

The second clause was also lost, ayes 30, noes 42, as follows:

AYES—Messrs. Allen, Archer, Burr, Clark, Conely, Harris, Hart, Hotchkiss, Hutchinson, Hyde, Jordan, Kingsley, McNeil, Miller, Penniman, Richmond, St. John, Salisbury, Sears, Shaw, Sheldon, E. Spencer, W. H. Spencer, Strong, Townsend, Waterbury, Witbeck, Yawger, Young, Youngs—30.

NAYS—Messrs. Angel, F. F. Backus, H. Backus, Bascom, Cambreleng, Chatfield, Cook, Crooker, Cuddeback, Dana, Dubois, Flanders, Gardner, Gebhard, Greene, Hawley, Hoffman, Hunter, A. Huntington, E. Huntington, Kernan, Loomis, Munro, Nellis, O'Connor, Parish, Patterson, Perkins, President, Rhoades, Riker, Russell, Sanford, Stephens, Stetson, Stow, J. J. Taylor, W. Taylor, Ward, Wood, Worden, W. B. Wright—42.

Mr. STRONG now renewed Mr. MANN's amendment, heretofore given at length.

Mr. CHATFIELD proposed to strike out Mr. MANN's proposition, and insert the tenth section of the Revised Statutes. [A laugh.]

The PRESIDENT desired the gentleman to send up the amendment. [Several voices,—“send up the book.”]

Mr. WORDEN did not agree exactly with his friend from Otsego, although he would rather this matter should be left to the legislature. He did not think it necessary that a man having a claim against another for more than \$50, should be obliged to employ a lawyer and take it into a court of record. He would make it merely necessary to have the claim preferred before a jus

tice, and if there is no defence, let a judgment be docketed at once. The employment of lawyers in the collection of debts only degraded the profession. He offered the following as a substitute for the section:

"Justices of the peace may render judgment for any amount not exceeding \$500 on money contracts, or agreements for the payment of money, when no defence is interposed, and when such defence is interposed, in any case where the plaintiff shall claim to recover over \$100, the justice be ore whom the cause is pending shall adjourn the case into the supreme court; but when the plaintiff shall not claim to recover over \$500, the justice shall retain jurisdiction of the cause, and may render judgment therein. No costs shall be allowed in any court of record, where the recovery is by default, and does not exceed \$500, and the parties reside in the same county. In similar cases when the parties reside in different counties, actual expenses and disbursements, with \$5 costs may be allowed, where the recovery is over \$100."

Mr. STETSON: Why limit it to \$500?

Mr. WORDEN: I have no objection to making it \$5000, or any sum you please.

Mr. CROOKER briefly opposed the amendment, when

Mr. RUSSELL moved the previous question, and there was a second &c.

The main question on Mr. MANN's amendment, (offered by Mr. STRONG,) was put and lost, without a division.

The fifteenth section was then adopted, ayes 65, noes 9. [Noes—Messrs. Bascom, Clark, Flanders, Penniman, Richmond, St. John, Salisbury, Waterbury, A. W. Young—9.]

Mr. STRONG then offered Mr. WORDEN's proposition as an additional section.

Mr. BASCOM moved to strike out all after \$500 where it occurs towards the close of the section.

Mr. HAWLEY moved to lay the section on the table. Lost, ayes 33, noes 40.

Mr. BASCOM explained the effect of the section as proposed to be amended—adding that he proposed to strike out to prevent swapping notes across county lines.

Mr. CHATFIELD said he should like to have the mover explain what he meant by adjourning causes over from justices' courts into the supreme court. The proposition itself struck him as altogether too ridiculous to talk about or to think about.

Mr. RUSSELL moved the previous question, and there was a second &c., and

The question was stated to be on Mr. BASCOM's amendment.

Mr. STRONG accepted that amendment.

The PRESIDENT ruled that no part of the section could now be withdrawn, except by unanimous consent.

No objection being made, that part of the section was struck out.

Mr. CROOKER called on Mr. WORDEN to explain the length of this adjournment of causes into the supreme court. [A laugh.]

The section as modified was then put and lost, ayes 9, noes 58.

Mr. WORDEN enquired if this proposition had not been modified by striking out the latter part of it—and the answer being in the affirmative—said he supposed so.

Mr. STOW proposed a section as follows:—

"Justices of the peace in the cities, shall be chosen by the electors thereof, or by the wards thereof, as

shall be prescribed by law. They shall hold their offices, after the first classification, for four years. Their number, classification and compensation shall be regulated by law."

The Convention here took a recess.

AFTERNOON SESSION.

There were but 57 members present on a call at a quarter to 4.

Mr. PATTERSON suggested that the PRESIDENT vacate the chair until 4 o'clock.

Mr. VAN SCHOONHOVEN moved an adjournment, and called for the ayes and noes, and there were ayes 7, noes 58.

A quorum being now present,

The amendment offered by Mr. STOW was announced as the pending question.

Mr. HARRIS offered the following as a substitute:—

"Justices of justices' courts, and justices of the peace in cities shall be elected by the electors of such cities, or the wards thereof, at such time and for such term as shall be prescribed by law. Police justices in any city or village shall be appointed by the common council or board of trustees of such city or village.

Mr. VAN SCHOONHOVEN offered the following amendment to Mr. STOW's section, to come in after "justices of the peace":

"Police justices of cities, recorders, and all other officers now authorized, or who may be hereafter authorized under this constitution, or existing laws, to hold a court or discharge judicial functions in municipal or justices' courts, in either of the cities of this state, shall, after the adoption of this article of the constitution, be elected to their respective offices as may be provided by law. The legislature shall determine such times and terms at its next annual session. Justices of city courts, who may be in office on the first day of January next, shall hold their offices until the 31st day of December following, but no longer."

Mr. PATTERSON suggested that this proposition required amendment. It should leave the mode of election to the direction of the legislature.

Mr. HARRIS said his proposition was to that effect.

Mr. VAN SCHOONHOVEN remarked that it did not apply to recorders of cities.

Mr. HARRIS thought the gentleman had too much in his proposition. Mr. H. wanted recorders elected—but the proper place for such a provision would be in the article reported by Mr. ANGEL. Whether we should reach that article or not, he did not know—but he was exceedingly anxious to have it reached and acted on. It need not occupy three days.

Mr. VAN SCHOONHOVEN desired to avoid having more than one section on this subject.—The recorder's was a very important judicial office—and ought to be provided for in this article. Besides, his proposition extended to all local judicial officers. Mr. V. S. accepted however the suggestion of the gentleman from Chautauque, and modified the section, so that it should read, after "office," "at such times, for such terms and in such manner" as shall be prescribed by law.

Mr. SHEPARD desired a division of the question, so as to have it put separately on some of these officers—recorders for instance. He should be sorry to see the recorder of New-York affected by such a provision. He had a more extensive jurisdiction than any other recorder in the state. His criminal jurisdiction

was coextensive with that of a circuit judge, with the exception of capital cases..

Mr. VAN SCHOONHOVEN struck out recorders.

Mr. MORRIS proposed to insert after the word "offices," as follows:—"the officers for districts by the electors of their respective districts, and the officers for the whole city by the electors of the city."

Mr. VAN SCHOONHOVEN accepted this amendment.

Mr. MORRIS remarked that in the city of New-York, they had assistant justices for particular districts. They were appointed by the districts, and had jurisdiction co-extensive with the city—just as justices of the peace were elected in towns and had jurisdiction co-extensive with the county. He desired to have these justices elected by the districts. The police justice, and the marine justices, whose jurisdiction was all over the city, he desired to have elected by the whole island.

Mr. SHEPARD remarked that the division of the city into districts was a division for the despatch of business—any district justice having jurisdiction over the whole city, with power to try causes in a neighboring district, in the absence or sickness of the district judge.

Mr. HOFFMAN objected that there was too much detail in this rule. It might be necessary to elect some by districts and others by the city at large—some for a shorter and some for a longer term. But all that was necessary in the constitution was to provide generally that judicial officers in cities shall be elected in such manner and for such terms as the legislature may prescribe.

Mr. MORRIS wanted the constitution to prescribe how the officers in the city of New York were to be elected, and because he did not want to have the city compelled to ask for special legislation—as such applications were always regarded with jealousy as designed to secure some special privilege not enjoyed by other sections. And all he designed by his amendment was to secure to New York, in regard to her justices, what the county had in regard to theirs—nothing more.

Mr. SHEPARD said New York had not applied for any special legislation in this respect, except to change these districts, since 1813.

Mr. O'CONOR thought it desirable that this matter of the appointment of city officers, should not be taken up now; but that it should be left until we came to the article reported by Mr. ANGEL. But he would now offer an amendment, excepting the city of New-York from the operation of this rule. He did not want New-York interfered with at all. He would not pretend to say how far justices courts in the country had answered the purposes of their creation; but in regard to similar courts in New-York, he would say that a better class of institutions for judicial purposes did not exist any where. As early as 1820, the legislature organized the justice's courts there—divided the city into districts, giving each a justice of the peace, holding for four years, appointed by the common council, with a salary and a clerk. The constitution of '21 recognized these courts, and made them permanent. These courts had worked well, dispo-

sing of a great mass in minor causes, affecting a greater amount of pecuniary interest, and a much greater amount of individual interest than many, perhaps than most of the courts of superior jurisdiction, or of record in the state. Now in organizing county courts, the convention had excepted the city of New-York. He asked, in organizing the inferior or justice's courts for other counties, that the convention would pursue the same course—except the city of New-York, and leave it to the action of the law. It would lead to no more special legislation than it had heretofore, and as his colleague had stated, not since 1813. Mr. O'C. hoped the senior delegate from the city, who seldom asked the attention of the body, would favor the convention with his views on this subject.

Mr. ALLEN did not know that he could add anything to what had been said by his colleague. These district courts were organized in 1820, as had been stated. He was at that time a member of the common council and he had occasion to know something of them. Previous to that, we had a court in each ward, which gave great dissatisfaction, owing to the great amount of small litigation which was promoted by the justice. In that state of things these district courts were organized by an act of the legislature—the judges were men of the legal profession, and had the confidence of suitors. He had heard no complaint of them. Every body was satisfied with them, and to break them up would be to inflict an injury on the city. The aldermen were all justices of the peace, and two of them always sat with the mayor in the court of sessions. We had also the marine court, and the common pleas. The people were perfectly satisfied with the arrangement of their courts. They asked nothing of the legislature or the Convention but to be left as they were.

Mr. MORRIS said he intended to speak well of these assistant justices; he did not say the same of the police magistrates, for he did not mean to include them. He went for the election of the higher judicial officers, not because he had any fault to find with the present incumbents, but as a matter of principle. He preferred the election of every officer rather than to appoint him. Nor could he see why New-York should be excepted from a principle which he conceived to be controlling. True, he had voted for some sections in this article containing an exception of the city of New York. And Mr. M. detailed the circumstances under which he had so voted—adding that his object was, not to give New York an advantage over the country in any respect, but to secure for the city force enough to do all its business. He did not so vote under the idea that her local judges were to be appointed, instead of elected—for he would never consent that they should be appointed here at Albany, or by the common council, whilst the judges for other sections were appointed by the people. He could never assent to the idea, by implication or otherwise, that the population of the city of New York had less of the intelligence, sagacity and patriotism necessary to elect judges, than the population of other portions of the state. In voting as he did, he voted as a matter of necessity for the next best thing he could get, after having failed

in getting what he preferred. He voted now for this exception, only in order that the city delegation might confer together and determine whether it was best to elect our local judges by general ticket or by districts. He preferred an election by districts. He had gone counter to their views, perhaps too often. He might have erred in this—and if their reasoning should convince him that he was wrong here, he would go with them—though he should reserve the right to vote as his own judgment might dictate.

Mr. SHEPARD presumed there would be no difference of opinion on the point of the election.

The question was then put on Mr. O'Conor's motion to except the city of New York, and the vote stood 42 to 22—no quorum.

Mr. TOWNSEND moved to lay the whole subject on the table. Lost.

Mr. ALLEN remarked that if gentlemen voted on this proposition under the idea that the delegation desired to except New York from the general rule of electing judges, they voted under a misapprehension.

Mr. PATTERSON remarked that under such an exception these local judges might be appointed by the Governor and Senate, or by the common council. If the delegation would say that their constituents were not capable of voting for judges, he would vote to except New York from the general rule.

Mr. CHATFIELD said the question was not whether they should be elected, but whether they should be elected in the mode here prescribed for other cities.

Mr. CAMBRELENG thought the gentleman from Otsego misapprehended the section as amended. It met this whole difficulty of electing by districts or general ticket. The effect of this exception would be to take New York out of the constitution as to the mode of electing judges, whether by districts or by the city at large, and to leave the matter to the city convention now in session.

Mr. O'CONOR replied to Mr. CAMBRELENG, urging that there were many local considerations, growing out of the immense population of the city, its position, and the necessity for a strong police, that seemed to require that so far as its police regulations were concerned at least, that there should be an exception made in its favor—so far certainly as to leave it to the legislature, under the advice of the local convention now in session—whose action after having been submitted to the legislature must undergo the revision and receive the ratification of all the electors of the city. He urged further that if the new constitution which we submitted to the people for ratification should be affirmed, and if it established throughout the principle of an elective judiciary, we certainly

need not fear that the electors of New York, or that the legislatures hereafter to assemble here, in making special laws in relation to the selection of magistrates for New York, would dare to depart from that principle merely to gratify New York. He trusted this minor branch of the administration of justice in New York, would be left subject to legislation.

Mr. CAMBRELENG still insisted that the proposition as it stood, left the matter precisely where the gentleman desired to have it—that is, it provided that the election of local judges should be by the electors at large, or by districts, as the legislature might prescribe.

Mr. CHATFIELD urged that this was not the true view of the proposition. It prescribed an iron rule that the election should be by districts or by the whole city—leaving no other alternative to the legislature.

The motion to except New York, prevailed—ayes 33, noes 31, as follows:

AYES—Messrs. Allen, Bascom, Bouck, Bowdish, Bull, Cande, Chatfield, Clark, Conely, Cornell, Cuddeback, Flanders, Gardner, Greene, Hart, Hoffman, Hunt, Hunter, A. Huntington, E. Huntington, Jordan, Kemble, Kernan, Kingsley, Nellis, O'Conor, Parish, Perkins, Rhoades, Riker, Russell, St. John, Sanford, Shepard, Stephens, Stetson, W. Taylor, Ward—38.

NOES—Messrs. Prayton, Cambreleng, Cook, Dana, Gebhard, Hawley, Hotchkiss, Loomis, Miller, Morris, Munro, Nicholas, Patterson, Penniman, Richmond, Salisbury, Sears, Sheldon, W. H. Spencer, Stanton, Strong, Swackhamer, Townsend, Van Schoonhoven, Waterbury, Wood, A. Wright, W. B. Wright, Yawger, Young, Youngs—31.

Mr. W. TAYLOR moved to amend by inserting after the word "cities," "incorporated villages."

Mr. HARRIS objected to the election of police justices—preferring that they should be appointed by the common council in cities, and by trustees in villages.

Mr. SWACKHAMMER expressed his surprise to see some of the ablest advocates of the principle of an elective judiciary, turning a somersault on this point of electing a police justice.

Mr. VAN SCHOONHOVEN expressed his regret to hear an objection which implied that the people were incompetent to elect their police magistrates.

Mr. W. TAYLOR, after some further conversation, withdrew his amendment.

Mr. HARRIS moved to insert, after justices of the peace, "and justices of justice's courts in cities, shall be elected by the electors of such cities, at such times and for such terms as may be prescribed by law." His amendment was adopted.

Mr. VAN SCHOONHOVEN now moved to amend by inserting "police magistrates"—but without taking the question, the convention adjourned to 8½ o'clock to-morrow morning.

TUESDAY, SEPTEMBER 8.

Prayer by the Rev. Mr. SCHNELLER.

DEBATE ON THE JUDICIARY QUESTION.

Mr. COOK offered the following:—

Resolved, That all debate on the judiciary article and

the several propositions on the same subject, shall cease at or before 12 o'clock at noon this day.

Mr. DANA enquired if the judiciary committee to which certain sections had been recommended, was ready to report.

Mr. PATTERSON said the committee had met, and the chairman was present—but he could not say when they would be prepared to report.

Mr. STRONG hoped the resolution would not be adopted. The committee on the judiciary had to report on the matters referred to them, and they should have an opportunity to explain their report.

Mr. O'CONOR said the committee had met and agreed in substance on its report, but as it had to be put in form, it was necessary to submit the written report to the committee, and the intention was to report to the Convention at the evening session.

Mr. KEMBLE moved to lay on the table. Carried, 46 to 19.

THE JUDICIARY.

The Convention resumed the consideration of the judiciary article.

The pending motion was the amendment to Mr. Stow's proposition, offered by Mr. VAN SCHOONHOVEN, last night, which was negative. The question then recurred on Mr. Stow's section.

Mr. CAMBRELENG doubted if justices could be elected under this section in New York.

Mr. MORRIS moved to amend as follows:—

All judicial officers of cities and villages, and all such judicial officers as may be created by law therein, shall be elected at such times and in such manner as the legislature may direct.

Mr. PATTERSON called for the yeas and nays and they were ordered on Mr. MORRIS's amendment.

Mr. BASCOM said the amendment was so drawn as to imply unlimited power in the legislature to create judicial officers.

Mr. MORRIS explained. He intended that power should be given to the legislature to make provision for the appointment of such officers and that the appointment should be by election by the people.

The yeas and nays were then taken and there were yeas 60, nays 13. So the amendment was adopted.

Mr. VAN SCHOONHOVEN moved to amend so as to add that the legislature shall provide for the election of these officers and making the term of those now in office expire on the 1st of January.

Mr. STOW said the expiration of office should be fixed by some more general provision.

Mr. RHOADES moved an amendment to except incorporated villages from the provisions of the new section.

The PRESIDENT said the amendment of the gentleman from New York (Mr. MORRIS) having been adopted as a substitute, it was not amendable. The gentlemen, however, could accomplish their purpose by having their amendments as separate sections.

Mr. VAN SCHOONHOVEN: My dear sir, I don't offer my proposition as an amendment, but as a new section. [Laughter.] I supposed the other matter was disposed of by the last vote.

The PRESIDENT said the final vote was yet to be taken upon the new section.

Mr. STOW would like to have the section so amended that these officers might be elected

either by the city or by the county. In some cases it might be proper to have them elected by the county at large. There were as many as 6000 inhabitants in the city of Buffalo, who resided without the bounds of the municipality, and the expense of these local magistrates, who had jurisdiction in all parts of the county, was paid jointly by the city and county.

Mr. MORRIS, in answer to an enquiry from Mr. Stow, said he intended his amendment to give power to the legislature to make all necessary provisions to meet the circumstances of the several cities and counties, so that New York should not be an exception.

Some conversation ensued between Messrs. STOW, MORRIS, PATTERSON, TALLMADGE, MURPHY, VAN SCHOONHOVEN, LOOMIS and others, as to the interpretation the legislature might put on this section. On the one hand it was desired to make it specifically provide for an election by the people.—On the other side it was thought it would give latitude to the legislature to vest the appointment in common councils or boards of supervisors.

Mr. MURPHY contended that there should be no invidious distinction created between cities and villages, and he called for the yeas and nays, which were ordered—and there were yeas 54, nays 25.

Mr. STOW moved a reconsideration. He had doubts as to the legal construction of the language of the section.

Mr. RHOADES moved the following additional section:—

§ — Police justices in incorporated villages shall be appointed by the board of supervisors of the several counties in which such villages are situated, in such manner as shall be prescribed by law.

Mr. STOW moved to include cities.

Mr. LOOMIS raised a point of order. Did not the section already adopted make this new provision nugatory?

The PRESIDENT decided that the proposition was in order.

Mr. MORRIS moved to except the city of New York. He believed that of all officers who should be elected by the people, the police magistrates in cities should be so elected above all others—and in the city of New York especially.

Mr. VAN SCHOONHOVEN moved to except the city of Troy.

Mr. F. F. BACKUS to except also the city of Rochester.

Mr. STOW withdrew his motion.

Mr. RHOADES supported his proposition.

Mr. VAN SCHOONHOVEN moved to amend the proposition of Mr. RHOADES as follows:—Strike out all after the word "be," and insert "elected by the electors of the counties in which such villages are located, in such manner, and for such terms, as the legislature may direct."

Mr. WATERBURY thought this proposition was backing water upon the principle of election.

Mr. RHOADES accepted the amendment of Mr. VAN SCHOONHOVEN.

Mr. LOOMIS thought the section already adopted covered the whole ground. This would

only imply the power to appoint a new batch of officers.

Mr. RHOADES said this provision gave the counties the right to vote for those police officers who were paid a salary out of the county treasury.

Mr. BERGEN said this was not the case in all instances, and would operate unjustly where these officers were paid by the localities in which they exercised their powers.

Mr. COOK said the village of Saratoga Springs had a police justice who was paid by the town; it was a place of great resort during the summer months, and from that fact a large amount of petty criminal business was of necessity done before that magistrate; and it would be unfair to make the county of Saratoga pay for the regulation of the morals of so large a watering place as that.

The proposition of Mr. RHOADES was rejected—ayes 3, noes 76.

Mr. MANN moved a reconsideration of the vote adopting the 7th section of the article, and proposed the following amendment:—

Strike out after the word "officer," in the fifth line and insert, "Any male citizen of the age of 21 years, of good moral character, on application to the supreme court, shall be admitted to practice as an attorney and counsellor, and every party, in each cause, prosecution or suit may appear, plead, pursue or defend, in his proper person, or by any citizen of good character."

Mr. STETSON believing that we had already sufficient legislative provisions in the article, moved to lay the motion to reconsider on the table.

Mr. MURPHY demanded the ayes and noes on this motion, and it was lost, ayes 20, noes 53.

The motion to reconsider was also lost, ayes 42, noes 42.

Mr. VAN SCHOONHOVEN proposed the following additional section:—

§ — The legislature shall provide for the election of the judicial officers mentioned in the preceding section at its next annual session. Those justices of the peace and justices of city court who may be in office on the 1st day of January next, shall hold their offices until the 31st day of December, 1847, and no longer.

This was rejected, ayes 18, noes 43.

Mr. VAN SCHOONHOVEN then offered the following additional section:—

§ — All justices of city courts and other city judicial officers who may be in office on the 1st day of January next, shall hold their offices until the 31st day of December next thereafter, and no longer.

Mr. JORDAN supposed it would be necessary to make some provision of this kind before the completion of the judiciary article, but he believed it would be advisable to wait until all the details were settled. He moved to lay the proposition on the table.

Mr. VAN SCHOONHOVEN supposing from what was said by Mr. JORDAN that the judiciary committee had this subject under consideration, was willing that his proposition should be referred to them. It was so referred.

Mr. KEMBLE proposed the following as an additional section:—

§ — The legislature shall provide that a judgment or decree rendered by the supreme court, shall be executed, notwithstanding an appeal or writ of error, upon adequate security being given to make full restitu-

tion in the event of a reversal or modification of such judgment or decree, on appeal.

Mr. WATERBURY advocated the section.

Mr. JORDAN moved to amend so that the security should be a lien upon unincumbered real estate.

Mr. KEMBLE. Suppose the party has no real estate?

Mr. JORDAN. Then let him get some friend to aid him.

Mr. KEMBLE was surprised that real estate should be required as security, when the party was willing to pay the necessary sum into court. If the gentleman would add, "or the money may be paid into court," he would not object, but as it was now proposed it would deprive those of justice who were not in possession of real estate.

Mr. JORDAN only desired to guard against the fluctuations of mere personal property. A man who was rich to-day might be poor to-morrow, and his personal guarantee would be worthless.

Mr. PATTERSON thought they should stop legislating somewhere, and this was a proper place. He could not approve of their putting the statutes at large into the constitution.

Mr. STOW thought this matter should be left to the legislature, to be accomplished mainly by a regulation in relation to costs. He was also opposed to it on the ground of its irregularity and injustice, for it said in effect that the rich might appeal, but that the poor should not.

Mr. WORDEN believed the argument that this was a subject of legislation, would prevent our putting any thing in the constitution. For unless we make a constitutional provision, then the legislature would have power to act on any subject. He thought favorably of the provision, and spoke of the manner in which appeals were now brought. Was there not more reason in giving the party who had obtained the judgment in the supreme court, the right to receive what had been awarded him, on his giving abundant security, than to allow the other party to keep him out of his rights, on giving bail which might prove worthless? He answered the argument that this would favor the rich at the expense of the poor, alleging that it was unsound. He considered this to be a sound principle, and hoped it would be incorporated into the constitution, doubting very much, if we failed to do so, whether the legislature would have the power to pass such a law.

Mr. STETSON said if there was any necessity for this provision, then the Convention had failed to provide such a judicial force as would prevent delays of justice. There might have been a necessity for such a provision under the old system; and if it was still required, he would suggest that we should go to the legislature for a new lease of time, in order to get up a new system. He could not agree to such an extension of credit in the courts. It provided that a man should be executed first and tried afterwards.

Mr. O'CONOR opposed the incorporation of such provisions into the fundamental law. He considered it matter of legislation.

Mr. WATERBURY was surprised that it should be contended that property should follow

the decision of courts which gentlemen said were so often reversed.

Mr. RHOADES was in favor of allowing all persons to go through every one of our courts when he had once entered upon a suit. There might have been cases when an appeal was brought merely for the sake of delay; and he supposed that this section was intended to meet such cases, which blocked up our courts. He was not opposed to the adoption of a provision to prevent such abuses.

Mr. STETSON alluded to the statute, by which interest can be charged upon verdicts rendered in cases of wrongs, which had removed the delays from a numerous class of cases, to show that there was no necessity for such a section in the constitution.

Mr. STEPHENS believed that the object of this section was to prevent frivolous and vexatious writs of error. The advantages of these appeals in a majority of cases, were in favor of the rich man to the injury of the poor man. He was, therefore, in favor of putting an end to such as were merely frivolous, and intended to embarrass a man who was not able to pursue justice to the last extent.

Mr. HOFFMAN opposed the adoption of the section, as a cruel and unjust provision.

Mr. SIMMONS continued the debate on the same side.

Mr. CROOKER regarded the whole proposition so absurd that he was surprised that it had received so much discussion. He hoped the question would now be taken. For the last three days we had only been "running emptyings," in finishing up the latter part of this article.

Mr. BERGEN moved the previous question. Seconded.

The amendment of Mr. JORDAN was lost.

Mr. WHITE demanded the ayes and noes, and the section was rejected, as follows:

AYES—Messrs. Allen, Burr, F. F. Backus, Kemble, Stephens, Worden—6.
NAYS—76.

Mr. BASCOM proposed the following new section:

§.—The clerks of the several counties of this state shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law.

Mr. B. said that without the adoption of a provision like this, the legislature would be obliged to appoint six or eight clerks of the supreme court. He thought it was better to adopt this provision than to run the hazard of having the number doubled.

Mr. STETSON said he believed now that the law provided that the county clerks shall be the clerks of the circuits.

Mr. MORRIS said this proposition met his approbation. He had thought it a proper subject of legislation; but having been offered, he should give it his vote. But he believed some further provision would be necessary, and he moved to amend by adding to the section as follows:—

"There shall be appointed a clerk of the court of appeals, who shall be ex-officio clerk of the supreme court, and to keep his office at the seat of government. He shall be appointed by the Governor, by and with the advice and consent of the Senate—shall hold his office for three years, and be paid a compensation to be fixed by law and paid out of the public treasury."

Mr. PATTERSON moved to amend by making the clerk of the court of appeals elective by the people of the whole state.

Mr. CROOKER moved to refer the whole section to the judiciary committee. It was necessary that it should receive more consideration than we could give it here. There should also be some provision for discontinuing the present clerks.

Mr. BASCOM hoped the Convention would allow a vote to be taken upon one simple proposition without a reference, and this one was of some importance, too. He was sorry that the proposition had been embarrassed by the amendment of the gentlemen from Herkimer and Chautauque, because his section involved something more than the question of the election or the appointment of a clerk.

Mr. RHOADES was in favor of the section proposed by Mr. B., but he thought it questionable whether clerks of counties would be able to perform the duties of clerks of the supreme court.

Mr. JORDAN hoped this whole subject would be left with the legislature. This was a new and untried subject, and we would be unable to decide how the system would work. It was a question in his mind whether we would be able to find county clerks who were competent to perform the duties to be thrown upon them by this section. He was not satisfied that it would not be more advisable to create a clerk's office in each of the judicial districts.—The legislature would have more time and opportunity to decide upon this question, and he hoped it would be left to them to regulate it.

Mr. RICHMOND followed in support of the proposition of Mr. BASCOM.

Mr. HAWLEY, after a few remarks on the length of time already occupied on this article, beyond what was anticipated, and on the necessity of bringing the Convention to a vote on these propositions in some reasonable time—moved the previous question, and there was a second, &c.

The motion to refer to the judiciary committee was negatived.

The amendment of Mr. PATTERSON, that the clerk of the court of appeals be elected by the people, was adopted, ayes 56, noes 17.

AYES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Bouck, Brayton, Burr, Cambreleng, R. Campbell, jr., Crooker, Dubois, Flanders, Gebhard, Hart, Hawley, Hotchkiss, A. Huntington, Hutchinson, Hyde, Jordan, Kingsley, Mann, Morris, Munro, Patterson, Penniman, Porter, President, Rhoades, Richmond, Russell, St. John, Sears, Shaw, Sheldon, Shepard, Smith, W. H. Spencer, Stanton, Stephens, Stetson, Strong, Taggart, W. Taylor, Townsend, Vache, Van Schoonhoven, Waterbury, White, Willard, Witbeck, Worden, A. Wright, W. B. Wright, Yawyer, Young, Youngs—36.

NOES—Messrs. Bascom, Bergen, Cuddeback, Dana, Gardner, Greene, Hunt, Hunter, E. Huntington, Kemble, Loomis, McNeil, Nellis, Nicholas, Riker, Simmons, Tallmadge—17.

The amendment of Mr. LOOMIS, as thus amended, was also adopted, ayes 51, noes 18.

AYES—Messrs. Bouck, Burr, Cambreleng, R. Campbell, jr., Crooker, Flanders, Gebhard, Hart, Hawley, Hotchkiss, Hunt, A. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kingsley, Loomis, Mann, Morris, Munro, Nellis, Patterson, Penniman, Perkins, Porter, Richmond, Russell, St. John, Sears, Shaw, Sheldon, Shepard, Smith, W. H. Spencer, Stanton, Ste-

phens, Stetson, Stow, Strong, W. Taylor, Townsend, Vache, Van Schoonhoven, Waterbury, White, Willard, Witbeck, Worden, Yawyer, Young, Youngs—51.

NOE.—Messrs. Allen, F. F. Backus, H. Backus, Pascom, Bergen, Dana, Dubois, Gardner, Greene, Hunter, McNeill, Murphy, Nicholas, President, Riker, Simmons, A. Wright, W. B. Wright—18.

The question then recurred upon the section as amended.

Mr. HAWLEY called for a division.

The question was first taken on the section originally offered by Mr. Bascom, and it was adopted, ayes 66, noes 7. [Noes—Messrs. Allen, Dodd, Jordan, Murphy, Nicholas, Young and Youngs.]

The remainder of the section was adopted, ayes 54, noes 22.

The entire section, as amended, was then adopted.

Mr. WHITE offered the following section :

§—. The legislature shall provide by law, that all moneys in the custody or under the control of any of the courts of law or equity, for the benefit of suitors and others, at the time this constitution shall take effect, and all moneys which shall thereafter be paid into any of the courts of record of the state, for the benefit of suitors and others, shall be paid into the treasury of the state, at such times and under such regulations, and be held by the state for the benefit of such suitors and others at such rate of interest as the legislature may prescribe.

Mr. SIMMONS had doubts about this. Now parties had security for the money paid into court. Bonds had to be given, and they could sue for it. If the state had the custody of it, the party had no remedy. A state could not be sued. It was always a hard matter to get money from a state, especially after the state had used the money. If you would make public officers liable to be fined, he had no objection to this proposition; but he could not consent otherwise to allow a state to seize on private funds, giving no security for them, and leaving claimants to the caprice or courtesy of a popular body.

Mr. LOOMIS concurred with Mr. SIMMONS. These funds, if in the hands of clerks, when it could be looked to by persons interested, was not only as safe, but more likely to be properly invested than if deposited in the state treasury. There were many other reasons why he would have these funds distributed, rather than accumulated in the hands of the state, which in would now go into.

Mr. RHOADES preferred also to leave these funds where they could be loaned out on bond and mortgage. For they could be safely invested in that way at seven per cent; whereas the state would not pay over five, if it did that.—This was an important consideration, as persons interested sometimes depended on the interest for their maintenance. It would also be a troublesome matter for the state to undertake to manage and pay out these funds.

Mr. PATTERSON remarked that as we had determined to unite the law and equity jurisdictions in one court, the legislature must make provision for the safe keeping and investment of the moneys now under control of the court of chancery, which were deposited in the Life and Trust company. And as that must be done, this whole matter had better be left to the legislature. But he objected to depositing this money with the state, which would pay but

five per cent., when it might be invested at seven.

Mr. RICHMOND preferred to deposit this money with the county treasurers, to be loaned out by them on bond and mortgage. They gave greater security in proportion to the amount of money falling into their hands than any of the courts.

Mr. WHITE said he should not have made this proposition, did he not believe that the credit of the state was better than that of any individual. Were the credit of this state no better than that of Mississippi, he should not have offered it. He had the authority of a high judicial officer for saying that the present system was neither secure nor satisfactory; and that it would be better to deposit these moneys in the state treasury. The only valid objection he had heard to this, was that the state could not be sued. But the legislature could remedy this difficulty. A large proportion of this money was in the hands of officers in the first circuit. Some \$900,000 was in the hands of the Trust company, where it was no doubt safe, and where they paid five per cent. But it could be nowhere safer than in the state treasury—and we meant to keep the credit of the state good—and if practicable to make it better.

Mr. MANN had many reasons for desiring to see this money placed in the state treasury. One was that a good deal of it had no owner that any body knew of—and a good deal of it had been under the custody of that court for forty-two years. As the court of chancery was to be abolished, something must be done with it.—And he knew of no better place for it than the state treasury—especially as so much of it remained unclaimed.

Mr. RHOADES had as yet heard no reason why the state should become security for all the moneys and estates of infants and others which might now by the courts be placed under their control. The state being in debt now, might use the money and pay a low rate of interest on it—but when the state was out of debt, as it would be, these funds might amount to eight or nine millions—and it seemed absurd to make the state treasurer the keeper of all this money.

Mr. ALLEN said the money invested in the trust company amounted to some \$300,000, for which they paid 5 per cent, annually. In addition to the security of the capital of the company, which was one million, there was an additional security of an ample character—which made these moneys abundantly secure. If the state took this money, there must be a separate department for the management and disbursement of it. Much of it belonged to heirs when they become of age, and was accumulating, the interest every year being added to the principal. Others again received money half yearly—and there was a good deal of business connected with it that it would puzzle the state to do with having a new department for it.

Mr. TOWNSEND alluded to the gentleman from Orange on a former occasion in favor of depositing this money in the state treasury, and dwelt upon the security which would thus be given to them, as well as the feeling of security and satisfaction which it would give to persons having property to leave behind them to their children,

to know that the state would be responsible for its safe keeping, and proper application. He urged also that such an arrangement would have a good effect in creating a more direct personal interest in keeping up the credit of the state.

Mr. STETSON raised the question when money was paid into court and deposited or loaned by the court on interest—on whom the loss would fall if the whole or any part of it were lost. This was a matter which had something to do with the settlement of this question here or by the legislature. His own opinion was that this belonged to the legislature rather than to us—and he would leave it there without any thing in the nature of a recommendation that the state be made the responsible keeper of these moneys.

Mr. SIMMONS appreciated fully the object of the mover of this proposition. He differed with the gentleman only as to the mode of effecting the object. In England they had an accountant general, whose duty it was to take care of these funds. And he had heard it suggested that we should have such an officer. He would do nothing to endanger these funds. The proposition to distribute them among the county treasurers, he thought the worst possible disposition of them. The better way was for us to leave the whole matter to the legislature, rather than to lay down an iron rule which might be found to work badly.

Mr. VAN SCHOONHOVEN had heard a great deal about this mammoth fund in the control of the court of chancery; but he had heard no one suggest or charge that any loss had been sustained under the present mode of deposit and investment. Insecure investments may have been made—but this was likely to happen under any system. If these funds were brought into the state treasury, the legislature would have to provide some public officer to take charge of them. But would that officer do this better than the chancellor. As to the large amount of this money said to be unclaimed, Mr. V. S. asked if it would have been called for any sooner had the state had the investment of it? Again, if the state was to be the depository, the state might borrow it, and use it—and in that case, the legislature must fix the rate of interest—and this would be to allow the one party to decide what interest it should pay. He was in favor of leaving the matter as it stood, which would give the control of all these funds to the new supreme court.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. MURPHY went into a statement, gathered from the returns, as to the mode in which these moneys were now invested—which, he said, amounted to about \$3,000,000. It was now all under the supervision of the law, or of the court directly—and the question was, whether we should transfer it to the state treasury. The parties now received interest on these investments. If we transferred the money to the treasury, we must have a separate department to take care of it and disburse it. And we had experience in regard to the state's investing money, in the case of the loaning of the U. S. deposit fund. He did not know how it was in

other counties—but he could say that of the money loaned in Kings county, about half of it had been lost. To transfer these funds therefore to the treasury, would only be giving trouble to the state, without benefiting the suitor. He did not say that the plan heretofore adopted was the best; but we had no evidence that a single dollar had ever been lost.

Mr. TALLMADGE said this subject was one of vast moment. He had no doubt, when the matter was fully investigated, that the amount of funds under the control of the court of chancery would be found to be much more than the public had any idea of. Young and rising members of the profession might feel that it was discreet to speak cautiously on this subject, in order to stand well with the court. But we could have no such motive to influence us. The gentleman from Rensselaer this morning seemed to think that any enquires into this matter implied a censure on the chancellor. Mr. T. felt that in this he was acting in accordance with the feeling and wish of the chancellor himself. Mr. T. had no arrow to throw at him. But many of his officers held this money. Some of them might not hold it discreetly, and it might be lost. Mr. T. had reason to know that the chancellor himself desired to be relieved of this responsibility. The chancellor stated the amount at about \$3,000,000—but did not include the amount under the control of the district courts. There were receivers also who had millions of money in their hands. He urged that it was but just to the chancellor, to his successors, and to the fund itself, that in changing the jurisdiction of the court that we should see how this thing stood. It would be a sinful omission not to do this. He spoke of the library that had been purchased out of the unclaimed funds in chancery. This library had cost from \$50,000 to \$100,000—and some \$5,000 a year was spent in keeping it up. Some \$20,000 of this money was lost in the Franklin Bank. In saying this and in urging that these moneys should be transferred to the state treasury, he intended no imputation on the chancellor—but he urged that this account should be stated, that the successors of the chancellor, and the chancellor himself, should know how the matter stood, and that persons interested might have the security of the state for the safe keeping of the moneys.

Mr. TAGGART moved to amend by striking out the proposition of Mr. WHITE, and inserting as follows:—

§ 1. The legislature shall provide by law for transferring and depositing all funds and securities now held, or which may hereafter be held, by or under the control of the court of chancery, or of any other court or courts, or of any register, assistant register, clerk or receiver of any court, for safe keeping, investment or disbursement in the state treasury, or with a county treasurer, as follows, viz:—

1. All funds secured by real estate in any county, with all securities relating to the same, with the county treasurer of the county in which such real estate is situated.

2. All funds belonging to infants, widows or lunatics, not secured by real estate, with the county treasurer of the county in which the infant, widow or lunatic, entitled to the same resides, if a resident of this state.

3. All funds arising from the sale of real estate, hereafter to be made, directed to be invested by order of any court, and all securities taken upon the sale of real estate hereafter made, by order or direction of

any court, with the county treasurer of the county in which such real estate shall be situated.

4. All other funds and securities mentioned in this section in the state treasury, or with a county treasurer, as shall be provided by law.

Mr. MURPHY in reply to Mr. TALLMADGE, and the intimation that some of the younger members of the profession might be influenced here by fear of the chancellor, remarked that he had begun to look upon the court of chancery as defunct, and that whatever foundation there might have been otherwise for the insinuation, it could scarcely be applicable now. He went on to say that he did not pretend that there should not be a change in the mode of investing this money, but he insisted that it was a proper subject for legislation—and that it should not be so tied up in the constitution that a change could not be made in the place of deposit if the convenience of suitors or other circumstances might demand it. But the great objection to transferring these moneys to the state treasury was that we should have to organize a separate department to manage these funds. Mr. M. repelled the intimation that we had not before us in the returns a full statement of the amount of these funds—and that the amounts in the hands of receivers should have been included. They gave good security, and no complaint had been made that a dollar was ever lost by them. The funds in their hands were paid over with convenience and satisfaction to parties, and they should not be compelled to come to Albany for them.

Mr. VAN SCHOONHOVEN stated what he had said before, that while these funds were well and safely kept there was no necessity for withdrawing them from the custody of the Chancellor, nor of making a grave constitutional provision which places them in the hands of the treasurer of the state, or of the several counties. If any change was made, he preferred the proposition of the gentleman from Genesee, (Mr. TAGGART.) but he preferred that they should remain where they were, subject to the control of the legislature.

Mr. BERGEN believed this to be a matter of legislation, and he also thought that this was the opinion of the Convention. If so, it should not occupy our time for a single moment longer. For the purpose of testing the matter, he moved the previous question.

There was a second, 54 to 21.

Mr. TAGGART's amendment was negatived without a division.

The proposition of Mr. WHITE was rejected, as follows:—

AYES—Messrs. Allen, Ayrault, Bonck, Burr, Cornell, Cuddeback, Hotchkiss, Kemble, Kingsley, Mann, Miller, Parish, Salisbury, Sanford, Sears, Shaw, Sheldon, Stephens, Tallmadge, W. Taylor, Townsend, Waterbury, White—23.

NOES—Messrs. Angel, Archer, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bowditch, Brayton, Hull, Cambreng, R. Campbell, jr., Chaffield, Clark, Cook, Dana, Flanders, Gebhard, Greene, Harris, Hart, Hawley, Hoffman, Hunter, E. Huntington, Hyde, Jordan, Kernan, Kirkland, Loomis, Munro, Murphy, Nellis, Nicholas, Patterson, Penniman, President, Rhoades, Riker, St. John, Shepard, Simmons, E. Spencer, W. H. Spencer, Stanton, Stetson, Strong, J. J. Taylor, Vanschoonhoven, Ward, Willard, Witbeck, Wood, Worden A. Wright, W. B. Wright, Yawger, Young, Youngs—39.

Mr. TOWNSEND moved a reconsideration of the vote on Mr. TAGGART's motion.

The 17th section of the report was then read as follows:—

§ 17. No judicial officer, except justices of the peace, shall receive any fees or perquisites of office.

Mr. LOOMIS moved to add as follows:—

After "receive," insert "to his own use." Add at the end, "Provision shall be made by law requiring parties prosecuting suits or proceedings before judicial officers, other than justices of the peace, to contribute towards the expense of administering justice by the payment of a specific sum in each suit, or of a rate per centage on the amount claimed, or value of the matter to be adjudicated in each case, to some officer for the use of the public treasury, before a hearing or a trial shall be heard thereon."

Mr. LOOMIS urged that it was but just that parties litigant should contribute towards the payment of the officers employed in their service, and to a greater amount than others. It was also desirable to have something in the constitution imposing the duties of the legislature to make some such provision. It was the more necessary also as we proposed to pay these judges a salary, who had heretofore received large amounts from suitors by way of fees.—Without prescribing any detail to the legislature, he would state how he should desire to see such a provision carried out. He would compel a party on commencing a suit, to pay a certain fee. Before trial, he should also pay a certain sum, say \$5—and out of the sums thus paid he would require the clerk to pay the jurors by the day, and other officers, if sufficient, taking their vouchers, the calendar to be handed over to the county treasurer at the close of the term, and the clerk to account to him for the amount received. If the party appealed to the supreme court in banc, he would compel him to pay again, before his cause should be entered on the calendar. And on his appealing to the court of last resort, he would require another sum—increasing the amount at each stage with a view in some degree to repress litigation. And under a simple form of pleading, such as he hoped to see adopted, the cost of litigation might be reduced very much, even under such a tax upon it. As the public provided tribunals for the settlement of controversies, it was eminently proper that those who had occasion to use them should contribute more towards the expense of maintaining them than peaceable citizens who never did use them. He regarded it also as essential to make some such provision mandatory on the legislature, in order that the people, when they come to calculate the expense of this system to them in the shape of salaries, might also see that suitors would be compelled to contribute a fair share of the expense.

Mr. NICHOLAS asked for a division of the question. He was in favor of the first proposition, intended to prevent judges from receiving for their own use any fees or perquisites of office. This was right, as judges were to be paid by salaries for their services. As to the second branch, which proposed to tax parties to suits to defray the expenses of the courts, it might be right and proper to impose such a tax, but he would have it done by the legislature. It was certainly a fit subject for legislation, but not a matter to be provided for in the constitution. The Convention had been legislating for several days, and would have hereafter to confine its action to its appropriate sphere, or many

subjects requiring attention could not be disposed of during the short time that we should continue in session.

Mr. SIMMONS said he agreed to this section sweeping away fees, in committee, but reflection had led him to doubt about it. He agreed that judges should be paid by salary and not by little fees for judicial duties proper—but he doubted about charging on the public the payment of their services at the chambers, in order to get it back again in some other shape. Besides to strip these officers of fees for chamber duties, he was afraid would make them less accessible, less competent and less careful in the discharge of their duties. He disliked the idea of making the salary of the surrogate a county charge, instead of requiring those who needed his services to contribute to his compensation as now.

Mr. CHATFIELD was understood to take the ground that the proposition was altogether too sweeping and indiscriminate—and from a difficulty inherent in the subject, which would require the detail of a statute book, if we went into it at all. There were suits that it was not worth five dollars to litigate, which had to come before our courts; and others which were worth more. All this was matter for legislation, and not proper in a constitution. Besides, parties now paid a great variety of fees which come out of their pockets, and though burthensome to them, the public would not be saddled with them. But a tariff on suits to pay jurors and constables and other county charges was another matter.

Mr. J. J. TAYLOR conceded that there were many wrongs growing out of the system of fees and perquisites, and he wished to see them abolished, so far as they could be with propriety. But we should require in some counties, other officers than the county judge, to do chamber duties, and these certainly should not be paid by salary. Referees also, auditors and others might for the time being be regarded as judicial officers. He would not pay them a salary. To prevent this difficulty he proposed to amend by striking out the exception of justices of the peace and inserting, "for whose compensation provision shall be made by salary."

Mr. LOOMIS replied to the objection that this was legislation. The original section was legislation, providing that the judges should be compensated by salary only. He desired to carry with this before the people the assurance that they were not to be taxed for all these salaries. He objected to Mr. TAYLOR's amendment as contemplating a class of officers in counties who were to do certain duties and receive fees—saying that as we had provided a county judge to do those duties, and paid him a salary, the consequence would be, if the amendment was adopted, that the county judge would do none of this business, but turn parties over to the officers who could take fees.

The Convention agreed to insert "to his own use."

Mr. SIMMONS did not see how a rule of the kind proposed by Mr. LOOMIS could be adopted without laying it down either too broad or too narrow. He was in favor of such a rule, and

had proposed it in the judiciary committee, but he now regarded it as the safest plan to leave it to the legislature.

Mr. JORDAN urged that the judiciary was one of the departments of the government as much as the executive or legislative—and he could see no reason founded in justice, why a person should pay a fee before approaching the one any more than the others, to aid in paying the salaries of public officers. For one, he was opposed to making the profession to which he belonged tax gatherers for the purpose of raising a fund to pay judicial officers—and bearing the odium of the suspicion which would attach to them that they pocketed these fees. The result would be that these fees would in many instances come out of the pockets of the profession. The approaches to justice had better be left free, as were those to other departments of the government.

Mr. STETSON urged that taxation should be equal—that the great mass of the people who contributed to support your higher courts, and yet never used them—that the mass had also to pay fees to sustain justices' courts and county courts—and that it would be unequal to make them pay a double tax to sustain the two classes of courts, while those who used them paid only their share of the general taxation to support them. He trusted this system or some other would be adopted to equalize these burthens.

Mr. W. TAYLOR took similar ground in favor of the proposition of Mr. LOOMIS.

Mr. ST. JOHN moved the previous question, but withdrew it at the request of

Mr. SIMMONS, who desired to make an explanation, and agreed to renew the motion. He believed that the provision should be to prohibit judges from receiving fees; the duties of other officers were in many cases merely ministerial, and fees were properly imposed upon those who made use of them. But all the people were benefitted by the judges. A man was hanged, for instance, not for his own benefit, but for the benefit of all the community and those who should feel disposed to follow his example. Mr. S. went on to illustrate his position, and sat down forgetting to renew the previous question.

Mr. STRONG, however, got the floor and moved the previous question, but he too withdrew at the request of

Mr. JORDAN, who regarded this as a new and important question which ought not to be decided without deliberation. He could not agree to what gentlemen appeared to suppose, that going to law was a luxury for which we ought to be taxed. People did not go to law merely from a litigious spirit, and this could not be urged as a reason for their being taxed when they entered into a lawsuit. The cases were very rare when persons went to law when they were not driven into such a necessity.

Mr. STRONG again renewed his call for the previous question, declining to withdraw it again, and there was a second, and

The last clause of Mr. LOOMIS's amendment was negated as follows:

AYES—Messrs. Angel, H. Backus, Bascom, Bergen, Bowdish, Brayton, Cuddeback, Dubois, Greene, Hart, Hutchinson, Kernan, Kingsley, Loomis, Mann, McNeill, Morris, Munro, Nelson, St. John, Salisbury, Sanford,

Stanton, Stetson, W. Taylor, Townsend, Waterbury, Willard, Wood, Yawger, Young Youngs—32.

NOE—Messrs Allen, Avrault, F. F. Backus, Baker, Bouck, Bull, Burr, R. Campbell, jr., Chatfield, Cook, Cornell, Crooker, Dina, Dodd, Flanders, Forsyth, Gardner, Gebbard, Harris, Hawley, Hoffman, Hotchkiss, E. Huntington, Jordan, Maxwell, Miller, Nicholas, O'Connor, Parish, Patterson, Porter, President, Rhoades, Riker, Russell, Shaw, Sheldon, Shepard, Simmons, W. S. Spencer, Strong, Swackhamer, Taggart, Tallmadge, J. J. Taylor, Vache, Van Schoonhoven, Ward, Worden, A. Wright, W. B. Wright—41.

The 17th section was then agreed to, as amended, without a division.

Mr. O'CONOR, from the judiciary committee, reported several sections, in pursuance of the reference made to that committee on Saturday last, of the propositions presented by Mr. Loomis, for transferring the business in arrears in the several courts to the newly organized tribunals. These sections were ordered to be printed.

Mr. JORDAN laid on the table a motion to reconsider the vote on the section making clerks of counties clerks of the supreme court.

The Convention then adjourned to 8 1/2 o'clock to-morrow morning.

WEDNESDAY, SEPTEMBER 9.

Prayer by the Rev. Mr. VAN RENSSELAER.

Mr. HOTCHKISS presented the petition of citizens of the county of Warren, in favor of Free Schools. Referred to the committee of the whole having that subject in charge.

Mr. BRUCE presented a petition from Madison county in relation to the unfinished public works. Referred to the appropriate committee of the whole.

Mr. SWACKHAMER offered the following, which was referred to the committee on rights and privileges:—

Resolved, That constitutional provision should be made against the sacrilegious disinterment of the remains of the dead, and for the protection of burying places from the interference of incorporated societies, municipal incorporations and individuals, without the consent of the surviving relatives interested therein.

THE JUDICIARY.

The Convention resumed the consideration of the judiciary article.

Mr. LOOMIS offered the following section:

§ —. The legislature may provide for local officers to discharge the duties of judge and of surrogate in case of their inability or of a vacancy, and with such other powers in special cases as may be provided by law.

Mr. SALISBURY opposed the section. If such an array of judges was to be provided as appeared to be intended by these daily additions, he should want to send them to Texas.

Mr. J. J. TAYLOR doubted the propriety of adopting such provision.

Mr. HAWLEY moved to strike out in the last clause of the section the words "powers in special cases."

Mr. LOOMIS defended his amendment and opposed the motion to strike out. He said he had not attempted to embarrass the passage of the judiciary article, but had steadily adhered to its principles throughout. He now desired to have this little provision giving the legislature discretion to appoint an additional officer in the large counties, when it should be found necessary. He did not propose to give this officer power to try issues.

Mr. J. J. TAYLOR said this would be a judicial officer, but how was he to obtain his compensation.

Mr. LOOMIS replied that as his fees must be paid into the county treasury, out of that treasury he might be allowed a moderate compensation.

Mr. SIMMONS thought the substantial part

of the proposition ought to be adopted. He fully agreed with the mover that it was necessary to give this little elbow room to the legislature. This surrogate's court was yet to be one of the most important in the state.

Mr. HOFFMAN sustained the proposition of his colleague and entreated the gentleman who moved the amendment to withdraw it. He said the provision would be found necessary for the convenience of local business, such as granting landlord's warrants, attachments for absconding debtors, and that such an officer should be at hand, without compelling the applicant to travel over the whole extent of a large county. Without some provision of the kind now proposed, it would be necessary to confer such powers upon fifty or sixty justices of the peace or supreme court commissioners.

The amendment of Mr. HAWLEY was negatived.

Mr. RUSSELL then offered a substitute as follows:—

§ —. The legislature may authorize the election of an associate county judge in each county, who shall discharge the duties of the surrogate and first county judge in case of vacancy of such officer, or of inability of the incumbents to discharge the duties thereof, and who may be authorized to discharge such special duties out of court as shall be prescribed by law.

Mr. HOFFMAN said the substitute provided judges, one of whom would be a cypher while the other was present. He called for the yeas and nays on the amendment.

Mr. RUSSELL defended his amendment. He said since the Convention had refused to allow the legislature to establish county courts whenever petitioned for, to be paid for at the county's expense, he supposed they would not agree to the appointment of these extra commissioners, and he had offered his substitute with a view to make the proposition less objectionable.

Mr. CHATFIELD proposed to amend by adding after the word "office," the words "not to exceed two in any county." Lost, 33 to 33.

Mr. MANN said we had been told that 32 judges would be sufficient to do all the business of the state. Next that county courts and county judges were necessary and their establishment was agreed to. And now there was another proposition to increase legal officers. He was opposed to this continual increase of such officers, and he should vote against the proposition.

Mr. SIMMONS said it was well enough to

have a lieutenant governor when we had a governor, but he had no desire to see lieutenant judges appointed, whose duties would only commence on the death of the judge.

Mr. KIRKLAND hoped some such proposition would be adopted, for these officers were requisite.

Mr. BASCOM was unwilling to leave the legislature so large a latitude in the erection of these minor offices.

Mr. WATERBURY enumerated the offices already contemplated, and the compensation which must be necessarily paid to them, and expressed his astonishment that a proposition should now be made to increase the number of officers and the tax on the people which their creation would involve.

Mr. A. WRIGHT asked a reconsideration of the vote rejecting Mr. CHATFIELD's amendment to which there was no objection.

The reconsideration was agreed to. The question then recurred on adding the words "not to exceed two in any county."

Mr. STRONG called for the yeas and nays, and they were ordered.

Mr. J. J. TAYLOR remarked that if the proposition did not contemplate the creation of new officers, it was unnecessary to limit them.

Mr. LOOMIS accepted the amendment of Mr. CHATFIELD.

Mr. SALISBURY contended that there should be a general and not a special provision to supply all vacancies that may occur in offices.

Mr. PATTERSON moved to amend the proposition by adding the words "the election of" at the end of the first line after the word "for."

Mr. BURR could not persuade himself to vote for a proposition to create new officers.

Mr. VAN SCHOONHOVEN agreed with the gentleman from Erie, that there should be a general provision for supplying all vacancies; he hoped the amendment would be modified accordingly.

Mr. LOOMIS explained, and

Mr. VAN SCHOONHOVEN urged and repeated his argument for a more extensive provision.

Mr. PATTERSON's amendment was adopted.

Mr. RUSSELL then withdrew his substitute.

Mr. HAWLEY asked what special duties were to be conferred on these officers which surrogates and other officers did not now possess?

Mr. LOOMIS explained that he wished to make provision for contingencies that might arise.

Mr. HAWLEY said then it was the creation of a new office with new powers and duties, to which he was opposed.

Mr. VAN SCHOONHOVEN took the same position. He objected to the unlimited authority which this section would give to the legislature to create officers and give them remuneration. He could not anticipate any emergency that could arise to render this necessary.

Mr. LOOMIS expressed his great anxiety that his proposition should be adopted. The officers he contemplated were necessary in many cases—in small ejectments for instance—and the expense would not be increased. Their compen-

sation might be very small, and would be raised by the fees and perquisites of the office.

Mr. DANFORTH wished to know whether the "inability" contemplated as the contingency on which these appointments were to depend, was to be deemed physical or mental, or arising out of a pressure of business. He thought the contingency should be more definitely stated and described; otherwise the legislature would have unlimited power to create officers. He had come to the conclusion that the judicial force was already sufficiently numerous, and he could not consent to open a door for its increase by the legislature. If the appointment should be made only upon application by the board of supervisors, he would regard it as less objectionable. He would not take the responsibility of moving such an amendment, however, but hoped the mover would make it.

Mr. LOOMIS said he proposed to amend the proposition to obviate the objections urged by the gentleman from Jefferson.

Mr. SIMMONS was surprised that there was not a general sense of appreciation of some such provision to provide officers to do the business here contemplated, in the respective counties. The thirty-six judges were held sufficient to do the judicial business, but the judiciary committee had never represented that they were sufficient to do all the local business.

Mr. STETSON urged the adoption of this proposition. The wants of the country required it. He regretted that there should be any opposition to this proposition. He had often been obliged to travel thirty or forty miles to have a small matter of business transacted which would not take the officer more than half an hour to attend to, and yet which it was very necessary should be transacted. This new officer was very necessary, and those who turned a deaf ear to this necessity were willing to inflict a greater inconvenience upon the people even than they had ever felt before. Under the old law there were three officers who might perform this local business, while there is now provided but a single one. He had no other motive in advocating this section, than to afford accommodation to the people for the transaction of their local business.

Mr. RICHMOND thought gentlemen were at last getting their eyes open to the necessity of these local officers. Gentlemen had heretofore stoutly refused to allow that there was a necessity for these "ornaments" to be stuck up about the county. Give us a good strong superior court, said they, and that will be sufficient to do all our local business. Yet they had gone on and made other county judges; and not yet satisfied, they throw in a proposition to elect two more of these common pleas judges to be called "officers." He believed there was a necessity for these local officers, but he would not smuggle them into the constitution in such a manner that the people would be misled with regard to the courts which we are to give them. He could not vote for this proposition under the present circumstances, because he did not believe the present system could be so patched up as to render it acceptable to the people. The supreme court must be cut down to twelve or fifteen judges in the first place, and then the inferior

courts might be organized with reference to this diminution of judicial force.

Mr. BERGEN moved the previous question, but withdrew it at the request of several gentlemen.

Mr. CHATFIELD moved to strike out the last clause, and insert, "who shall possess the power and discharge the duties of a justice of the supreme court or a judge at chambers."

Mr. ANGEL said allusion had been made to a matter which had been dragged into this debate a few days ago by the gentleman from Cattaraugus (Mr. CROOKER) who recited language which he said had been used by two side judges in a locality which "the gentleman from Allegany" could fix—thereby creating the impression that such a scene had occurred in the county of Allegany at some recent day. Now he should be inexcusable if he allowed such an injurious reflection to operate to the disadvantage of the very respectable judges of that county. He would not deny that some such scene was said to have occurred, but it was merely a "tradition" of something which if it occurred at all, occurred in the early history and settlement of that county—when good judges were not so easily to be had as at present. The gentleman from Cattaraugus knew the judges to whom the language was attributed, and he knew that they had left respectable families who would read these reminiscences with great pain. The gentleman knew that one of these judges came from Vermont in poverty, and by his industry obtained a competency. The other rose so high in the estimation of the district around him, as to obtain a seat in the state Senate, and the gentleman from Cattaraugus voted for him at that election. That senator attended faithfully to his duties through his entire term.—Mr. A. next alluded to the ungenerous remark of the gentleman from Dutchess, (Mr. TALLMADGE,) on a subsequent occasion, who intimated that the judges of that county were under the influence of King Alcohol.

Mr. JORDAN objected to these propositions, which came here without having had the consideration of a committee. He moved the following substitute for the whole section:—

§ — The legislature may provide for the election of county commissioners, not exceeding two in any county, with powers to perform the duties of the justice of the supreme court or county judge at chambers, and to discharge the duties of a county judge and surrogate in case of the absence or inability of such judge or surrogate and in cases of a vacancy in said office.

Mr. CHATFIELD withdrew his proposition, leaving Mr. JORDAN's as the pending amendment.

Mr. TOWNSEND moved the following as an amendment of the substitute:—

"After 'may,' in the first line, insert 'confer upon justices of the peace special judicial powers, to be exercised in the absence or inability of the county judge or surrogate'"

Mr. BERGEN moved the previous question, and it was seconded—33 to 1—no quorum. The vote was again taken, and stood 56 to 11. The main question was ordered to be now put, and on the demand of Mr. TOWNSEND, the yeas and nays were taken on his amendment, and were—yeas 13, nays 71.

Mr. JORDAN'S proposition was next in order, and there were yeas 44, noes 46.

Mr. LOOMIS' proposition was then adopted yeas 51, noes 38.

Mr. FORSYTH moved a reconsideration of this vote—Table.

Mr. RICHMOND moved a reconsideration of the vote taken last night upon the proposition of Mr. LOOMIS, in relation to the taxation of suitors in courts of law. Without some such proposition, Mr. R. believed the judiciary system would fail to receive the ratification of the people.

Mr. BASCOM hoped the proposition would be adopted upon a reconsideration, and that it would not be thrown out merely because it appeared to be a legislative provision. There was much force in the argument that the poor man, if he had any property, would be taxed for a great amount of the litigation in the higher courts.

Mr. CHATFIELD contended that it was wrong to call the justices' courts the courts of the poor. He also went on to oppose legislation in a constitution.

Mr. RICHMOND replied and contended that the gentleman had steadily voted to put matter in the constitution which was legitimately the business of legislation; but whenever it was desired to put any thing in the constitution to protect the poor from being ridden down, the gentleman from Otsego exclaimed, "Oh, that's legislation." He hoped some provision would be made by which those litigious people who were so fond of lawing, should be made to pay some proportionate part of the expenses of our courts.

Mr. W. TAYLOR urged a reconsideration.

Mr. RHOADES opposed the reconsideration, because this was the business of legislation.

Mr. KIRKLAND approved the proposition to establish these local tribunals, and he thought those who used them should pay for them. He hoped the reconsideration would be agreed to, because he believed it involved a principle which should be made to appear upon the face of the constitution. The Convention had provided a large judicial force, whose salaries were to be paid out of the county and state treasuries, and taking away the principle of fees and perquisites. It appeared to him that the people should be relieved from the payment of the entire amount of the large sums which must be paid for the salaries of judges. The mode proposed, by which those who resorted to the courts for their own individual purpose, should be made to bear an equitable proportion of the expenses of those courts, he regarded as a proper one to afford that relief. The legislature had certainly the power to make this provision, but we had no security that they would ever exercise that power. They had never done so heretofore, and he was desirous that this matter should be settled by a fixed constitutional provision.

Mr. SIMMONS thought the Convention had better not bother its head with this proposition, but leave it to the legislature.

Mr. LOOMIS defended the proposition. He thought it would secure much popular favor for the Convention itself.

Mr. MURPHY hoped the Convention would adhere to its vote of yesterday.

The previous question was then moved and seconded and the main question ordered.

Mr. RICHMOND called for the yeas and nays and there were yeas 49, nays 43. So the vote was reconsidered.

Mr. BASCOM moved to add the words "or sum recorded," after the word "claims."

Mr. PATTERSON said this amendment would fix the payment on the suitor and not on the man whose refusal to pay his just debt had rendered a suit necessary.

Mr. R. CAMPBELL moved the previous question which was seconded—46 to 28, and the main question on the amendment of Mr. BASCOM was put and negatived.

Mr. RICHMOND called for the yeas and nays on the adoption of the section, and there were yeas 41, nays 53. So Mr. Loomis's proposition was again negatived.

Mr. O'CONOR desired to offer a section to provide that "the legislature may authorize the judgment, decrees or decisions of any local inferior court established in a city, to be removed for review directly into the court of appeals." He said if a party litigant in the superior court of New York—where the judges of high character presided—desired to obtain the decision of the court of last resort, the case had to be carried through an intermediate court, where two or three years might be spent in obtaining the judgment of the supreme court judges—a local court in fact—before the cases could be carried to the court of last resort. To obviate this he had offered his amendment.

Mr. WATERBURY said if this privilege should be given to the New York superior court it should also be given to the one-horse cabinet of the counties.

Mr. VAN SCHOONHOVEN thought there was much force in the suggestion of the gentleman from Delaware. There was as much propriety in authorizing the transfer of a cause from a county court as from the superior court of New York.

Mr. JORDAN suggested the addition of the words "of original civil jurisdiction" to meet the objections. He thought the local courts of the city of New York would stand in the position of the supreme court in the country and that they should have the right to appeal from the court in banc to the court of appeals.

Mr. O'CONOR accepted Mr. JORDAN's amendment.

Mr. MURPHY suggested an amendment to add "concurrently with the supreme court" illustrating his amendment by reference to an inferior court in Brooklyn.

Mr. O'CONOR had no objection to including county courts if he had control over the subject, and if it would not endanger the proposition.—He had no idea that the legislature would allow a direct appeal from petty courts such as the municipal court of Brooklyn, or the marine court of New York which was held by three justices of the peace; and therefore he desired to vest a discretion in the legislature in this matter.

Mr. HARRIS tho't some such provision as this was necessary and just to the city of N. York,

though personally he felt little interest in it. A large amount of business must be done there in the inferior courts, and it would be unjust to compel them to go through the supreme court, and thus encounter the expense and delay of one appeal, in order to get into the court of appeals.

Mr. HOFFMAN asked what proportion of the causes that now went into the supreme court from the local courts in the city stopped there?

Mr. O'CONOR (to whom this enquiry was directed) said he could only judge from his own private practice. All or nearly all his causes that went from the inferior court into the supreme court, went into the court of errors—the supreme court being a sort of stepping stone to the court of errors. Probably it was not so with the common pleas—most of the judgments carried up from that court to the supreme court, stopped there.

Mr. SIMMONS saw no objection to the proposition of the gentleman from New-York, and hoped it would be adopted.

Mr. VAN SCHOONHOVEN moved to strike out the words, "established in a city."

Mr. CROOKER remarked that if the gentleman supposed he was accommodating the country by this, he was mistaken. The country did not want to come here to Albany to try their little appeals.

Mr. VAN SCHOONHOVEN said there was no harm in giving them the power to appeal directly from the county court to the court of appeals.

Mr. WATERBURY wanted no distinction between the city and country courts.

Mr. MORRIS replied that if this new supreme court was adequate to all the business of the city, the city would need no local courts, and then they would be on a footing with the country, as there would be but one appeal. But as the Convention had refused to New-York any additional local force in the supreme court, they would be driven into the local courts first, and to get to the court of appeals must take two strides, when the country would take but one, as the force provided for them would do all their business.

Mr. VAN SCHOONHOVEN varied his amendment so as to add the words "and from county courts"—and

The amendment was lost, without a division.

The section proposed by Mr. O'CONOR was then adopted, yeas 49, noes 21.

Mr. TOWNSEND offered the following:—

§ — Remedies existing at the period when a contract is made, shall not be disturbed or impaired by subsequent legislation.

Mr. T. explained his object in offering this, referring to the exemption law of 1842, for illustration of the evil effects of the contrary principle. He would guard against a change of remedies hereafter, having this retrospective effect.

Mr. SIMMONS said the principle of the amendment was worthy of consideration, though in point of form it might be improved. The U. S. Constitution attempted to establish the entire principle under a prohibition of ex post facto laws, and laws impairing the obligation of contracts. But owing to the construction put upon it by the courts at the onset, it had never come

up to the end intended—and the states were left to pass retrospective laws, if they did not violate contracts—as if right did not deserve protection as well as contracts. We had had many cases of retrospective legislation which the courts had broken in upon, but it would be well to have some such thing in the constitution, though it would more properly come in under the head of private rights.

Mr. TOWNSEND was aware of that, but he was fearful we should never reach that article.

Mr. TALLMADGE said the committee of which he was chairman, did propose a section going the full length against retrospective laws, but the Convention voted it down.

Mr. LOOMIS remarked that this word "remedies" had a broader signification than the mover probably intended. It covered the proceedings and practice of the courts, and to pass this in the shape in which it was, would fix and fasten on us these forms of practice.

Mr. TOWNSEND proposed to say statutory remedies.

Mr. LOOMIS replied that that would not help it—and went on to point out the distinction between remedy and right, and to urge that it would be the height of imprudence, if we intended even to see a change in the present forms of legal practice, to adopt the amendment in the shape in which it was.

Mr. SIMMONS said the gentleman confounded two things together that were widely different. He was surprised that he should do it after having had an opportunity to read his speech. [Laughter.] Blackstone also made the distinction, and that made him marvel more. A remedy was a right. The legal proceeding was another thing. He agreed that the section was ambiguous—but he was against abolishing remedies, in the sense in which he understood the word. The supreme court of the U. S. he found were travelling back, and had recently decided unanimously that a state legislature had no power to do it. And they had applied this doctrine to Illinois, Ohio, and other half civilized states. [Laughter.]

Mr. LOOMIS had not read the gentleman's speech, [laughter] but he had laid it aside to read when he should have more leisure. But he knew the event had made the distinction he took between remedies and rights—and the distinction was as he understood.

Mr. JORDAN said the courts had decided that the remedy might be varied, but not so varied as to take away the right. The proposition was that the remedy existing at the time the contract was made, shall not be varied—but it allowed that to be done prospectively, as to future contracts. The proposition was certainly a proper and harmless one—and he regarded it as important to place some such restrictions on the legislature, which had shown a disposition materially to impair the rights of parties by varying the remedies retrospectively. He instanced several cases where the legislature and the courts had recognized a principle which if carried out to their extreme application would operate effectually to destroy rights.

Mr. BASCOM remarked that some contracts in this country had been in existence a great while, and it might be well to inquire what the

existing remedies where when they were entered into. He moved to refer this section to the committee on land tenures—saying that he trusted the reference would quicken the action of that committee.

Mr. JORDAN said there could not be a more unsuitable committee, and he could not believe the gentleman from Seneca was serious in proposing that reference, especially in the absence of the chairman. If the gentleman meant to give the section the go-by, as a thing unworthy of consideration, he trusted others would not contribute to put it in that position. We were not all debtors in this community, and some of us entertained, and he hoped to God always would entertain, a disposition to hold men rigidly to the payment of their debts, and to prevent the legislature from virtually taking away the right of a creditor to collect his honest debts, or taking away three-fourths of his debts by varying the remedy. He had no objection to a select committee, and that the gentleman from Seneca should be chairman of it.

The Convention here took a recess.

AFTERNOON SESSION.

Mr. BASCOM'S motion to refer was lost.

Mr. O'CONOR moved a reference to the committee on the rights and privileges. Carried.

Mr. TOWNSEND moved a reconsideration of that vote, and that the motion lie on the table. Table.

Mr. WATERBURY moved the following section :—

§ —. Every qualified elector shall be eligible to every judicial officer

On looking over the statutes, Mr. W. found that the legislature had made it necessary to be a counsellor-at-law in order to be judge. In some counties, when a judge was necessary to be appointed, there was no timber to be found to make one out of in the profession. He supposed it was not necessary for him to talk about this matter further than to show what the facts were at present. He demanded the ayes and noes.

Mr. BURR did not think the proposition of his colleague should be laughed down. The object of it was to prevent the legislature from prescribing qualifications like those which had been alluded to. He thought they should be restrained from doing this.

Mr. STRONG : Will the gentleman accept of a very small amendment—to except lawyers?

Mr. O'CONOR moved to strike out "judicial."

Mr. DANFORTH thought we had better see, before acting on this, whether we should extend the right of suffrage to women and children and colored people. He moved to lay the section on the table.

Mr. WATERBURY assented to that course.

TRANSFER OF BUSINESS.

The first section of Mr. O'CONOR'S report, made last evening, from the judiciary committee, upon the subject of transferring unfinished judicial business to the new courts, was read as follows :—

§ 1 The legislature, at its first session after the adoption of this constitution, shall provide for the or-

ganization of the court of appeals, and for transferring to it the business pending in the court for the correction of errors; and for the allowance of writs of error and appeals, to the court of appeals, from the judgments and decrees of the present court of chancery and supreme court, and of the courts that may be organized under this constitution.

Mr. CHATFIELD offered the following substitute for the entire report:—

§ — The legislature shall, at the session next after the adoption of this constitution, provide by law for finishing the business and suits which may be pending in the several courts in this article abolished when this constitution shall take effect; and for that purpose may provide at what time the justices of the supreme court first elected shall enter upon the duties of their offices; but the constitutional term of said justices shall be deemed to commence on the first day of January in the year 1848.

Mr. C. said his object was to turn this matter over to the legislature, rather than to go into all these details here.

Mr. WORDEN said perhaps a short section like that might supersede all these sections.— But he thought it should go further and provide for continuing the old courts in operation up to a certain time—say a year—that the mass of business now pending might be disposed of by the old courts and the new. It was defective also in that it did not provide for transferring business from the old to the new courts.

Mr. LOOMIS pointed out some difficulties in the substitute. If the legislature was to provide for finishing the pending business, they must employ some court or courts—for they could not institute a commission to do it—and how much more convenient to continue these courts for a certain period. The expense of a double force for a short time, to dispose of the present accumulation of business, was not to be regarded in view of the importance to suitors of having their causes decided.

Mr. CHATFIELD believed nevertheless that his proposition would accomplish all he designed, and all the useful purposes of this long report. It gave the legislature full and ample power to make the transfer of the unfinished business.

Mr. WORDEN enquired of Mr. C. if there should not be some provision made for the selection of the judges of the court of appeals, who are to be taken from those of the supreme court having the shortest time to serve?

Mr. CHATFIELD replied that the legislature had of course that power. And he proposed to give them power to provide for transferring business and doing up the old business. But he did not believe it was desirable to continue the old courts for a year or two. If the committee's report was adopted, the new court of appeals would have nothing to do for that period, and yet would be under pay. Nor would the new supreme court have any thing to do in banc for six months.

Mr. HOFFMAN remarked that one difficulty with this proposition was that there were suits finished in the old courts on which no execution had issued—and that without a transfer, the legislature could not authorize an execution on the record in another court. And unless provision was made for continuing the functions of the old court for a short time, in relation to causes they may have heard but not decided, the parties must be heard again by the new court.

Mr. CHATFIELD'S proposition was rejected, 28 to 38.

Mr. WORDEN moved to strike out all after the first section, and insert the three other sections—which he said had been drawn up by Mr. O'CONOR, with a view of condensing the remaining sections, and embracing every thing in them.

The first section was adopted, when

Mr. WORDEN sent up the following, as a substitute for the residue:—

§ — The court of appeals, and the county courts hereby established, shall be organized, and the judges thereof shall respectively enter upon the duties of their offices, on the first Monday of July, 1847. The judges of the court of appeals, justices of the supreme court and county judges, shall be elected at such times as may be prescribed by law, but the first election of such judges and justices, shall be held before the first day of July, 1847: and their terms of office, as limited by this constitution, shall be deemed to commence on the first day of January, 1848.

§ — The present supreme court and court of chancery, and the present offices of chancellor and justices of the supreme court, shall continue under their existing organization, until the first Monday of July, 1848. The supreme court hereby established shall not be organized until the last named day; but the justices thereof shall perform such judicial duties as may be prescribed by law in the present supreme court or chancery, prior to that day.

§ — Provision shall be made by law for the transfer of suits and proceedings, from courts now existing, to the courts to be organized under this constitution, at such time or times and in such manner as may be proper, and for assigning the same to the proper districts.

Mr. O'CONOR suggested that the three last sections of the original report ought to be retained.

Mr. WORDEN assented and varied his motion accordingly.

Mr. RICHMOND thought the substitute did not correspond with the sections proposed to be struck out. If he understood it, it kept up the old courts one year longer.

Mr. O'CONOR: One year shorter.

Mr. RICHMOND then said it was so much the better—but his objection was that we should have two complete systems under pay for a year. He understood the gentleman from Essex to say the other day, that in three months they would work off all their business.

Mr. SIMMONS explained that the remark of the chancellor, which he had given a few days since, related to the causes argued in his court, which was but a small part of the business pending. One of the judges of the supreme court had informed him lately that it would require one year to dispose of the unfinished business in the court, if there should no more come in; and he (Mr. S.) supposed the court of chancery would require about as much time.

Mr. LOOMIS said the proposition of the gentleman from Ontario was new to him, though he found it printed here in due form like our other documents. He was the mover of the original proposition on which the report of the judiciary committee was based, and that committee adopted substantially his proposition—the temporary chairman being left to draw it up—and yet, here was a new proposition, said to have been drawn up by the temporary chairman, never submitted to the committee, but radically different from that which they had adopted. Mr. L. went on to point out wherein

it differed from the original report—among other things saying that it deferred the organization of the new supreme court from January 1848 to July 1848. He supposed the report agreed on by the committee, was to be sustained by them substantially. For one, he preferred the proposition of the gentleman from Otsego to this new one. He had rather see the new courts organized in July 1847, than July 1848, if practicable, and to have the old courts go out of existence then. But since this new proposition had been offered, he had a substitute to propose which he would make. Mr. L. read as follows:

§ — The legislature shall, at its first session after the adoption of this constitution, provide for the transfer of suits and proceedings in the courts hereby abolished to the courts hereby ordained. The legislature shall also provide for the organization of the supreme court before the first day of January, 1848, and for the hearing and decision before the said supreme court hereby granted, of any writs and proceedings pending in the present supreme court and in the court of chancery in aid of the chancellor and justices of the supreme court.

The term of office of the justices of the supreme court and of the judges of the court of appeals and of county judges and surrogates, as limited by this constitution, shall commence on the first day of January, 1848.

Mr. WORDEN said these sections were drawn by the gentleman from New York (Mr. O'Connor) without consultation with him with a view to condense the three sections following the first and to vary them so as not to continue the old courts so long. The substitute provided that the present courts should continue as they now were until July 1848, and that meanwhile the new court should be organized and come in aid of the old supreme court—so that together they might work off the old business.

Mr. O'CONOR confessed to the impeachment of having drawn up the original report and this substitute for a part of it; but he added that the former was submitted to the committee and altered in several respects, and reported as they had amended it, he objected to no alteration. As to the substitute for the 2d, 3d and 4th sections submitted by Mr. WORDEN, he said he drew that at the request of several members who thought the original sections too long—but he had no feeling or taste about either of them, having acted only the part of reducing to shape propositions agreed on in one case, and in the other endeavoring to condense a part of it to avoid objections made to its prolixity. Mr. O'C. went on to explain the several propositions and in what respect they differ from each other, leaving it entirely to the Convention to choose between them.

Mr. SIMMONS said he had not seen this substitute until a moment ago; but it embodied the idea he had entertained—that the old business should continue in the old courts as long as should be necessary to dispose of it or the mass of it.

He would not dismiss the judges unceremoniously—believing they deserved better of us than to be told abruptly to go out of office, without so much as making a bow to them. He did not believe they would eke out the business for the purpose of remaining in office a few months longer—but they would go on with the industry and ability for which they were distinguished, to work off the business which had accumulated on their hands.

Mr. JORDAN said he had no right to be surprised at this substitute from the gentleman from Ontario; but he thought he had some occasion to be surprised at its coming from him with the declaration that it was the same thing substantially as the original report, or that part of it for which it was a substitute. If the gentleman from Essex had never seen it before, Mr. JORDAN had. It was essentially the proposition submitted to the judiciary committee last evening and voted down. Mr. J. went on at some length to point out the difference between it and the original proposition, which he preferred as contemplating putting the new courts in operation as soon as possible after the election of judges, and leaving the old judges to work off the accumulated business on their hands.

MESSRS. HARRIS, BASCOM, HOFFMAN and WORDEN continued the debate—the latter withdrawing his proposition.

Mr. LOOMIS then withdrew his.

Mr. KIRKLAND moved to adjourn. Lost, 38 to 39.

Mr. CHATFIELD offered the following as a substitute for the whole report:

§ — The legislature, at its first session after the adoption of this constitution, shall, by law, make provision for organizing the several courts in this Article mentioned, and for transferring the suits, business and proceedings which shall be pending in the several courts hereby abolished to the appropriate courts herein established, and for carrying judgment, orders and decrees which may remain in the said courts so abolished, into full effect. The term of office of the several judicial officers first elected under this constitution shall commence on the first day of January, 1848; but the justices of the supreme court shall perform such judicial duties as may be prescribed by law in aid of the supreme court and court of chancery, prior to that day.

In order to act upon this it was necessary to reconsider the vote upon the first section.

Mr. KIRKLAND objected.

Mr. CHATFIELD moved a reconsideration, to lie on the table, and also offered the above as a substitute for the remainder of the report.—He proceeded to explain his proposition.

Mr. VAN SCHOONHOVEN suggested a reconsideration of all the propositions to the judiciary committee.

Mr. A. WRIGHT moved to adjourn. Agreed to.

Adj. to 8 1-2 o'clock to-morrow morning.

THURSDAY, SEPTEMBER 10.

Prayer by the Rev. Mr. VAN RENSSELAER.

Mr. ALLEN offered a resolution, which was adopted, respectfully declining the invitation of

the New-York State Agricultural Society to attend the Fair at Auburn.

Mr. MANN moved the following:

Resolved, That on and after Monday next, this Convention will hold evening sessions, commencing at 7 o'clock.

Mr. HOFFMAN moved to lay the resolution on the table. Carried.

CLOSE OF THE DEBATE ON THE JUDICIARY.

Mr. RUSSELL called for the consideration of Mr. Cook's resolution which was laid on the table on Tuesday, to terminate all debate on the judiciary article at 12 o'clock.

Mr. CAMBRELENG hoped the resolution would be adopted. In the judiciary committee and the Convention this subject had been debated for twelve weeks. Nearly three months had been devoted to it, and he thought it time to go to voting and cease debating. He was not one of the monitors of this Convention, but his opinion was that there had been time enough devoted to discussion. He differed from the gentleman from Albany (Mr. HARRIS) who said that when one subject—that which had engaged the attention of the committee, of which Mr. ANGEL was chairman—was disposed of, (besides the financial article,) he should be ready to go home. Mr. C. thought there were others that must be disposed of before they could go home with the assurance that they had done all their duty.

The resolution was taken up for consideration.

Mr. KIRKLAND moved to strike out "twelve" and insert, "six this afternoon."

Mr. PATTERSON opposed the amendment. He thought four weeks and a half were long enough for the talking part of the business. He thought speaking should cease at twelve o'clock, but the voting might go on longer.

Mr. TALLMADGE differed from gentlemen on this subject. It should be borne in mind that the first six weeks of the session were consumed in the reception and consideration of abstract propositions that were of no consequence; but now when great constitutional principles of government were under consideration, he thought some latitude should be allowed. He hoped it would be left to the discretion of gentlemen and to the decision of the chair, keeping members to the question.

Mr. DODD moved the previous question, and it was seconded—55 to 11. The main question was ordered, and Mr. KIRKLAND's amendment was negatived.

The original resolution was then adopted.

REVISION OF THE AMENDMENTS.

Mr. CHATFIELD submitted the following, and it was laid on the table by consent:

Resolved, That a committee of five be appointed to arrange and reduce to form the several amendments of the constitution adopted by this Convention and to engraft such amendments upon the constitution and to put the whole body of the constitution in proper form to be submitted to the people.

EX POST FACTO LAWS, &c.

Mr. TALLMADGE from the eleventh standing committee, made the following report on propositions which had been committed to it, and it was referred to the committee of the whole, and ordered to be printed:

No ex post facto law either civil or criminal shall be passed; nor any law impairing the obligation of a contract; or the remedy existing at the time such contract shall be made.

CONCILIATION COURTS.

Mr. MILLER moved a reconsideration of the vote taken a day or two since on Mr. BAKER's proposition for conciliation courts. He thought such courts would be of great utility. There was a demand for them through the state, and he was of opinion that they would not lead to any increased expenditures by the creation of salaried officers, for he was satisfied that men of intelligence would be found in every town to undertake the office of conciliators free of expense. By such courts many if not two-thirds of the cases involving sums less than \$20 could be speedily and economically settled.

Mr. BURR hoped the motion for a reconsideration would be carried, and that something would be inserted in the constitution that shall authorize the legislature to establish some such tribunals, for he was not wedded to any particular form.

Mr. W. TAYLOR moved the previous question, and there was a second.

Mr. WATERBURY called for the yeas and nays on the motion to reconsider. He wanted the opponents of conciliation courts to be put on record.

They were ordered, and on the main question there were yeas 64, noes 22, as follows:

AYES—Messrs Allen, Angel, Archer, Ayrault, Baker, Bascom, Bergen, Brayton, Bruce, Bull, Burr, Cambreling, R. Campbell, jr., Chamberlain, Clark, Danforth, Dodd, Dubois, Graum, Green, Harrison, Hart, Hotchkiss, A. Huntington, E. Huntington, Kemble, Kinsley, Kirkland, Mann, McNeil, McVitt, Maxwell, Miller, Munro, Nellis, Nicholas, Patterson, President, Rhoades, Russell, St. John, Salisbury, Sears, Shaver, Shaw Sheldon, W. H. Spencer, Stanton, Stephens, Stow, Strong, Taff, Tallmadge, J. J. Taylor, W. Taylor, Townsend, Tutill, Warren, Waterbury, White, Willard, Worden, Yawger, Young—64.

NOES—Messrs. F. F. Backus, Chatfield, Cook, Dana, Gebhard, Hawley, Hoffman, Hunter, Jordan, Loomis, Murphy, O'Connor, Powers, Kiker, Shepard, Simmons, E. S. Sencer, Stetson, Wood, A. Wright W. B. Wright, Youngs—22.

The provision then took its place with others on the table, to be considered in its order.

THE JUDICIARY.

The Convention then resumed the consideration of the question pending at the adjournment last night on the supplemental report made by Mr. O'CONOR.

Mr. CHATFIELD moved to reconsider the vote by which the first section of the supplementary report was adopted.

Mr. JORDAN desired to present his reasons why that section should not be reconsidered—He had certain amended sections which he wished to present to the Convention before the termination of debate and the application of the previous question; and, perhaps, this was the best opportunity he should have to do that. His amendments were somewhat numerous, but they preserved the precise meaning of the section, simply reducing the verbiage about one-third.—Mr. J. then moved his amendments, so as to make the report read as follows:

§ 1. The legislature, at its first session after the adoption of this constitution, shall provide for the organization of the court of appeals, and for transferring to it the business pending in the court for the correction of errors, and for the allowance of writs of error and appeals, to the court of appeals, from the judgments and decrees of the present court of chance-

ry and supreme court, and of the courts that may be organized under this constitution.

§ 2. The first election of judges of the court of appeals, the justices of the supreme court and judges of county courts shall take place at such time as may be prescribed by law, between the first Tuesday of May, and the second Tuesday of June, 1847. The said courts shall respectively organize and enter upon their duties on the first Monday of July next thereafter; but the term of office of said judges and justices as declared by this constitution, shall be deemed to commence on the first day of January, 1848.

§ 3. On the first Monday of July, 1847, jurisdiction of all suits and proceedings then pending in the present supreme court and court of chancery; and all suits and proceedings originally commenced and then pending in any court of common pleas (except in the city and county of New-York) shall become vested in the supreme court hereby established.

§ 4. But the chancellor and present supreme court shall respectively have power to hear and determine any of such suits and proceedings then ready to be noticed for hearing, and shall for their services therein be entitled to the present rates of compensation until the 1st day of July, 1849, or until all such suits and proceedings shall be sooner heard and determined.—And the supreme court hereby established shall also have power to hear and determine such of said suits and proceedings as may be prescribed by law.

§ 5. In case any vacancy shall occur in the office of chancellor or justice of the present supreme court previous to the 1st day of July, 1849, the governor may nominate and by and with the advice and consent of the senate appoint a proper person to fill such vacancy. Any judge of the court of appeals or justice of the supreme court elected under this article may receive and hold such appointment.

§ 6. The offices of chancellor, justices of the supreme court, (except as herein otherwise provided,) circuit and county judges, vice chancellors, assistant vice chancellors, supreme court commissioners and masters and examiners in chancery, as now existing, shall expire on the first Monday in July, 1847.

§ 7. The chancellor, the justices of the supreme court and the circuit judges, are hereby declared to be severally eligible to any office at the first election under this constitution.

Mr. O'CONOR, as he drew up the supplemental report, said it might be necessary that he should express his concurrence in these amendments. He fully concurred, and hoped they would be adopted.

Mr. MANN was opposed to the report before it was amended and he was opposed to it now, for he thought it was lengthened instead of shortened.

Mr. JORDAN assured the gentleman he was mistaken. He had taken the trouble to count the words and he found he had reduced it from 565 to 341 words.

Mr. MANN was opposed to it for another reason. It permitted the present judicial officers to remain to dispose of the arrears of business, and they might hold on for two or three years. He thought these constitutional provisions should be short and explicit.

Mr. RUSSELL thought, having adopted one section, we should go on and act upon the rest, without returning back to sections disposed of.

Mr. O'CONOR hoped the reconsideration would be carried. He went into some explanations as to the course to be hereafter pursued.

Mr. BURR would vote for the reconsideration were it not for the "welding" of the old upon the new system, which had been spoken of. He thought the "lap" was too long, for it extended over two years, whereas another proposition only contemplated six months.

Mr. BASCOM thought gentlemen could accomplish their purpose by moving to strike out

one year, and with that amendment, which could be made hereafter, the reconsideration would be unnecessary.

Mr. LOOMIS having made some remarks, Mr. STRONG moved the previous question, and it was seconded—63 to 4. The main question was ordered, and the motion to reconsider was not agreed to—ayes 25, noes 65.

Mr. JORDAN sent up the section as he had amended it, as a substitute for the second section as reported from the committee.

Mr. CHATFIELD moved to amend by striking, as follows: "The said courts shall respectively organize and enter upon their duties on the first Monday of July next thereafter"

Mr. LOOMIS opposed the amendment; the objection of the gentleman from Otsego was premature.

Mr. O'CONOR concurred with the gentleman from Herkimer. The gentleman from Otsego had entirely misapprehended the section. Mr. O'C. explained the object of the section.

Mr. MILLER moved the previous question, and it was seconded—56 in the affirmative. The main question was ordered.

The motion to strike out was negatived—ayes 23, noes 55.

Mr. DANA asked consent to insert "April" for "May," and it was assented to.

The section, as amended, was agreed to.

The third section was read.

Mr. JORDAN moved his amended section as a substitute.

Mr. BAKER moved the previous question, and it was seconded by 61 votes. The main question was ordered, the substitute adopted, and the section as amended was agreed to.

The fourth section was read.

Mr. JORDAN'S amended section was submitted as a substitute.

Mr. MANN moved to strike out "nine" and insert "eight" to diminish the period of office of the present judges as proposed, one year.

Mr. KIRKLAND said there were 2 one causes ready for trial. At the term of the chancellor, just closed, but one cause had been heard in the fourth class cases. It would thus be seen that the courts would start with a large amount of business unless they were thus to have the aid of the present judicial force. He hoped the new system would not be borne down by the present arrears; but that it would have a fair chance to prove its efficiency.

Mr. STRONG advocated the amendment.—He was willing to take the statement they had heard repeated so often from the judiciary committee, that the thirty-two judges would be sufficient for every purpose.

Mr. JORDAN explained. The terms of the old judges would cease as soon as they had finished their business, whether it were one month or one year. Objections were made to the new court if it could not dispose of both old and new business. Mr. J. should be opposed to the new court if it could, for it would thereby afford proof that it was too strong.

Mr. RICHMOND thought the argument of the gentleman would apply to the court of errors, and they then should have a little more pickings.

Mr. JORDAN defended his proposition which

he explained to be a plan to prevent the new courts being clogged up with these accumulated arrears of years; and if the judges could not be trusted to do it without a suspicion that they would knavishly protract the time, for the sake of the perquisites of office, they should not be trusted at all, whether with or without restrictions.

Mr. TALLMADGE thought the 1st January, 1848, was allowing time enough.

The motion to strike out "nine" and insert "eight" was agreed to—ayes 54, noes 40:

Mr. CHATFIELD moved to amend by striking out from the word "respectively," in the 4th section, and insert as follows:—

"Have power to determine any of such suits or proceedings as may have been argued in said courts respectively; and for that purpose shall be entitled to their present rate of compensation, after the first day of January, 1848, until all such suits as shall have been previously determined; but such compensation shall not continue after the first day of July, 1848."

Mr. LOOMIS said that proposition was unnecessary.

Mr. CHATFIELD said the Convention by the amendment just adopted, had determined that the term of the present judges should terminate on or before the 8th day of July, 1848. They should therefore not be allowed to hear arguments after the first day of January, that they might have six months to decide on those argued.

Mr. O'CONOR had a bad opinion of the capacity of this new engine to discharge its duties, but he thought he saw a combination among the friends and enemies of it to throw upon it a great amount of business, which would have the effect of breaking it down. The motive might not be the same, but such would be the result. He ranked himself amongst its enemies, because he was satisfied of its incapacity, but fairness would require that it should be fairly tried and not overwhelmed with the old business. He was opposed to the amendment.

The amendment was negatived.

Mr. LOOMIS moved to amend the amendment of the gentleman from Columbia, thus:—

"The legislature may confer upon the present chancellor and justices of the supreme court, or in case either of these offices shall become vacant, then upon such other persons as may be designated by the Governor in their respective places, power to hear and determine any of such suits and proceedings ready to be noticed for hearing on the 1st Monday of July, 1847, and they shall while so employed be entitled to their present rates of compensation. Such employment shall not extend beyond 1st of July, 1848."

Mr. L. explained the difference between the amendment of the gentleman from Columbia and his own.

Mr. O'CONOR also explained.

Mr. MILLER moved the previous question and there was a second, &c.

Mr. HOTCHKISS called for the yeas and nays on the amendment, and there were yeas 12, nays 75.

Mr. JORDAN'S amendment was adopted and the section as amended agreed to.

The fifth section was next read and also Mr. JORDAN'S substitute, and the figures "1849" were altered to "1848" to conform to a previous amendment.

Mr. LOOMIS moved to strike out the last sentence.

Mr. O'CONOR explained the necessity of the words proposed to be stricken out.

The amendment was lost—27 only voting in the affirmative.

Mr. JORDAN'S substitute was agreed to, and the section as amended—a motion of reconsideration being laid on the table.

The sixth section was read.

Mr. BAKER moved to amend the amendment of Mr. JORDAN by adding "supreme court commissioners" after the words "vice chancellor." Agreed to.

Mr. JORDAN'S amendment was adopted as amended. And the section and likewise the seventh were agreed to.

Mr. MILLER called for the question on the section to establish conciliation courts, the vote rejecting which was this morning reconsidered, as follows:—

§ —. There may be established in any county one or more tribunals of conciliation, each to be composed of not exceeding three conciliators, to be elected as the legislature may direct. The legislature may afford parties inducements to submit their differences to the conciliation of such tribunals, by regulations as to costs in other courts.

Mr. BAKER desired to amend so as to obviate the objections which heretofore caused its rejection. He was proceeding to give his reasons, but was called to order, the hour of 12 having arrived. He then moved his amendment and it was adopted, 54 to 37.

Mr. ST. JOHN moved to strike out the section and insert a simple provision thus, "conciliation courts may be established with such powers, and duties as may be provided by law."

It was adopted 47 to 35.

Mr. JORDAN moved to strike out "courts," and insert "tribunals." Agreed to.

Mr. TAGGART moved to amend by adding the words of the next section, so as not to make the decision obligatory.

Mr. TALLMADGE said that was a motion to murder the proposition by the way side.

Mr. JORDAN moved to amend the amendment by adding "or subject them to any penalty or forfeiture." Lost, 41 to 49.

Mr. JORDAN asked if any thing provided a forfeiture or penalty on the parties, although the judgment was not binding.

The PRESIDENT replied in the negative.

The amendment of Mr. TAGGART was adopted, 66 voting in the affirmative.

So the entire section reads as follows:—

§ —. Tribunals of conciliation may be established with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters of difference and agree to abide the judgment or assent thereto, in the presence of the tribunal in such cases, as shall be prescribed by law.

Mr. CROOKER inquired if any appeal were allowed from the decision of these conciliators? [Cries of "oh no, it is unnecessary."] Mr. C. thought there should be preserved the right of appeal to a town meeting. [Laughter.]

Mr. RUSSELL moved to amend by adding "the magistrates of such tribunals shall be such justices of the peace as may be provided by law." Lost.

Mr. HAWLEY moved to amend by adding "the members of such tribunals shall receive no salary, fees or perquisites of office." Lost.

The section as amended was adopted—ayes 71, noes 22, as follows:—

AYES—Messrs. Allen, Angel, Archer, H. Backus, Baker, Bascom, Bergen, Bowdish, Brayton, Burr, Cambreleng, K. Campbell, jr., Chemberlin, Clark, Cornell, Crooker, Cuddeback, Dana, Dodd, Dubois, Flanders, Gebhard, Greene, Harris, Harrison, Hart, Hawley, Hotchkiss, A. Huntington, E. Huntington, Hutchinson, Kemble, Kernan, Kingsley, Kirkland, Mann, McNeil, McVitt, Marvin, Miller, Nicholas, Nicoll, Parish, Patterson, Perkins, Rhoades, Richmond, St. John, Salisbury, Sears, Shaver, Shaw, Sheldon, W. H. Spencer, Stanton, Stephens, Taft, Taggart, Tallmadge, W. Taylor, Townsend, Tutthill, Warren, Waterbury, White, Willard, Wood, Worden, Yawger, Young—71

NOES—Messrs. F. F. Backus, Bouck, Bull, Chatfield, Cook, Dorlon, Gardner, Graham, Hunter, Jordan, Loomis, Murphy, O'Connor, Porter, Powers, Russell, Sanford, E. Spencer, Vache, Ward, A. Wright, W. B. Wright—22.

Mr. JORDAN moved a re-consideration of the amendment which he offered (and which was rejected) to provide that no penalties or forfeitures shall be enforced against parties to compel submission to the decisions of these courts. If such a system were to be allowed it would be the worst kind of despotism.

Mr. STEPHENS hoped the question would be taken now and finally disposed of.

Mr. JORDAN preferred not to take the question now.

Mr. RICHMOND called for the question.

The PRESIDENT ruled that the question could not be taken now, unless by unanimous consent.

Messrs. JORDAN and O'CONOR objected—so the motion lies over.

Mr. TOWNSEND moved a reconsideration of the section in relation to conciliation courts—in order that the question might be finally settled.

Mr. JORDAN objected to that so long as his motion was pending to reconsider the vote rejecting his amendment—an amendment designed to prevent conciliators from subjecting parties to penalties and forfeitures unless they agreed to their judgments.

Mr. TOWNSEND then gave notice of a motion to reconsider the vote adopting the section alluded to. He desired to close up that question.

Mr. O'CONOR offered the following addition al section to the judiciary report:—

§.—The court of appeals shall have power on motion, to determine the venue of suits and proceedings depending in the supreme court.

Rejected, ayes 19, noes 72.

Mr. O'CONOR moved to reconsider.

Mr. LOOMIS offered the following section:—

§.—The legislature shall provide for the speedy publication of all state laws and of such judicial decisions as it may deem expedient, so as to render the same easy of acquisition by the people; and all laws and judicial decisions shall be free for publication by any person.

Mr. W. H. SPENCER moved to amend, so that a copy of all laws and decisions of a general nature should be deposited in each school district of the state. Lost.

The question being then on Mr. Loomis' proposition,

Mr. DANA rose to enquire whether, as this section related purely to the legislative department, it fell under the rule adopted this morning, closing debate on the judiciary article?

The PRESIDENT—(Mr. PATTERSON occupying the chair,) ruled that it did—as the rule embraced all matter connected therewith.

Mr. BASCOM suggested it was only intended to cover matter then connected therewith.—He did not want to see new proposition's poked in here, and members forced to a vote on them without debate.

Mr. JORDAN called for the ayes and noes on Mr. LOOMIS' proposition and it was adopted, as follows:—

AYES—Messrs. Allen, Archer, F. F. Backus, F. Backus, Baker, Bascom, Bergen, Bouck, Bowdish, Bruce, K. Campbell, jr., Clark, Cornell, Dana, Dodd, Dorlon, Dubois, Flanders, Gebhard, Graham, Harris, Harrison, Hoffman, Hotchkiss, Hunter, A. Huntington, Hutchinson, Hyde, Jordan, Kemble, Kernan, Loomis, Mann, O'Connor, Patterson, Powers, St. John, Salisbury, Sanford, Shaver, Shaw, Simmons, Smith, W. H. Spencer, Stanton, Stephens, Taft, Townsend, Tutthill, Warren, Waterbury, White, Wood, Worden, A. W. Wright, W. B. Wright, Yawger, Young—69

NOES—Messrs. Angel, Brayton, Bull, Burr, Cambreleng, Chatfield, Cook, Crooker, Cuddeback, Danforth, Gardner, Hart, Hawley, E. Huntington, Kirkland, McVitt, Marvin, Miller, Munro, Nicholas, Nicoll, Parish, President, Riker, Russell, Sears, E. Spencer, Taggart, Tallmadge, Vache, Ward, Youngs—32.

Mr. TAGGART offered the following sections:

§.—The legislature shall by law so regulate the practice and proceedings in all courts, that every party to any action or proceeding may have any remedy or relief to which he may be entitled in reference to the subject matter of such action or proceeding, either legally or equitably in the same action or proceeding without resorting to any other action.

Mr. JORDAN enquired whether this was debatable?

The PRESIDENT ruled that it was not.

Mr. JORDAN then enquired if the proposition was in order? If it was—then, after spending so much time in maturing this system, amendments might be thrown in here, and in the absence of all debate or explanation, might be adopted, that would completely overthrow the whole fabric which we had taken so much pains to erect. He insisted that the rule cutting off debate could not apply to propositions not pending when the rule was adopted.

The PRESIDENT directed the resolution alluded to, to be read, and, it having been read,

Mr. JORDAN reiterated his point of order—and in reply to a remark that Mr. LOOMIS' proposition was in the same position as this—said he thought that proposition was debatable, but the question was not then raised.

Mr. RUSSELL moved to lay on the table the proposition of Mr. TAGGART, and the point of order.

Mr. JORDAN said he had not yielded the floor. He asked for the decision of the chair on the point of order.

The PRESIDENT (Mr. PATTERSON) said upon the reading of the resolution, and examining it more critically, the Chair was of opinion that it applied only to propositions pending when it was adopted. And being a resolution restrictive of the freedom of debate, it should be construed liberally.

Mr. CHATFIELD appealed from this decision.

Mr. RUSSELL insisted on his motion to lay on the table as taking precedence of the appeal.

The motion prevailed.

Mr. MARVIN offered the following:—

The court of appeals shall have power to issue writs of habeas corpus, mandamus, prohibition quo warranto, informations in the nature of quo warranto, and other original remedial writs, and to hear and determine the same. In case an issue in fact be issued in any such case, the said court may refer such issue of fact to the supreme court to be tried by a jury.

Mr. M. was proceeding to explain his proposition, when

Mr. CHATFIELD called to order—and formally raised the point whether the rule adopted this morning did not preclude debate on all propositions relating to this article.

The PRESIDENT reiterated the decision before made, that debate was inadmissible only on propositions pending when the rule of this morning was adopted.

Mr. CHATFIELD appealed—and

Mr. CAMBRELENG sustained the appeal.

Mr. HOFFMAN sustained the chair.

Mr. MARVIN said he did not want to be responsible for the consumption of one moment of time, and therefore should not discuss the appeal. Had he been permitted to go on, he should not have consumed one moment. He now moved the previous question on the appeal.

The call was seconded 55 to 12, and

The decision of the chair was sustained, ayes 82, noes 8.

Mr. MARVIN (his proposition now coming up) urged that there should be a single court somewhere in the state, having the power to issue these original prerogative writs. But he would not debate the question, supposing the matter to be fully understood. He offered the section not to embarrass this system, but to improve and perfect it. He drew it up some ten days ago.

Mr. SIMMONS had no objection to the section provided the mover would so word it as to give this power concurrently with the supreme court.

Mr. MARVIN supposed it would be concurrent. He added that he had no objection to varying it so as to leave it to the legislature to confer this power.

Mr. KIRKLAND said the very statement that the section proposed to give the court of appeals concurrent power with the supreme court to issue these prerogative writs, showed that it was entirely unnecessary. If the supreme court had this power now, why give the same power, to be exercised concurrently, to another tribunal?

Mr. JORDAN had no doubt the mover of this proposition offered it with the best motive, but he thought the gentleman had entirely mistaken the effect of it. We had already heard that this court of appeals would be broken down in eighteen months; and he confessed were he an enemy of this system, and desired so to arrange it as to produce that result, he should propose as one of the means of doing it this very proposition. When these applications for writs of mandamus, or prohibition or quo warranto came before a court, there must be a hearing before the writ issues, and a hearing after it was returned—and there would be no doubt that this court of appeals might find itself seriously burdened with this business. He did not believe that the mover intended to make this prediction history that this court of appeals would

break down in eighteen months. But Mr. J. believed that such would be its effect.

Mr. STRONG here moved a recess. Agreed to.

AFTERNOON SESSION.

A communication was received from the Comptroller in answer to Mr. CHAMBERLAIN's call for the amount and description of stocks outstanding and the purposes for which they were issued—which, on motion of Mr. J. J. TAYLOR was ordered to be printed, and referred to the committee of the whole having in charge the financial article.

Mr. MARVIN's section, pending this morning, now coming up, Mr. MANN moved the previous question, and there was a second, &c.

The proposition was negatived, ayes 12, noes 64.

Mr. SIMMONS moved a reconsideration. He was satisfied that this question had been taken without sufficient consideration; and was one which he regarded as necessary to the safety of the system.

Mr. STRONG asked unanimous consent to a reconsideration at this time. It might as well be done now while our minds were upon it.

Mr. AYRAULT objected—so a reconsideration could not be had to-day.

CODIFICATION OF LAWS.

Mr. WHITE offered the following:—

§ — The Governor of the state, at the first session of the legislature, after the adoption of this constitution, shall by and with the advice and consent of the Senate, appoint five commissioners, whose duty it shall be, as far as practicable and expedient, to reduce into a written and systematic code, the laws of this state and also the civil and criminal procedure. The said commissioners shall specify such amendments and alterations therein as they shall deem proper, and they shall from time to time, when required, make reports of their proceedings to the legislature. And if found to be practicable and expedient, the said commissioners shall provide for the abolition of the distinct forms of actions now in use, and that justice be administered in all civil cases in an uniform mode of pleading, without reference to the distinction between law and equity.

§ — At the first session of the legislature after the adoption of this constitution, and from time to time thereafter, as may be necessary, provision shall be made by law for filling vacancies and for regulating the tenure of office and compensation of the said commissioners. And the said code shall be published prior to its being presented to the legislature for adoption.

Mr. BAKER raised the point of order that this subject having been already referred to a committee of the whole, it was not at this time in order to consider it.

Mr. WHITE replied that the subject of these sections had not been referred. It was a different proposition.

Mr. BAKER was aware that some additions had been made to the proposition—but the main subject had been referred.

The PRESIDENT ruled that the proposition was in order.

Mr. CROOKER was not exactly satisfied with the proposition in the shape in which it was. He would have the general statute law revised, whether by the commissioners appointed by the Governor or not, was immaterial. But the commissioners should be tied to that duty. He would have another commission to simplify and cheapen the practice and proceedings in courts of record, and to that point he would tie them.

And he would have a third commission to revise the laws in reference to town and county affairs. Our revisers, though able, skilful and well qualified to revise the general laws of the state, had mystified rather than simplified the local laws of every day application. He alluded to the highway acts, the laws relating to common schools, &c. There were more of them than there should be by four fifths. He wanted practical men to revise these laws and when a proposition having something like this was presented, he would go for it. But perhaps it would be better to turn the whole subject over to the legislature.

Mr. NICOLL was averse to having separate commissions. There should be a homogeneity of purpose in the man to whom this duty was assigned, and that could only be attained by having one commission. He differed also with the gentleman from Cattaraugus in regard to the revised statutes. He did think it necessary to revise them again. The proposition contemplated nothing compulsory—but it did assure the people that an effort to carry out the great reform indicated, would be made.

Mr. PATTERSON said before he could vote to direct the Governor to appoint these commissioners to codify the law, he must know what number of volumes this code would run through. It had been suggested to him that a code of the written and unwritten laws would extend through 15 or 20 volumes.

Mr. NICOLL replied that it was impossible to speak with precision as to the extent of such a code. The code Napoleon embraced about 3000 articles comprised in one volume about the size of one volume of the revised statutes. The law now extended through 3000 volumes.

Mr. PATTERSON thought at all events, knowing as little as we did, about the extent of such a work, that the section instead of being obligatory should be permissive only.

Mr. PERKINS thought we had legislated under the name of the judiciary report, long enough. And as it was desirable that this matter should be brought to a close, he moved the previous question on the judiciary report and all matters pending in relation to it.

Mr. NICHOLAS thought this question had better be left with the legislature—for this code, if formed, must be made under the direction of the legislature. He did not doubt the right of the legislature to appoint suitable persons to form the laws into a code, and should this work be deemed expedient, it would be commenced and finished when the people required it, and their representatives could best judge when the proper time arrived to undertake it.

Mr. CHATFIELD suggested that the proposition had better be withdrawn, as the previous question was to be sprung upon it.

Mr. WHITE withdrew his proposition.

Mr. O'CONOR suggested (Mr. P. withdrawing this motion to allow him to make a remark) that this article should be printed as it had been amended, and laid upon our tables before passing finally upon it, as had been done with all the reports which had been previously passed.

Mr. PERKINS had no doubt that unless this article was now definitely disposed of, whenever it should be called up hereafter, there would be

quite as many legislative propositions introduced as heretofore. Mr. P. neglected to renew his motion.

Mr. HARRIS here said that he had some days since intimated his intention to move a section designed to carry out another great reform which he regarded as of no inferior importance to those already effected in this article. He was fully persuaded that whatever judicial force we might provide here, it would prove insufficient unless there was connected with it some measure of legal reform. Various modes had been suggested to effect this object, but none of them appeared to be adequate to the end in view. It could only be effectively carried out by a co-operation between the judiciary and the legislature, and with a view to secure this object he moved the following additional section:

§ 5. A chief justice of the supreme court shall be chosen by the electors of the state, who shall hold his office for — years. He may perform any of the duties of a judge of the court of appeals or a justice of the supreme court. He shall, subject to the power of the legislature to alter or change the same, prescribe such rules and forms of practice of the supreme court and all subordinate courts as shall tend effectually to simplify the practice and reduce the expense of proceedings in said courts. And to this end he shall report annually to the legislature and recommend such action as he may deem necessary.

Mr. CHATFIELD offered the following substitute:—

§ — The legislature, at its first session after the adoption of this constitution, shall provide by law for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules of practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature.

Mr. NICOLL moved to amend the substitute by adding the following:—

The commissioners, if practicable, shall provide for the abolition of the various forms of actions at law now in use, and that justice be administered in all civil cases in a uniform mode of pleading without reference to the distinction of law and equity.

Mr. JORDAN enquired if this had not been acted on already?

Mr. PATTERSON said it had been in substance four or five days ago.

Mr. MANN asked if the gentleman from Albany designed to elect a judge who would have power to make laws? This power should be certainly subject to the control of the legislature.

Mr. LOOMIS thought if this constitution was adopted we should have taken a very great stride towards the great object which all had in view—that is the simplification and cheapening of legal practice and proceedings. But much as he had this great reform at heart, he could never consent to give any one individual the power to prescribe these reforms. It must be accomplished through a commission, but their doings should be subject to the revision and control of the legislature. He could never consent to commit the whole power over this subject either to one man or to three.

Mr. O'CONOR, after remarking that this whole subject had been referred to a committee, whose report was now before a committee of the whole, moved to lay all these propositions on the table.

Mr. HARRIS (the motion being waived) said he regarded this proposition as in fact a propo-

sition to give the go-by to this important subject. He went on to urge the magnitude and importance of this subject, and the necessity for some action on the part of the Convention, if we were even to look for any thing like effective legal reform.

Messrs. STETSON, PATTERSON and KIRKLAND continued the debate—the latter concluding by suggesting this section:—

§ —. With a view to diminish costs and expenses, to abolish injurious and useless forms, and to promote justice, the governor shall without delay, appoint three commissioners whose duty it shall be to prepare and report a code for the simplification of the pleadings, proceedings and practice in the courts of this state. The said code shall be submitted to a board composed of commissioners, and of the judges of the court of appeals; and the same, or so much thereof as shall be approved by a majority of said board, shall be filed in the office of the Secretary of State, and shall thereafter govern the pleadings, proceedings and practice in said courts, subject, however, to alteration by law.

Messrs. STOW and NICOLL continued the debate, when

Mr. BERGEN moved the previous question. Seconded.

Mr. NICOLL's amendment was negatived, 35 to 51 as follows:

AYES—Messrs. Archer, F. F. Backus, H. Backus, Bascom, Bouck, Chatfield, Clark, Cornell, Crooker, Cuddeback, Dana, Dorlon, Dubois, Flanders, Harrison, Hutchinson, Loomis, Mann, Nicoll, O'Connor, Porter, St. John, Salisbury, Sheldon, W. H. Spencer, Stephens, Taft, Townsend, Waterbury, White, Willard, Wood, A. Wright, Young, Youngs—35.

NOES—Messrs. Allen, Angel, Ayrault, Baker, Bergen, Bowdish, Brayton, Bruce, Burr, Cambreleng, Danforth, Gardner, Graham, Harris, Hawley, Hoffman, Hotchkiss, Hunter, A. Huntington, Hyde, Jordan, Kemble, Kernan, Kirkland, McNitt, Marvin, Maxwell, Miller, Munro, Nicholas, Parish, Patterson, Perkins, Powers, President, Riker, Russell, Sanford, Shaver, Simmons, E. Spencer, Stanton, Stetson, Stow, J. J. Taylor, Tuthill, Ward, Warren, Worden, W. B. Wright, Yawger—51.

Mr. CHATFIELD's substitute was adopted, ayes 64 noes 18 as follows:

AYES—Messrs. Allen, F. F. Backus, H. Backus, Baker, Bergen, Burr, Cambreleng, Chatfield, Clark, Clyd, Cornell, Crooker, Cuddeback, Dana, Danforth, Dorlon, Dubois, Flanders, Gebhard, Graham, Harrison, Hoffman, Hotchkiss, Hunter, A. Huntington, Hutchinson, Jordan, Kemble, Kernan, Kirkland, Loomis, Mann, McNitt, Marvin, Maxwell, Munro, Nicoll, O'Connor, Parish, Porter, Powers, Rhoades, Riker, St. John, Sheldon, E. Spencer, W. H. Spencer, Stanton, Stephens, Stetson, Stow, T. J. Taylor, Townsend, Tuthill, Ward, Waterbury, White, Willard, Wood, A. Wright, Yawger, Young, Youngs—64.

NOES—Messrs. Allen, Bowdish, Brayton, Bruce, Gardner, Hawley, Hyde, Miller, Nicholas, Patterson, Perkins, President, Salisbury, Sanford, Simmons, Warren, Worden, W. B. Wright—18.

Mr. JORDAN moved that there be added to the section "subject to their adoption and modification from time to time." Agreed to.

Mr. ROHADES moved a substitute for the section giving to the Legislature power to provide for the revision of the practice, &c. of the courts. Ruled out of order.

The section adopted by substitution was then agreed to as amended.

Mr. HARRIS moved the question on the reconsideration of the 9th (now 10th section which is as follows:—

§ 10 The testimony in equity cases shall be taken in like manner as in cases at law. The offices of masters and examiners in chancery are hereby abolished.

After a few remarks from Messrs. HARRIS and JORDAN the motion was negatived.

Mr. STRONG moved the reconsideration on the section adopted last night authorizing appeals direct from city courts to the court of appeals. Carried 36 to 35.

Mr. BAKER moved to amend by inserting the words "of record" after the word "court"—Agreed to.

Mr. PERKINS moved to strike out the words "in a city." Lost.

The section as amended was adopted.

Mr. WATERBURY called up his section, declaring every elector eligible to judicial office.

Mr. JORDAN moved to lay the section on the table. Agreed to.

Mr. JORDAN (the whole article being gone through with) moved that the same be laid aside and be agreed to.

The entire article on the subject of the judiciary, as perfected—is as follows:—

§ 1. The Assembly shall have the power of impeachment by the vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators or a major part of them, and the Judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor, the Lieutenant Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until his acquittal. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment, according to evidence, and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.

§ 2. There shall be a court of appeals composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the supreme court having the shortest time to serve. Provision shall be made by law for designating one of the number elected as chief judge, and for selecting such justices of the supreme court, from time to time, and for so classifying those elected that one shall be elected every second year.

§ 3. There shall be a supreme court having general jurisdiction in law and equity.

§ 4. The state shall be divided into eight judicial districts, of which the city of New-York shall be one—the others to be bounded by county lines, and to be compact and equal in population as nearly as may be.—There shall be four justices of the supreme court in each district, and as many more in the district composed of the city of New-York as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population as shall be in conformity with the number of such judges in the residue of the state in proportion to its population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

§ 5. The legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity, as they have heretofore possessed.

§ 6. Provision may be made by law for designating from time to time one or more of the said justices who is not a judge of the Court of Appeals, to preside at the general terms of the said court, to be held in the several districts. Any three or more of the said justices of whom one of the said justices so designated shall always be one, may hold such general terms. And any one or more of the justices may hold special terms and circuit courts, and any one of them may preside in Courts of Oyer and Terminer in any county.

§ 7. They shall severally, at stated terms, receive for

their services, a compensation to be established by law; but the salary of no judge of the Court of Appeals or justice of the Supreme Court shall be increased or diminished during his continuance in office.

§ 8. They shall not hold any other office or public trust. All votes for either of them for any elective office, (except that of justice of the Supreme Court, or judge of the Court of Appeals) given by the legislature or the people, shall be void. They shall not exercise any power of appointment to public office. Any male citizen of the age of 21 years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all courts of this State.

§ 9. The classification of the justices of the supreme court, the times and place of holding the terms of the court of appeals, and of the general and special terms of the supreme court within the several districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law.

§ 10. Testimony in equity cases shall be taken in like manner as in cases at law. The offices of master and examiner in Chancery are hereby abolished.

§ 11. Justices of the Supreme Court and judges of the Court of Appeals, may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to the Assembly and a majority of all the members elected to the Senate concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace, may be removed by the Senate, on the recommendation of the Governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have an opportunity of being heard in his defence. On the question of removal, the yeas and nays shall be entered on the journals.

§ 12. The justices of the Supreme Court shall be elected in the respective judicial districts by the electors thereof, at such times as may be prescribed by law; but the first election of justices of the Supreme Court, after the adoption of this Constitution, shall be held at least forty days before the general annual election of 1847.

§ 13. In case the office of any judge of the Court of Appeals or justices of the Supreme Court shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied at the next general election of judges, when it shall be filled by election for the residue of the unexpired term.

§ 14. There shall be elected in each of the counties of this State, except the city and county of New-York, one county judge, who shall hold his office for four years. The county judge shall hold the county court, perform the duties of the office of surrogate, and such other duties as may be prescribed by law. The county court shall have such jurisdiction of causes arising in justices' courts, as shall be prescribed by law, but shall have no original civil jurisdiction, except in special cases to be prescribed by law.

The county judge, with two justices of the peace may hold courts of sessions with such criminal jurisdiction as the legislature shall prescribe, and perform such other duties as may be required by law.

In counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.

The legislature may confer equity jurisdiction in special cases upon the county judge. Appeals shall lie from the county court and court of sessions to the supreme court, in banc.

Inferior local courts, of civil and criminal jurisdiction may be established by the legislature, in cities; and such courts, except for the city of New-York, shall have an uniform organization and jurisdiction in such cities respectively.

§ 15. The legislature may, on application of the board of Supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of judge and surrogate, in case of their inability or of a vacancy, and to exercise such other powers in special cases, as may be provided by law.

§ 16. The legislature may reorganize the judicial districts, at the first session after the return of every enumeration, under this Constitution, in the manner provided for in section four, and at no other time; and

they may, at such session, increase or diminish the number of districts, but such increase or diminution shall not be more than one district at any one time. Each district shall have four justices of the Supreme Court; but no diminution of the districts shall have the effect to remove a judge from office.

§ 17. The electors of the several towns shall, at their annual town meeting, and in such manner as the legislature may direct, elect their justices of the peace. Their term of office shall be four years. Their number and classification may be regulated by law.

§ 18. All judicial officers of cities and villages, and all such judicial officers as may be created by law therein shall be elected at such time and in such manner as the legislature may direct.

§ 19. The clerks of the several counties of this state shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. A clerk for the Court of Appeals to be ex-officio clerk of the supreme court, and to keep his office at the seat of government, shall be chosen by the electors of the state; he shall hold his office for three years, and his compensation shall be fixed by law, and paid out of the public treasury.

§ 20. No judicial officer, except justices of the peace, shall receive, for his own use, any fees or perquisites of office.

§ 21. The legislature may authorize the judgments, decrees and decisions of any local inferior court of record of original civil jurisdiction, established in a city, to be removed for review, directly into the Court of Appeals.

§ 22. The legislature shall provide for the speedy publication of all statute laws and of such judicial decisions as it may deem expedient, so as to render the same easy of acquisition by the people. And all laws and judicial decisions shall be free for publication by any person.

§ 23. Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties except they voluntarily submit their matters in difference and agree to abide the judgment, or assent thereto in the presence of the tribunal in such cases as shall be prescribed by law.

§ 24. The legislature at its first session after the adoption of this constitution shall provide by law for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules of practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature subject to their adoption and modification from time to time.

§ 25. The legislature at its first session after the adoption of this constitution, shall provide for the organization of the court of appeals and for transferring to it the business pending in the court for the correction of errors, and for the allowance of writs of error and appeals, to the court of appeals, from the judgments and decrees of the present court of chancery and supreme court, and of the courts that may be organized under this constitution.

§ 26. The first election of judges of the court of appeals, justices of the supreme court, and judges of the county courts, shall take place at such time as may be prescribed by law, between the first Tuesday of April and the second Tuesday of June, 1847. The said courts shall respectively organize and enter upon their duties, on the first Monday of July next thereafter; but the terms of office of said judges and justices as declared by this constitution, shall be deemed to commence on the first day of January, 1848.

§ 27. On the first Monday of July, 1847, jurisdiction of all suits and proceedings then pending in the present supreme court and court of chancery, and all suits and proceedings originally commenced and then pending in any court of common pleas, (except in the city and county of New-York,) shall become vested in the supreme court hereby established.

§ 28. But the Chancellor and present Supreme Court shall respectively have power to hear and determine any of such suits and proceedings then ready to be noticed for hearing, and shall for their services therein, be entitled to their present rate of compensation until the first day of July, 1848, or until all such suits and proceedings shall be sooner heard and determined.—
The Supreme Court hereby established shall also have

power to hear and determine such of said suits and proceedings as may be prescribed by law.

§ 29 In case any vacancy shall occur in the office of Chancellor or Justice of the present Supreme Court, previously to the 1st day of July, 1848, the Governor may nominate, and by and with the advice and consent of the Senate, may appoint a proper person to fill such vacancy. Any judge of the court of appeals or justice of the supreme court, elected under this article, may receive and hold such appointment.

§ 30. The offices of chancellor, justices of the su-

preme court, (except as herein otherwise provided,) circuit and county judges, vice chancellors, assistant vice chancellors, supreme court commissioners and masters and examiners in chancery, as now existing, shall expire on the first Monday of July, 1847.

§ 31 The chancellor, the justices of the present supreme court, and the circuit judges, are hereby declared to be severally eligible to any office at the first election under this constitution.

Adjourned to 8 $\frac{1}{2}$ o'clock to-morrow morning.

FRIDAY, SEPTEMBER 11.

Prayer by the Rev. Mr. VAN RENSSELAER.

Mr. GARDNER presented a remonstrance of the trustees of Yates Academy against the diversion of the literature fund. Referred to the appropriate committee of the whole.

Mr. CAMBRELENG offered a resolution to provide that when it is ordered that debate shall cease on any article or amendment thereto, it shall not be in order to propose and debate any amendment which has not been previously offered in some form, but the question on any such amendment shall be taken without debate. Mr. C. explained that this was offered to obviate the difficulties in which they had last night found themselves.

Some explanations were made by Messrs. CAMBRELENG, PATTERSON, MURPHY, MARVIN, SIMMONS and HOFFMAN. The resolution was then referred to the committee on rules.

Mr. CHATFIELD called for the consideration of a resolution heretofore offered by Mr. BRAYTON, for the appointment of a committee of seven, to arrange the several articles and sections of the constitution as amended and adopted—the manner and form in which the constitution as amended and adopted shall be submitted to the people—the publication of the amendments or the constitution as amended—the form of the notice of the election—and the form of the ballot.

After some explanations in which Mr. KIRKLAND and others took part, the resolution was adopted, and the chair appointed as the committee Messrs. CHATFIELD, BRAYTON, HOFFMAN, JORDAN, NICOLL, HARRIS and W. TAYLOR.

Mr. BAKER offered a resolution and laid it on the table for the present calling on committees that have not yet reported, to make their reports on or before the 16th instant.

Mr. NICOLL moved that evening sessions be held on and after the 17th instant, for the consideration of the report of the committee on education. Laid on the table.

MESSANGER'S PAY.

Mr. BASCOM offered the following resolution:

Resolved, That owing to the length and number of the daily sessions of the Convention, the compensation allowed the messengers is inadequate to the value of their services, and that the Secretaries communicate this resolution to the next legislature as a petition from this body that the same be increased.

Messrs. SIMMONS and MANN advocated the resolution.

Mr. RUSSELL moved to amend so as to include the door-keeper.

Mr. SIMMONS hoped the gentleman would not mix up other matter with the resolution.

Mr. RUSSELL withdrew his amendment, and the resolution was adopted.

PERSONAL.

Mr. CROOKER said that he desired to call the attention of the Convention to an article that appeared in the Tribune a few mornings since. He felt that the explanation was due to himself. He had figured so frequently of late in the remarks of the reporter for the Tribune, that he could not allude to all the objectionable matter that was personal to himself that was contained in its recent numbers. He should refer to that portion only that imputed corruption of motive, founded upon a direct and positive falsehood. And it was a falsehood at which he (Mr. C.) was the more surprised, because the reporter for the Tribune was informed of its falsity before the article was written. The article to which he referred was as follows. He would read so much only as was necessary for his purpose:—

"When Mr. Strong did this, lawyer Crooker rose up, and with great apparent candor advised his legal brethren to place every elector of the State on the same platform with themselves, by voting for Mr. Strong's motion. *This was for the public e.*

"While advising the Convention to support Mr. Strong's plain and sensible resolution, Mr. Crooker secretly advised him to withdraw it, at the very moment when it was likely to pass, and to present in its stead the resolution which did pass, and which Mr. Crooker drew up, though Mr. Strong presented it.

As he saw the honorable gentleman from Monroe in his seat, he would now ask him to rise in his place and say whether he (Mr. C.) had secretly, or in any other way, advised him to withdraw any proposition on the subject referred to.

Mr. STRONG rose and said that neither Mr. CROOKER, nor did any other man advise at all upon the subject—that he did not know from whom the section offered by him in lieu of his own had come. He had become satisfied that his own could not pass, and the one that was adopted was put into his hands, and thinking it better and more liberal than the old rule, he submitted it for his own. He was still satisfied his own would have been rejected, and it was so shown by a subsequent vote of the Convention. That what he had done he had not been advised by the gentleman from Cattaraugus or any one else.

Mr. CROOKER then said he would call upon every member of the Convention to rise in his place and say whether he (Mr. C.) had ever had any secret or other conversation with them

or any one of them on the subject. No one rising, Mr. CROOKER continued. He had all his life been favorable to a liberal rule in relation to the admission of attorneys, and his course on that subject in his own county was well known. The article so far as it imputed unfriendliness to a liberal admission of all men to practice in our courts, was, as far as he was concerned, unfounded. When Mr. STRONG first introduced his section he (Mr. C.) rose and implored his professional brethren as an act of magnanimity to vote for it in a body. Subsequently, finding that it could not pass, he drew up and sent to the gentleman from Monroe the section that was adopted. He did it in the hope and belief that it would liberalize the old and rigid rule. That it would do away with the seven years' study now required, and admit all men to practice in all our courts, whenever they were fitted, if they became so in one year or one hour. Had it not been for the imputation of corrupt intentions so grossly and so falsely imputed to him, he should not now have alluded to the subject. He was the more restrained by the fact that the reporter could not appear and speak on this floor. The denial was an act of justice to himself. And though the article was in its most important particulars, he felt compelled to say, willfully false, he had not risen to make this statement from any unkindness of feeling towards the reporter for the Tribune. Having said thus much here ended the matter with him.

FINANCES, CANALS, &c.

The Convention resolved itself into committee of the whole on the report of committee No. 3, Mr. W. TAYLOR in the chair.

The first section was read as follows :

§ 1 After paying the expenses of collection, superintendence and ordinary repairs, (\$1,600,000) one million and five hundred thousand dollars of the revenues of the state canals shall, in each fiscal year, and at that rate for a shorter period, commencing on the first day of June, one thousand eight hundred and forty-six, be set apart as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the Canal Debt, as it existed at the time aforesaid, and including three hundred thousand dollars then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

Mr. HOFFMAN rose to do that for the first, and he hoped the last time, which he believed—that is, make a report on finances without writing. He claimed the indulgence then, of the Convention while he made his parol report, had never before been done in a deliberative body that the views of the committee might be understood. And first, he alluded to the complaints which had been made again and again to the manner in which the accounts of the state were kept. So far as those complaints were made against the public officers, they were wholly unfounded. The accounts were as clear and simple as they could be. There was no mechanic, or merchant, or farmer who could keep the account of his affairs, to answer any practical purpose, but kept them precisely in the same way. If a merchant desired to know the profit or loss on any adventure, he must keep an account of that adventure. If a mechanic desired to know the profit or loss of a job, he must keep an account with that job. So the farmer in re-

lation to any portion of his crops; and it was precisely so with the state accounts. If they would know what any canal cost or gained an account must be kept with that canal. If they desired to know the result of the salt tax, they must know what amount was paid out on that account. Hence there were separate funds kept. There was the canal fund, and an account was kept of the income and expenditures of and for the canals. There were the general fund and the school fund, of whose receipts and expenditures an account was kept. And in the report of the committee of finance in 1842, the endeavor was made to put it in the power of every member of the government to understand precisely how the accounts were kept. Having further illustrated this position, he proceeded to speak of the state debt. There was a part of the state debt which, for the purpose of distinction he would call the passive debt. It amounted to \$4,000,000 and a fraction, and was called the U. S. deposit fund. This state had agreed solemnly to repay that debt. It was, therefore, one of the most sacred debts that could be conceived. But as this had been loaned out on bond and mortgage, and the interest applied to the sacred purpose of education, he would consider the two sides as exactly balanced, and would not take this debt into consideration.—What was the state of the public debt on the 1st of April, 1842, and how much had it been reduced since? That was a quarter day, and the amount could then be ascertained. It was necessary, in the management of so large a debt, that there should always be some surplus means in the treasury to meet contingencies. The debt in 1842 (see doc. 47, p. 5,) would be found to be as follows:—\$21,179,019 81 for the canals; the railroad debt was then considered as contingent—but it never was so in regard to us. We were always bound to pay the whole amount. The only contingency was, whether the railroad companies would refund to the state. He was considered a panic-maker in 1841, because he considered this as a debt. This contingent debt was now \$1,713,000. The treasury debt, which was less than \$2,000,000 in 1842, was now swelled up to more than five millions and a half.—This made the whole debt in 1842, \$28,237,000. This debt, in consideration of the fact that we were a young and growing country, was a British debt in amount, in interest, and in its threatened results—the withering and blasting of all species of industry. He brought no complaint against the men who created this debt. Let others indulge in as much vituperation as they see fit. He should not interfere, nor attempt any apology for them. What then, was this debt at the meeting of this Convention? He quoted several documents to show that the canal debt stood thus:—Principal \$17,516,119 57, interest which must be paid before its extinguishment \$3,379,838 33—making a total to be paid by the state of \$25,895,957 90. Insolvent railroads, principal \$3,515,700; interest (as above) \$2,933,165 37—total, \$6,448,865 37. General fund debt \$2,369,849 24; interest (as above) \$370,296 87—total, \$3,240,142 11. Solvent railroads, principal —1,713,000; interest (as above) \$1,001,707 50—total \$2,714,707 50. This would

make a total which the state must pay of \$38,299,672 88.

Mr. WORDEN inquired if this statement of the amount of the general fund debt agreed with the report of the Comptroller of last year.

Mr. HOFFMAN (evidently misapprehending the question to be whether he had taken his statement from the report of last year,) said he did not, but he knew the book-keeper in the canal room was very accurate and a whig, and these items were all copied from his book. From this total of \$33,199,672 88, gentlemen might deduct as much as they supposed any of these railroad companies would repay. In 1841 it was asserted all would pay. If the sky should fall, there would be larks that would either catch us or be caught! History had spoken on this and we had the result. Mr. H.'s opinion was that at least \$420,000 of this amount, set down as due from solvent railroads, must soon fall upon the state. He would not give his reasons for this opinion. He had no ill will towards any of the railroad companies that had failed. Towards those that were soon to become insolvent, he had no other feelings than those of commiseration. Accordingly, to his last calculation there would be \$875,000 per year for nineteen years and one third. He added that the public officers, unwilling to encourage these railroad companies to become defaulters, have not been in the habit of classing this as among the contingent debt of the state, but had kept up the account in form, saying to the companies, "you owe us so much upon our books." He called the attention of the committee to the Comptroller's statement of the general fund and railroad debt, to show that his view was correct. He also referred to the statement of the aggregate debt of the state, paying interest, saying that gentlemen might see for themselves how much it would cost to defer paying the principal and interest when it fell due. Next year there would fall due \$13,000 of the principal, and of the interest \$1,259,480 56. The whole debt, interest and principal, is put down at \$35,584,965 38, payable by the year 1865. If the state got off with paying full \$40,000,000 in round numbers, they would get off quite as easily as he believed they would be able to do. He next proceeded to inquire what was the amount of funds on hand, June 1, 1842, to manage this debt, contending that it did not exceed \$300,000. He read the items of deposits in broken banks, remarking that they were the most unavailable of all unavailable funds in this world. They would not pay for a repair on the canal or a cent of the interest of the debt. He could not admit that the commissioners had one dollar too much in their hands to manage the debt. Now, what were the charges against the state? Canal expenses were the largest, and would necessarily increase with the increase of business. The next item was to meet the charges on account of canal debt and interest. Then the insolvent railroad interest, and then the ordinary expenses of government. He should refer to facts to show what these severally would probably be. What were our available means? He was opposed to the system adopted of laying taxes on the railroads for carrying freight.—This was a tax on trade and commerce. If we

should attempt to rivet this system by a constitutional provision, he believed we should utterly fail, owing to surrounding circumstances. There were too many rival routes for trade. He could never consent that the sovereign should ever tax a line of trade and travel built by private enterprise. It was on a par with the base, mean Bourbon government of Spain. The only excuse for such a tax was the absolute necessity to meet heavy debts. Debt and taxation were inseparable. The next source of revenue was canal tolls.—These were large and would increase. They would doubtless reach a culminating point and would then decline. Then came the salt tax. He had demonstrated this to be unjust—whether considered as a rent or not. He hoped the great debt of the state would not be thrown upon the salt boilers. This tax was now one cent a bushel, which on 4,000,000 of bushels would be \$40,000. Deduct the expenses, and it would leave a revenue of only \$10,000. For the state of New York to hold on to this miserable pittance, looked like the veriest evidence of insolvency. A broken down merchant might hold on to this, but this state should not. He considered the salt tax as at an end. The auction tax was equally unjust and unwise. He proceeded to denounce it as a most injurious restriction upon trade and commerce. It could not be retained. If imposed, it could and would be evaded, and Mr. H. pointed out how, by the removal of the depot to Jersey city, or by mere selling a sample, while the balance would be sold at auction prices. He honored these men for evading this foraging upon their business. At the utmost, these auction and salt duties would not exceed \$100,000. They were unwise, impolitic and contemptible taxes and would soon cease. He thought they would soon go to the tomb of the Capulets. He believed they were fast going the way of all the earth, and it might be thought unkind for him to hit them this kick to help them on their downward course. But he could not resist the luxury. Putting these revenues then at \$100,000, or as they ought to be, at nothing at all, then the only sources of revenue were canal tolls on the one side and direct taxation on the other. If you did not take enough of canal tolls to answer your purpose, you must resort to direct taxation, or take the alternative of repudiation. The only other mode would be the less base, but more cruel system of creating a new debt to fasten its withering and blighting curse upon the limbs of your children. With this view of the subject it became necessary to consider what the effect of time would be upon the canal tolls. As near as he could judge, the competition in the carrying trade had reduced the profit in the up and down freight at the rate of from \$3 to less than \$1½. Would not the competition in all routes have the same effect? In all the streams of the great south the competition had been regarded as respectable, but it bore no comparison with what existed on our own channels. This competition would continue to increase, and in five, ten or fifteen years competition would reduce prices in the south just as it had done in this state. The Welland canal enlargement would enable vessels of a large class to reach Montreal—propellers of 400 tons would be able to navigate through that canal.

There too, competition would do its work; how far it would reduce freight he could not tell; he did not doubt that it would attract a good proportion of the trade of the west. He saw by a statement upon this subject, that the demand for vessels had increased the price of freight to Montreal during the last season. All these things must be borne in mind. The tolls of our canals, said Mr. H. were a greater obstacle to commerce than if the canals of the state were converted into rock, because \$17,000,000 would remove the rock. It had become necessary that the seller of produce should be able to get his finished articles in the market at the latest in April or May, or otherwise he would have to wait until September or October before a sale can be effected. The railroads of the South gave ready access to the coast, and from the coast to the metropolis they might go every week, purchase what they wanted and return. In the interior the manufacturers must labor five months in winter inaccessible to the market. This fact would render the want for railroads more and more imperative. He believed they would in the event be built from the west to the seaboard. The question then was whether they could be made a good means for the transportation of goods, and thus compete with the canals. He described the facility with which flour was now taken over these roads to Boston. Place the same tolls then, said Mr. H. upon the Hudson river, (which is as good a canal as there is in the world,) as are placed upon the canal, and the battle would be settled; the trade would go to Boston. The state might block up the way from here to Buffalo, and thus insure to itself a monopoly. But this would be only a power to destroy itself—to destroy commerce. The probability was, under the present rate of tolls, that their amount would continue to accumulate as at present. In 10 or 15 years they would begin to culminate. At that period hereafter, the struggle of Railroad companies for bread, would bring them into active competition with the canals as carriers of produce.—He might be mistaken as to the time when it would commence; but in 20 round years he believed it would be in full vigor, and would begin to be seriously felt in 15. Had the social insolvency and moral bankruptcy of the west and southwest, and Pennsylvania too, been avoided, this competition would have been felt now. The progress of the last year had been affected in some degree by the unsettled state of our foreign relations. From all these considerations, he thought it would not be wise nor politic for this Convention to fix the rates of canal tolls, and the debt of the canal must be paid—if not by tolls, then by a resort to direct taxation—it must not hang as a mill stone about the necks of this people. These canal tolls must be taken whenever and as fast as you can get them; and when they fail resort to taxation to expunge the debt. The worst vice of the worst government is to contract a debt which you will not pay.—Shall we be marked with that vice, or will we not with these canal tolls as fast as we can, and when the fail, by taxation, pay the debt as fast as falls due? He, for one, said, pay the debt when it becomes due, at all events. Having made these general remarks he pro-

ceeded to examine the article submitted by the standing committee for disposing of this debt. First the expense of collection, superintendence and ordinary repairs were to be paid. By reference to a table in the Comptroller's report, it would be found that these total expenses from 1826 to 1845 had been \$10,000,000—while the entire receipts had been \$18,600,000—thus showing the expenses to be a little more than one-half the receipts. The Erie and Champlain canals showed an expenditure of \$3,600,000, and of receipts about \$19,000,000—a ratio of over one-third. Mr. H. asked what the annual ordinary repairs would be? After giving his premises he said he was satisfied that none too much had been hitherto paid for that purpose. He could not say they would be less hereafter on a general average than \$600,000 for each and every succeeding year. This included only what was paid to keep the canals in operation. The plan of the finance committee gave this sum a priority over all other things, and this he believed to be right. If the business of these canals did not increase, this sum would be sufficient. The next proposition was that \$1,500,000 of the canal tolls should be taken annually to meet the canal debt. This, as he had shown, would in principal and interest amount, ere it was paid, to \$26,000,000. This annual sum of \$1,500,000 would pay this in 1864, although it would add about \$1,500,000 to the state debt, beyond the time when it would fall due. He pointed out what sums it would be necessary thus to postpone. He spoke of the probable current rate of interest under the propositions submitted by others for borrowing many millions of dollars, contending that 6 per cent. would be as low as could be reasonably expected. He alluded to the hazard of war with France or Great Britain, in which case we should find this debt uncomfortable to be managed. It could not be repudiated, but must be paid. He went on with a detailed statement of the amount falling due in each year up to 1865, with the sums that would be available to meet these sums. In 1864 this annual sum of \$1,500,000 would consume the canal debt and leave a surplus of about \$16,000. There would be additional interest to be paid for begging credit of over \$1,500,000. The total, then, that must be paid to extinguish this canal debt of \$17,400,000, as fast as the committee recommend, is the round sum of \$27,483,375 39. The committee only proposed to pay the debt in the time now fixed by law. The law of 1842 meant, and was so understood, that the debt should be paid in 22½ years. The public creditor so understood it, and upon the strength of that pledge, we obtained some four or five millions of dollars. Unless we abide by that, we obtained that money under false pretences. And if there had been any doubt about it, it was settled by the act of 1844, which confirmed that act. He insisted that the sum proposed by him was as small as it could be. Violation of public faith was to the state what wilful and corrupt perjury is to the individual man—the very deepest act of guilt. If we take our revenues as they come in and apply them to the payment of the public debt, then we have done something to redeem representative governments from the

reproach of repudiation. But if, instead of doing this, you take these revenues to pension a locality here and there, to reward power, to obtain a numerical majority in this or that county, then, in the face of Heaven, we should be guilty of this bad breach of faith to our public creditors. To extend the payment of these debts, as they fall due, would meet his uncompromising opposition. He would denounce it as a gross breach of trust. Should this Convention resolve to do this, he would keep silent while a member of the Convention. But no power under Heaven should prevent him, when out of its walls, from denouncing the act as one of the vilest, idiot folly. Mr. H. took up the several propositions which had been submitted to the Convention, contending that they would not only procrastinate the time of payment, but vastly increase the amounts to be paid by the state.—Was it necessary to pay these additional sums of \$10,000,000, \$15,000,000, and even \$19,000,000, for the mere purpose of getting sixpences to pension localities and get numerical majorities here and there? Why not rather get your debt out of the way, when you will have the hard dollars to spend? He had proved that \$1,500,000 was the smallest sum that would be required to pay the canal debt.—Mr. H. next glanced at the second section which appropriates \$672,500 annually, forever, from the canal revenues, for the use of the state, in liquidation of the state claims for advances to, and payments for, the canals. The state, Mr. H. said, had a right to the advances made to the canals, with the usual mercantile profit on it—this is a just and moderate interest. Not that the canals should pay the railroad debt, the general fund debt and every thing of that kind,—but the question which we were to settle was what is the fair sum which is due to the state for advances to the canal as a system—in a word, what annuity should the canals settle on the state in liquidation of these claims. He did not go for taking the canal fund for general purposes. He insisted that the right of way was the right of the million. The sovereign held it in trust, and exercised it only for the benefit of the million. We had no right to make a revenue out of it. But the question was a different one—what were the fair actual advances made by the state to the canals? He insisted that any sum of money that had gone into the canal fund, that did not proceed directly from canal tolls, or directly from the canals, was an advance by the trustee having them in charge, and should be charged with a proper interest. Mr. H. went into the items of these advances. The first was the salt duty, which had been paid into the canal fund from 1817 to 1836. The next was the auction duty. Both belonged to the state, and the canal fund had had the benefit of them. Good faith was a jewel, and he advised the canals not now to act the part of a fraudulent bankrupt and repudiate this debt.—He adverted to the advice and promise of Clinton in 1817 to the committee on ways and means of the assembly—who he said advised that the salt and auction duties should be taken from the state and given to the canal fund, and in the clearest and strongest language he could adopt, promised in due season, and shortly, that they

should be restored to the state by the canal tolls. It was on the strength of these promises and pledges that the bill passed authorizing the construction of the canal. Then let it be done, and without hesitation. In 1825, the fund commissioners, of whom the gentleman from Dutchess was one (Mr. TALLMADGE,) and the Secretary of War (Gov. MARCY) another, took up this very subject, and in the strongest and most direct terms, renewed the engagement of 1817.—They provided that the salt and auction duties should be restored to the state. They said when; they estimated how; the estimate was realized, and the means. The act was not performed. In 1830, a competition was made on these advances—the doctrine maintained that the salt tax should be restored—that interest on it should be compounded. He could not lay his hand on it now, but he would find it, and see that it was rightly printed in his speech.

Mr. WORDEN would like to see it now.

Mr. HOFFMAN said if the gentleman had voted to allow him to write out a report, he would have had it to look at in print. Mr. H. went on to say that the interest was there compounded on this tax, making four millions and a fraction then. The doctrine was there maintained that the general fund existed in the canal revenues, and that the state had a right to use these revenues for its purposes. It was the doctrine on which the administration then stood, and was afterwards elected. Was it honorable or fair in us now to say, after the people had looked to these sources of income to free them from direct taxation, to say that these advances should not be restored? He denied the right of this Convention to repudiate all these promises. In his judgment, therefore, the salt and auction tax, with interest properly compounded, was a fair charge against the canals. The same might be said of the land sales and steam boat tax. As to the rate per cent in compounding interest, the argument of the Canal Board in 1830 was conclusive. If this tax had not gone into the canal fund, money on interest must have been borrowed at six per cent, half yearly. He had calculated interest at five per cent., and he insisted that the amount made out was fair, and should be allowed. Perhaps five and a half per cent annually would have been more fair, but the committee did not feel authorized to change a rule which all had observed. They thought the least annuity, in round numbers, would be \$600,000—that this was a just charge against the canals—not that they should pay the railroad debt, but their own debt to the state. He did not stop to inquire whether the canals would pay this sum or not. But they were just debts, which they should pay if they could. If they were deferred, then the committee proposed that they should pay quarterly interest at the current rates. If they could not pay what was justly chargeable on them, then, he apprehended no further expenditure should be made on them, than to make them useful. If they could pay, were the legislature to be left to lay taxes to pay the state, instead of compelling the canals to pay their debts to the state.

Mr. BASCOM here asked the gentleman to give way for a motion to rise and report.

Mr. HOFFMAN was not quite ready yet. He

was favored liberally with chairs (referring to the empty seats) and would endeavor to get on a little further, as they could endure it as well as he. Mr. H. then glanced at the subject of the canal revenues. What would they be for a series of years to come? What was the capacity of the canal, and how far would this two and a half millions of surpluses, proposed to be expended in the aggregate by the third section, add to the capacity of the canal? He could write a book on this subject, and found it difficult to condense his remarks on it. Different minds would come to different conclusions on it. He believed that the tolls would continue to have their usual increase for eight or ten years—that they would begin to culminate then, and after fifteen years would culminate rapidly, enforcing a rapid reduction of rates to keep up the aggregate. For the present fiscal year, the demands and tolls would be about the same.—They would not differ over 30 or \$40,000 upon the lowest estimate of increase, based on the increase from 1836 to 1845. there would be a surplus in 1851, of \$647,512 57—and in 1856 of \$2,501,895 76, taking another basis of increase, the surplus in 1856, would be four millions and a half and upwards. The medium between the two would possibly be a safe estimate.

Mr. H. here gave way for a motion to rise and report progress. The committee rose.

The Comptroller transmitted an answer to the resolution as to the sums paid for the support of the government since 1817, and from what source; which was ordered to be printed.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. HOFFMAN resumed and concluded his remarks—first running over some items of the account against the canals which he had omitted. Among these was the expense of the legislation which the canals had cost the state—the bounty paid out of the treasury in the shape of bounties for the transportation of salt, coal, gypsum and empty barrels on the canals—a bounty which, though in name taken out of the salt tax, came in fact out of the direct tax.

Mr. WORDEN enquired when this bounty law passed?

Mr. HOFFMAN replied in 1843. He believed the gentleman had no part in it.

Mr. WORDEN helped repeal it.

Mr. HOFFMAN believed the gentleman had voted on several occasions to increase the debt. He hoped the gentleman would go with him to get it paid. These two items, he had mentioned, and which might well be charged to the canals, would make half a million more than he had estimated. Mr. H. next went into the question of the capacity of the canal. Previous to 1835, he stated that the depth of water in the canal was very little over three feet. Boats carried not to exceed 33 tons, and it required from eight to ten minutes to pass a boat through a lock. The new paddle gates ordered in the spring of 1835, Mr. H. believed increased materially the capacity of the canal. Had the commissioners known the depth of water at that time, they never would have thought the doubling of the locks indispensable. The enlargement was not then dreamed of. That had its

birth at a convention in Rochester, where there had recently been another convention having reference to the canals. There was a vast deal of theory about all this matter, and he had labored to get at some facts that would settle the matter. He had a table before him showing that a well built boat carrying 80 tons or more, drew three feet three inches—an ill-formed boat of the same burthen, three feet nine inches.—Boats now made their trips with these cargoes. The boatmen and carrier, in fact, held in sovereign contempt all the theories about the easiest traction. He made his 80 ton boat, and carried his cargo. He had a table of lockage and tonnage, commencing with 1835, from which it appeared that the boats in 1835 averaged 36 and 8-10 tons. In 1845, they averaged 63 tons. He also read from a table of the carrier's profit on transportation, showing that it had been reduced, taking up and down freight together, fully one-half since 1835, and this too, with such a canal as we had given him, and whilst all this controversy had been going on in regard to the enlargement. Mr. H. said gentlemen might suppose that the canal board had invented a new canal for them. He believed they had to some extent. But since we had been here orders had been given to every superintendent to measure the water on the mitre sill of every lock, and at every chain between them, to see what the actual depth of water was, and to see also how soon a boat could be passed through a lock. Sworn returns were now in the canal office. These returns contained much curious information. On looking at them, he had come to the conclusion that when the canal was made and paid for, it had not been finished by the contractors. He went on to state the depth of water on the mitre sills.

Mr. BOUCK interposed—saying that the mitre sills were placed from six to nine inches below the average depth of water, in the construction of the canal.

Mr. HOFFMAN regretted that the gentleman had stated this—for then it was certain you never had even a three feet canal. He believed the gentleman from Schoharie was somewhat in error. But assuming the mitre sill to express the bottom water line of the canal, the water on that was from 5 to 7 inches too deep. Yet the sounding between lock and lock proved that there was not 4 feet of water between Albany and Utica; nor on the same rule was there 4 feet between Rochester and Buffalo. Either the bottom of the canal had risen or it never had been taken out. Mr. H. insisted that if you would clean out the canal, giving four feet five inches of water, you might increase the capacities of the canal very largely—raising the banks in a few places where the water on the mitre sill was not over four feet. A lock in good order would fill in 40 seconds and empty in the same time. A lockage might be made with improved paddle gates in three minutes. Now it took in some instances ten minutes. He insisted, therefore, that without increasing the tonnage of about one ton, by giving the same facilities of operation at all the locks, that some of them now had, the tonnage on the canal might be increased one-third. The capacities of the locks had not yet been reached. Mr. H.

went on to estimate what degree of improvement could be given to the Erie canal by the surplusses under his plan, if they should be realized. Mr. H. said he had the estimate of the engineer for one line of enlarged locks to Syracuse—which was \$295,000. Mr. H. placed it, in round numbers, at \$300,000. Estimates had also been made of the cost of raising the canal banks one foot per mile. It was supposed this would cost \$1,400 a mile. He preferred to put it at \$2,000. Then you must lengthen the twenty locks to Rochester so as to make them 100 feet in the chamber. This would cost \$3,000 a lock. At Lockport it was supposed \$400,000 would complete a double set of locks. The engineer estimated all this at \$1,600,000. Mr. H. made it \$1,900,000 leading a surplus to cover contingencies. If the carrier, with a canal that did not give him four feet, had reduced his share of compensation for transportation more than 50 per cent for the last ten years, taking up and down freight together, and had his boat up to 80 tons was it not in his power with locks 100 feet in the chamber, and five feet of water to transport as cheap as was ever imagined by the most sanguine friends of the greatest enlargement. Give him these advantages without a debt that shall increase his tolls, and he would be better off than he could be by any debtor scheme that increased toll. The thing he should dread was tolls. The evil we should keep from him was debt, for that would bring tolls. The capacity of the canal being increased, you might reduce tolls. But gentlemen wanted to go on and complete the enlargement, the Genesee and Black River canals, cost what it would. The estimates for this varied from \$15,000,000 to \$17,000,000. But this included nothing for land damages, extra allowances, or unearned profits of contractors. Mr. H. did not believe \$15,000,000 would effect it, and the probability was that the estimate of to-day would double the moment you put forth your hand to make them. This had been your history. The Erie and Champlain canals, after repeated estimates got up to five millions and a fraction. You executed them, and they cost eight millions. The Cayuga and Seneca, the Oswego and Chenango canals all contrived to double their estimates.—The Genesee Valley and Black River canals had doubled their estimates, after repeated doublings. The Chemung and Crooked Lake canals were built bad enough to come within the estimate—but the Chemung locks had to be rebuilt, at a cost equal to that of the entire canal. There were not wanting tokens of a desire to commence anew the debtor system, on the top of the existing debt. Gentlemen had said, why not propose some means to finish the works begun?

as if we could make the ways and means! And in the same breath, why put such heavy burdens on the canals? But you must get ways and means somewhere. Mr. H. desired to call attention to what we had lost by the debtor system, and he went into a long recital of figures and estimates to show that if we had operated on the cash system, we should now have had all our canals finished without a dollar of debt. Mr. H. went into a calculation to show how much it would be necessary to lay aside as a sinking fund to pay off the general fund debt. The sum of \$500,000 a year could pay the debt in 1865—\$400,000 a year would pay it in 1878. He urged the largest sum and the shortest period. This rail-road debt, he urged had not been and never could be a favorite. He advised that the means of its payment be strong and speedy. Let us leave no question about them to be decided by the future. Pay it with the least interest you could. Make this \$500,000 a year, and get it out of sight. Take any of these lower sums and the aggregation of interest would be seen and felt. And no man knew what would be said of these debts at a future day. Let it be paid. You had the means. You could pay it. You had better pay it. Passing to the fifth section, Mr. H. said if it was supposed that that the New-York and Erie railroad would need a farther extension to complete the road, he would be willing to add to this section, that the legislature might to this alone. The sixth section authorized and required a tax to fill up any deficiency that might occur. This was necessary, and provision was made that the canals should repay such sums, with interest. Mr. H. proceeded to estimate what would be the future current expenses of the government. He referred to the Comptroller's report, and said he could not believe they would be less than \$650,000 or \$700,000 per annum. He referred to the various items of revenue—half-mill tax included—and contended that in no case could they be made to exceed \$500,000. The remaining \$100,000 or \$150,000 must be supplied by taxation.—Draw as largely from the canals as the committee proposed, and it was his sober conviction that for the next ten years the state could not get along with less than a mill tax. Mr. H. concluded by saying that he had exhausted himself, though not the committee, for scarcely a quorum had been present to listen to his exposition. He believed he had said enough to enable those who had given him their attention, to understand the subject.

Mr. KIRKLAND moved to rise and report.—Agreed to.

The Convention then adjourned to 8½ o'clock to-morrow morning.

SATURDAY, SEPTEMBER 12.

Prayer by the Rev. Dr. WELCH.

The PRESIDENT laid before the Convention a report from the clerk of the 2d chancery circuit, of moneys deposited in that court. Referred.

Leave of absence was granted to Mr. DANA for 5 days.

Mr. TOWNSEND laid on the table a resolution, which he said he should call up on Monday, for the purpose of having evening sessions,

to commence on Tuesday evening at 7½ o'clock, and to be continued every evening, Saturdays excepted, for the consideration of the report of the committee on education, &c.

CANALS AND FINANCES.

The Convention now went into committee on the report of committee number three, Mr. W. TAYLOR in the chair.

Mr. ARCHER commenced the debate by apologizing for the embarrassment he felt in thus addressing the Convention for the first time. He did not claim the ability to meet in argument those who would speak upon this important question. He should not attempt to cope with the Ajax Telamon, who addressed the house yesterday, nor to follow him in his long argument. He had not the support of the Ulysses of the party to furnish him documents and long drawn out statistics, and hence the disadvantage under which he labored. He should not differ from the honorable gentleman so far as regarded the necessity for paying the public debt.—The doctrine of repudiation would find no support upon that side of the house. The faith of the state must be preserved, above even the breath of suspicion; Mr. H. would find those who disagreed with him contending that the debt must be paid so soon as the interests and ability of the state would allow. But this must not be, and need not be, at the loss of the great policy of internal improvement, the projection of which had placed the author's fame upon an imperishable basis. There were those who acted upon a feeling of hostility to these great works, which were the pride and honor of our state, but he could not apply this remark to the honorable gentleman from Herkimer.

Mr. HOFFMAN: It would be false if you should.

Mr. ARCHER said that evidence might be adduced to show that the gentleman from Herkimer had been one of the firmest champions of the system. He described the origin of our internal improvement system, showing the arguments which were adduced to induce this state to secure by opening channels of communication with the west, its trade for our own state. In the year 1830, the commissioners were found advising these works, and upholding the belief that the revenue of the canal itself would pay the necessary outlay for increasing the capacity of the canal to an extent in proportion to the increase of business. He quoted from Assembly document of the session of 1830, No. 199, to show the arguments made use of at that time by the commissioners. In 1835, they were found praying the legislature to proceed without delay to the completion of the enlargement of the capacities of the canal, doubling the locks to Syracuse, (see Assembly document 143 of the year 1835) declaring that the effect of delay would be injurious to the interests of trade, and give time and occasion for the diversion of business into other channels. After reading these extracts, he said language like this might now sound strange in the mouth of a member of this Convention. It showed the absolute necessity of free and uninterrupted communication for the vast trade of the West to reach the Atlantic. He continued to read fur-

ther extracts from the report of the Canal Commissioners in 1835, urging the speedy enlargement of the capacity of the Erie canal, and said similar opinions would be found in the Executive message of 1836, which he read. Mr. A. was not one of those who regarded a public debt as a public blessing. He did not believe that any man or state should at any time incur reckless debt. But when it became necessary to incur debt to secure to us and to future ages the blessings of a great public improvement, it was no more than right that those who should enjoy the improvement hereafter should help us pay the debt. The gentleman from Herkimer had much to say of the cost of our internal improvements under the credit system. He would ask that gentleman whether, if there had been no resort to credit, the Erie and Champlain canals would have been built? The gentleman was too well acquainted with financial matters not to know that the people would never have consented to a tax large enough to meet the yearly expenditures in building those canals.—The credit might have been abused. It had been grossly abused. But if we had gone too far and too fast, it was only necessary to retrace our steps and remedy the evil. Credit, properly used, was the great engine of prosperity, and he could not endorse the conduct of those, who instead of redressing any grievances, kicked from under them the ladder upon which they had mounted to this high eminence. He proceeded to read from other documents, and then came down to the year 1842, commenting upon the circumstances under which the tax and stop law of that year was passed—referring to the fact of its only being petitioned for by moneyed brokers, who alone received benefit from its operation. The state, as such, never had received benefit from its passage. The policy of that year, it had always seemed to him, had been more for the advantage of moneyed men, than for the great body of the people of the state.—He next referred to the fact that the state had now property invested to the amount of \$31,000,000. Nearly one-third of this was wholly unproductive. The state realized no benefit from all that had been expended upon the Black River canal—a large portion of that on the Genesee Valley canal, and upon the Erie enlargement. And yet, notwithstanding all this, the canals now yielded a handsome revenue upon the whole investment. The gentleman from Herkimer did not give us to understand that he would at any time give us an enlargement of the canal to the extent of the present project, but by an expenditure of less than two millions, he proposes to enlarge the capacity to some extent.—He (Mr. A.) asked if we were willing to give up the benefit of what had already been expended? In another part of the gentleman's speech, he gave us to understand that he believed the canal would be superseded by the use of railroads. He said truly, that our great rivals, the St. Lawrence, and the routes through Pennsylvania, would eventually succeed in effecting a diversion of our trade, unless we, by a rigorous prosecution of the improvements of our channels of communication, give to them facilities which would enable them, as the great natural strait through which the trade of the west would nat-

urally find its way in its passage to the seaboard, to compete with and outstrip those great rival routes. He next went into a calculation to show that the revenues of the canals would be sufficient to enable the state to progress with the public works. He asked if it was not necessary for our state, in order to retain its present position among the commonwealths of the Union, to retain the advantages which gave her the greatest share of trade? We must sustain our credit; we would do so while we were securing the advantages of business and internal commerce to our own citizens; there would be no danger of "breaking down under the load of our debt."—By neglecting to retain the advantages which the state had always possessed, its success must be defeated, its brilliant fame obliterated; but if, on the contrary, our hope was not extinguished by delay, and other states did not snatch from us the advantages which might easily be secured to ourselves, our state, pursuing her way in the spirit of her proud motto "Excelsior," would continue to rise in importance and power. To do all this, he contended there was no necessity for burdening the state with taxation. Its credit would never suffer depreciation, while it retained within itself her great sources of revenue.

At the close of Mr. ARCHER's remarks no member seemed disposed to proceed. Some delay occurred, but no one was ready to take the floor. The CHAIRMAN caused the section to be read, but still all were silent. After further delay the section was passed over *sub silentio*.

The second section was next read, and the same disinclination to debate was manifested.

Mr. CHAMBERLAIN expressed some surprise at this, as he believed many desired to speak, and moved that the committee rise and report progress. Lost.

The second section was passed over. [It requires the payment annually into the state treasury of \$672,000 in liquidation of the state claims for advances and payments to the canals.]

The third section was next read as follows:—

§ 3. The surplus of the revenues of the canals, after paying the said expenses of the canals and the sums appropriated by the two preceding sections, shall, in each fiscal year, be applied to the improvement of the Erie canal, in such manner as may be directed by law, until such surplus shall amount in the aggregate to the sum of (\$2,500,000) two million five hundred thousand dollars.

Mr. DANFORTH moved to add "and Black river canal" after the word "Erie."

Mr. CHATFIELD thought the whole section should be stricken out.

Mr. HOFFMAN explained.—The committee were charged with the duty of making ample provision for the discharge of the public debt as speedily as possible. They could not be blind to the fact that, do what we might on this subject, there would be surpluses. He considered the Erie canal as much a local work as any of the others. The question was how you could best promote the interest of the state by cheapening and extending the facilities of transportation. On the Erie enlargement there were more than \$10,000,000 still unlet, besides a large portion of that which was still unfinished. While therefore these surpluses, which must arise, would go but little way in the completion of the

work, they still would by application to the improvement of the navigation, afford additional facilities for commerce and trade. The committee had supposed \$2,500,000 might thus be advantageously applied. Beyond that, they were willing to leave the legislature free to dispose of any surpluses that there then might be. They agreed to the preference given to the Erie canal, not as a measure to gratify locality, but solely with a view to make the public secure of an instrument to perform transportation, and to secure an instrument of taxation to pay the debt for their construction. Would it do to undertake to get along with the unfinished canals with the surpluses? Suppose we were to take these surpluses and go on with all three of the public works? The effort would be an abortion; neither one of them would derive any advantage. Suppose we select out the Genesee Valley canal. The cost of its completion would reach \$3,000,000. He knew that estimates might be had in order to reduce this amount. But at this estimate it would require \$200,000 every year for 10 or 15 years from the annual revenues of the canal. It had been said if the Black River and Genesee Valley canals were completed, they would pour great amounts of tolls into the Erie canal. It might be so, but he had never been able to compute it; the estimates had never been collated. The committee had not thought it necessary to advise for or against the enlargement, nor for or against the completion of the unfinished canals. They left that with the Convention to decide. He believed that the means which the state possessed of doing so would not be increased above what he had stated.

Mr. DANFORTH endorsed the principle that strict justice to the creditors of the state should be maintained. There was however a class of creditors whom the gentleman from Herkimer had not included: if he had Mr. D. would not have troubled the Convention with any remarks. Jefferson county had contributed largely to every public work and had received no return. He was pledged to carry out the policy of 1842, he desired to make ample provision to pay all our debts as they became due; he had no wish to dip deep into the treasury, but where there was a surplus, as was contemplated by the section under consideration, the Black River canal had claims on it as great as the Erie canal. He had moved this amendment that the state might do justice to Jefferson county, and he intended to follow it up by another increasing the total mentioned in the section to \$4,000,000.

Mr. CHAMBERLAIN said the amendment of the gentleman from Jefferson was partial. If however, he would withdraw it and allow Mr. C., to propose as an amendment the 5th section of a plan he some time since proposed, including several public works, it would be more satisfactory.

Mr. DANFORTH declined withdrawing his proposition.

Mr. HAWLAY moved to amend the amendment, by adding the words "Genesee Valley canal." He thought the partial provision of the committee's report was unworthy of a constitution. He added, though he offered the amendment, he reserved the right to oppose the whole section.

Mr. BOUCK suggested that as the Convention was very thin, it would be better to pass by this section, and proceed to others, to which there might be less objection. He threw out the suggestion for the consideration of the movers of these amendments.

Mr. DANFORTH had no objection.

The CHAIR asked if the gentleman withdrew his amendment.

Mr. DANFORTH did not.

Some conversation ensued, in the course of which Mr. HAWLEY expressed his willingness to withdraw his amendment and Mr. CHATFIELD said he desired to have a vote on striking out the section. His reason was that he should be absent next week.

Mr. DANFORTH moved to postpone the further consideration of this section. Lost.

Mr. HAWLEY's amendment was lost—24 to 43.

Mr. DANFORTH's amendment was lost, 11 voting in its favor.

Mr. CHATFIELD then moved to strike out the entire section. He asked if it was wrong that localities that had received no benefit from the works of public improvement, which they had helped to build, should ask for some portion of their revenues? He would not, however, provide for localities in the constitution, but leave it open for the legislature to hear their claims, giving the revenues of the state as a trust in the hands of its representatives, to be applied for the general benefit. The gentleman from Herkimer had said that we should look solely to the security of the creditors of the state in our action upon this subject. He dissented entirely from, and would refuse to cooperate in, any such principle. He held that we did all that we could justly be called upon to do, when we provided for the payment of the debt to our creditors.—He went into some statistics to show the incorrectness of the estimates of revenue given by Mr. HOFFMAN. The expenses of the canals for the last five years were greater than the amount which the report had set apart for such purpose. He did not believe with some gentleman that the revenues of the canals were to increase year by year. The anticipations of statesmen in regard to this had not been thus far realized.

Mr. WORDEN asked if he meant state officers, by the term statesmen?

Mr. CHATFIELD said he had no reason to suppose that the state officers who had given estimates upon this subject were other than statesmen.

Mr. WORDEN again inquired if the gentleman intended to say that the estimates of those officers had not been realized?

Mr. CHATFIELD said he alluded to the calculations made by Mr. RUGGLES, and contended that the anticipations of that statesman had not been realized.

Mr. WORDEN said the revenues had increased above his estimate over \$2,000,000.

Mr. CHATFIELD took a different view of the matter than that of the gentleman from Ontario. Mr. RUGGLES had provided a sinking fund which was to extinguish the debt at a certain period, which he believed had not been realized thus far, and if the gentleman imagined that it would be found correct in a period of ten

years to come, he was more insane than he had supposed him.

Mr. WORDEN said he only took the ground that they had been more than realized up to this time.

Mr. CHATFIELD proceeded with his argument, and closed his remarks by reiterating what he had said with regard to the rights of localities in this matter of benefits from the canal revenue s.

The motion to strike out was lost—29 to 37.

Mr. CHAMBERLAIN moved to strike out the third section and insert the following:—

The remaining revenues, after complying with the preceding sections, shall be applied to the enlargement of the Erie canal, the completion of the Genesee Valley and Black River canals and the Oneida river improvement, as shall be directed by law.

This motion was lost, 16 to 38.

Mr. BOUCK again suggested that these important sections should be passed over as the house was very thin.

Mr. VAN SCHOONHOVEN said nothing would be lost by going through all the sections, as motions to amend could hereafter be entertained.

The Secretary proceeded to read the fourth section and there were no propositions to amend. It was as follows:—

§ 4. Of the sum of six hundred and seventy-two thousand five hundred dollars required by the second section of this article to be paid into the treasury, [\$200,000,] five hundred thousand dollars shall, in each fiscal year, and at that rate for a shorter period, commencing on the first day of June, one thousand eight hundred and forty-six, be set apart as a sinking fund to pay the interest and redeem the principal of that part of the state debt called the General Fund debt, including the debt for loans of the state credit to railroad companies which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever and as far as any part thereof may become a charge on the treasury or General Fund, until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the said five hundred thousand dollars shall at any time be deferred by reason of the priority recognized in the second section of this article, the sum so deferred, with quarterly interest thereon at the then current rate, shall be paid to the last mentioned sinking fund, as soon as the sum so deferred shall be received into the treasury.

The fifth section was next read as follows:—

§ 5. The claims of the state against any incorporated company to pay the interest and redeem the principal of the stock of the state loaned or advanced to such company, shall be fairly and duly enforced, and not deferred, released or compromised; and the moneys arising from such claims shall be set apart and applied as part of the sinking fund provided in the fourth section of this article.

Mr. JORDAN moved to strike out the words "and not deferred, released, or compromised" in the fourth line, and insert "but may be deferred or compromised as may be most consistent with the interest of the state." He thought the rule established by the committee was too stringent and might operate to the loss of the state.

Mr. VAN SCHOONHOVEN thought the whole section should be stricken out.

Mr. HOFFMAN defended the section as right, proper, and necessary. The term "released," often meant robbery of the treasury. He men-

tioned several cases in which the treasury had been defrauded by the release of companies. He desired that it should be made known to companies that they are to make efforts to meet their responsibilities to the government. If it was meant that they should not pay, the amendment would prevail, but if it was desired that they should pay their just liabilities, the section stringent as it was deemed, should be retained. It required a two-third vote to change the character of these companies. One of them after pocketing \$70,000 of the public credit came here in 1844 and asked for relief, which is only another name for public robbery. That is a very good translation for the term. A two-third vote looked rather dubious, and so the Lobby changed ground. They got a joint resolution passed directing the Comptroller not to sell the road.

Mr. JORDAN: What road was it?

Mr. HOFFMAN said the name was so long, he did not know that he could repeat it.—He believed it was called the Tioga Coal, Iron and Mining Company. Well, they got relieved from from the 2 per cent to the sinking fund, and thus the state and public creditors were defrauded. Another of these roads got permission to expend *its* sinking fund on the improvement of the road. When he remembered these things, and how often, here and elsewhere it had been sworn to that these sums *would* be paid, and yet we saw these results, he wanted this section adopted. He was willing to allow an extension in behalf of the New York and Erie road, but nothing farther. He would have all these railroad companies know that they must pay or take the consequences.

Mr. WORDEN inquired whether provision had been made to meet the payment of this contingent debt—that from the Delaware and Hudson Canal Company.

Mr. HOFFMAN only knew that the stock of that company was above par. They might thus be able to pay. But the state had no funds within its control to meet that contingent liability. The canal itself was all that could be reached by the state.

Mr. WORDEN had inquired, because last winter when a member of the finance committee, he had been told by the majority of the committee that that sum was provided for, and no sort of legislation was required.

Mr. HOFFMAN supposed those who had informed the gentleman knew no more than he did—that is, they supposed the company could and would pay.

Mr. JORDAN was afraid that the gentleman from Herkimer was disposed not only to lock up his bowels of compassion and turn state Shylock, but to defeat his own objects in his zeal to promote the interests of the state. In examining into these matters, we should regard them as an individual would. He should think it the very worst policy, if a person owed him a debt, to compel him to a sale and sacrifice of his property, when by deferring the debt he might enable the debtor to retrieve his affairs and ultimately not only pay the whole debt but save something. The course of the gentleman from Herkimer cut through all considerations of policy, mercy, justice and every thing else.—The gentleman was disposed to take a rigid

course with these corporations—to put his knife right into the very spot, and take out the very heart's blood the moment a debt was due, unless it was paid. This was neither good policy nor magnanimous, nor the course which the true interests of the state demanded. Mr. J. knew some companies that had great difficulties to struggle with. He knew of individuals in the same situation. But these companies had paid or were paying as fast as they could, and he believed with a little indulgence they would not only do justice to the state, but save something to themselves. And he had known individuals, who if they had been pressed and coerced by their creditors, must have been inevitably destroyed, and yet, who had by indulgence been able to go on and pay their debts, and save something for their families. He knew one company that had \$150,000, that paid interest regularly on it semi-annually—paid two and a half per cent. towards a sinking fund, and extinguished a portion of the debt. But they were under the necessity within a year or two of applying to the legislature, not to forgive them the payment of any portion of the debt, but to defer the payment of the two and a half per cent. to the sinking fund, to enable them to apply their means to greater advantage. They obtained this relief, and were thus enabled to prosecute their work and to put themselves in a condition to pay the debt due the state. If the rule of this section had been rigidly enforced against them, the road must have been sold out for little or nothing, and perhaps have become the property of the state—and from the examples we had had of the expenditure of money by public agents, on the state works, we should then have had a pretty exhibition of state policy and economy. Mr. J. conceded the policy and necessity, not only on the part of the state but of individuals and corporations, of meeting obligations to the utmost farthing. But he insisted there was no wisdom in crippling and crushing either an individual or a company, when by indulgence there was a probability of their being able to pay and to save themselves. Such a policy was perfectly suicidal. But it did not follow, if we left this power to the legislature, that they would indulge companies when there was no prospect of their being able to pay.

Mr. RICHMOND understood the gentleman to say that the company he alluded to had obtained the relief sought and was doing well.—He asked whether it had returned to pay?

Mr. JORDAN replied that the time was not up yet; but when it did come the company would return to pay. Mr. J. went into the history of this company a little further. It was to build a railroad from Hudson to the state line. There was another company chartered to build a road from Berkshire to Castleton, but nothing was done under this charter nor likely to be done, when the other raised its funds, constructed its road and had it nearly completed, when the legislature chartered another to run along side of it nearly half its length and destroy it.—This was old Castleton charter, altered, so as to terminate at Albany. Albany sold it out to a Boston company, and they built it. Such was the effect upon the Hudson road that they had

to apply for the relief mentioned. If the constitution was to freeze up the power of the legislature to grant these little indulgences, on similar occasions, the consequences were obvious. The interests of stockholders must be sacrificed, for nobody would buy a road under such circumstances—certainly not the rival road, and pay one-tenth of the lien of the state on it. But for this parallel road, the Hudson road would have been a fair stock. He had the honor, the enterprise and all the profit of being a stockholder in this Hudson road to a large amount. But this did not vary the principle. Every farthing of interest and loan had got to be paid up and would be, if a reasonable indulgence was extended. But if this Shylock rule was to be put into the constitution, that if a man did not pay on the day, you may cut his heart-strings, both the state and the company must suffer by it.

Mr. RICHMOND was willing to take the gentleman's word for it, that this company was doing well, paying interest, and would continue to do so. But he would inquire further, whether any of these railroads that had stopped payment and had come here and got relief, ever resumed payment?

Mr. JORDAN did not know of a case in which the legislature had granted similar relief. But he knew of rail roads that had been sold under the hammer, the rails torn up, and all its appurtenances converted to some other purpose. He did not believe they had resumed payment.

Mr. RICHMOND believed this Hudson company was very patriotic; at all events they would never have expected to make much money. But there had been some very curious legislation in these matters. They had furnished two facilities for getting to market, side by side, and loaned the credit of the state to one of them, to the injury of the other. He had been charged with seeing things a great way off. This was the case when in the Assembly, bills were pending to loan the state credit to the companies, and he predicted that they never would be paid. His prediction had nevertheless come true, as to some of them. If there could be any way devised to induce them to pay, he would be liberal towards them. But he did not want this thing kept open forever, and pay day deferred.

Mr. BURR wanted to see this section struck out. He did not believe we should add strength to these claims by inserting it in the constitution, and he trusted this body had no intention to diminish them. But if the section was to be retained, it should be amended, as proposed by Mr. JORDAN. But he rose to suggest that it would be better still to strike out the words proposed and insert nothing.

Mr. PERKINS said the legislature in passing the bill for the relief of the Hudson road, did so on the principle that if the road was sold we should get little or nothing, and that if the bill passed the company would pay interest for a while and relieve the state from it.

Mr. WORDEN said as remarks had been made in relation to this company that were calculated to throw a cloud over its credit, and as he had the honor to belong to the committee that reported the bill of last winter, he would say that he was at first opposed to the bill in com-

mittee, and on the ground now taken by the gentleman from Herkimer—that it was the duty of the state to enforce their contracts against these corporations to the very letter, unless public policy should dictate otherwise. True the considerations connected with this rival road were brought forward; but there was no suggestion made that if the bill did not pass the road would be a defaulter. On the contrary it was made to appear that it was then worth more than the debt due the state—but that it was necessary to make extensive repairs on the road—that they wanted to expend one or two hundred thousand dollars on it—or almost as much as was due to the state—to improve the property—and that the building of the rival road made this necessary. It was under these circumstances that he assented to the bill, regarding it as in fact a proposition to improve property mortgaged to the state. This same state of facts might occur again. It had occurred in regard to the Erie railroad. If that road had been sold last winter, under such a provision as this, no man in his senses could believe that it would ever be built. If sold under the hammer of the Comptroller, every body knew that it would have been purchased by Boston capitalists and broken up in order to secure a monopoly of travel through the central line. Some further legislation might be necessary in regard to the Erie road. The state had released its lien conditionally only. If this provision was adopted, you would have a rigid constitutional rule, that would tie up the legislature to the act of last winter; and any temporary state of the money market, or unforeseen contingency might bring down upon it the Comptroller's auction hammer. Was it wise then, or just by such a provision to say to all future legislatures, "you are not competent to manage such a question—you cannot be trusted with the interests of the state in this matter." For one, he should prefer this entire section struck out. The case of the Ithaca and Owego railroad was an illustration of the working of such a provision. The company that bought it immediately procured a charter and quadrupled this money. He insisted that the state might have realized nearly the whole of its debt. He was opposed to making further loans to these railroads. He never voted for one of them or advocated them. But he would not tie up the legislature in a matter of this sort.

Mr. HOFFMAN insisted that we should lay down a rule for the legislature to prevent them from taking a course calculated to injure the just rights of the people of the state. As to the Erie railroad, Mr. H. differed entirely with the gentleman from Ontario. He believed that the sale of it, instead of operating injudiciously to the completion of that great work, would have been the greatest good fortune that could have happened to the people of the district through which it passed—that it would have disincumbered the road of all the rotten contracts, in writing and by parol, entered into by the old managers—and of the fictitious stocks, which, with these other claims, were the greatest burthen on it—that if seasonably sold, and it had gone into fair hands, they would now have had a road of fifty miles in operation, and that in other respects, it

would have been more forward than it was now. But this had gone by, and the committee did not desire to interfere with the completion of this railroad. It might be very convenient to have this railroad come here and ask relief, and it might be very convenient to grant it; and when two or three of them had got relief, the remainder could ask it with propriety and could not be refused—and thus the entire right of the state to compel them be frittered away. These roads had abundant time to fulfil their obligations to the state. All of them, except the Erie, were completed. They had nothing to do but to go on and pay. He insisted that it was ground for relief that the state had by a rival charter, injured a company. He dissented entirely from the doctrine that the legislature having granted a right, could not grant a rival charter. That was the only way of getting relief from a monopoly. The people now stood security for these loans. Their rights should be strictly enforced, not compounded or frittered away by the legislature. He did not believe that any one of these companies that was really determined to pay, had not abundant time to do so, if they would be faithful and honest. He wanted to test their honesty and fidelity by this section. He did not desire that they should hope to come here and persuade such conscientious and liberal gentlemen as his friend from Ontario, by a cock and bull story, that it was right to extend these credits. As to this Ithaca and Owego road, he was glad it was gone—glad it was sold—that it brought something into the treasury—that we might know the end of it. He did not want to deal with them as if we supposed they were solvent, when we doubted it. If solvent, let them pay.

Mr. CHATFIELD opposed the amendment. If any portion of it was adopted, he hoped it would only be to strike out the word "deferred." In reply to Mr. JORDAN, Mr. C. said he regarded this section as an evidence of returning sanity, and that the day of madness had gone by.—He had the honor of a seat in the assembly when this madness was at its height. At that time but two instances had occurred in which the credit of the state had been loaned to corporations. These were the Hudson and Delaware canal and the Erie railroad loan—but these were sane and safe loans compared with those of 1840 and 1841. He looked back now with astonishment at those periods when these lobbies and even this hall was thronged with cormorants, asking the legislature to give them leave to thrust their hands up to the elbows into the public treasury. And he remembered very well, when large promises were made of ample security to the state, that he took occasion to say that this security was about as good as a hat full of November fog. The people of his county, at the time, deprecated these loans as the worst of all the bad legislation of that period—and he had no doubt that they expected and demanded that we should interpose some barrier between them and the legislature on this subject. These railroads, as Mr. HOFFMAN had said, had ample time to conclude whether they could or would pay, or when pay day came surrender their roads. He enumerated and named the several roads that had loans of the state

credit. The Hudson and Berkshire had 19 years to pay; and long before that time the name of the H. and B. railroad would scarcely be known. Long before that, it would have passed to the tomb of the Capulets. If it did not pay its sinking fund, he hoped the state would save what it could. The sooner these railroads were sold, when they stopped paying interest, the better for the state and the stockholders. He did not believe the sale of the Ithaca and Owego was injurious to the company itself. He had not that entire confidence in the legislature that others seemed to have in these matters. He had seen too much of it. The legislature seemed to have lost its common sense and to have yielded to the importunities of localities and corporations, to the great injury of the state. He would say to these companies, prepare to pay at the day. If you cannot, don't expect to come here and by petition and otherwise prevail on the legislature to release the debt and shift it off upon the people of the state.

Mr. VAN SCHOONHOVEN animadverted on the morbid disposition in some quarters to visit vengeance on the associations which the state had created and on those which had come here asking the aid of the state—and particularly on Mr. HOFFMAN's hearty denunciations of the legislature, of corporations, and of state works in general, not excepting the canals, the auction and salt duties and steamboat tax—to which it was avowedly a pleasure and a luxury to that gentleman to give a kick to help them down hill. It was time, when sentiments so repugnant as these to the general sentiment were uttered, for the Convention to reflect those who entertained them were safe counsellors. Mr. V. S. went on to insist that the propriety and policy of these rail roads and the loans made to them were not now the question—and even though we might be of opinion after the experience we had had, that these loans were improvident or unwise, it would only show that the anticipations of those who authorized them were ill-founded—first as the calculations made by some of the wisest and best men in regard to your canals had proved erroneous—and especially their estimates. Denunciation and imputation were equally misapplied to those who authorized the one or the other. He held that it was proper, if the state could aid these enterprises consistently with her own interest that she ought to do it. Nor in principle was there anything wrong in it, under proper guards and restrictions. He did not stand up to advocate loans of the state credit as it had been loaned heretofore. He only desired to protest against the denunciations heaped upon those, who from honest though perhaps mistaken views, authorized these loans. It seemed to afford the gentleman from Herkimer peculiar gratification that the Ithaca and Owego railroad was wound up, because it enabled to see where we stood—and yet we found, that if we had given the company a little indulgence, instead of sacrificing nearly the entire loan and the interest of stockholders, we might have saved a great deal of money. This would have been valuable knowledge, if we had not known it all before the road was sold. It taunted us certainly that nothing would more amuse than to compel

a foreclosure the moment a debt became due, without regard either to the interests of the state or of the corporators of these companies. This was a rule which no sane man could impose upon himself in his private dealings. Under such a rule as this a company having a loan of the state credit that might desire to expend money on and improve the property mortgaged to the state, could not do so—the rigid enforcement of payment by the day, whether the state wanted its money or not, would be the only alternative. He cited the case of a railroad which last year applied for leave to pay in the money borrowed and leave was refused, merely because the state could make more by compelling the company to hold on. So long as a company was solvent; and only asked an extension from circumstances that sometimes embarrassed the men of the highest credit, the legislature ought to be left the discretion to extend the time of payment, if the interest of the state would not be jeopardized, and those of stockholders might be promoted by it, or they saved from making sacrifices. This was the substance of the amendment, and it could by no torturing be made to have a tendency to encourage “cormorants” or “foragers” to deplete on the public treasury. The whole idea of this section was a distrust of the legislature or the Executive, which for one he did not feel—and there was scarcely a governor of recent date, that had not signed some of these bills, with the exception of the present governor.

Mr. WORDEN said the present Governor introduced the bill to loan the credit of the state to the Delaware and Hudson canal company.

Mr. VAN SCHOONHOVEN was aware that he had advocated the doctrine denounced here with all sorts of epithets, when entertained and acted on by legislators—as if epithet and denunciation was to carry through this section. He trusted the entire section would be struck out—and because it enforced that course upon the legislature which circumstances might make utterly suicidal. But at all events, he hoped the amendment proposed by Mr. JORDAN would prevail.

Mr. HAWLEY said he was opposed to the whole section, though as proposed to be amended, it could not be very mischievous. He was opposed utterly to depriving the legislature of all power to change the terms of these loans.—He could conceive of cases where the state might be a gainer by a change of conditions, and might lose every thing, if no such power existed in the legislature. As to this loan to the Ithaca and Owego railroad Mr. H. said that it was made upon proof furnished to the then and present Comptroller that \$500,000 had been expended on the road. In 1841 the company failed to pay interest, and the facts furnished a very pertinent illustration of such a clause as this in the constitution. The Comptroller considered himself bound to sell the road though the law was not mandatory, and he was authorized by law to bid in for the state. He advertised the road for sale here at the capital. At the time appointed, Messrs. Yates and McIntyre, who were present asked an adjournment of the sale to allow them to make examination into the condition of the road. He was informed that there

were persons present who had come prepared to bid up to a certain amount—having previously made their examinations, and satisfied themselves that the iron on the road was worth a good deal for other than railroad purposes. But the sale was postponed, under a distinct declaration by the Comptroller that he should not bid on the road in behalf of the state. When the time came round, Yates and McIntyre bid off the road for \$4,500, without competition—a sum about half that paid by the company for the transportation of the iron from tide water to Ithaca. At the recent session of the legislature a bill was introduced to charter this old company under a new name, with a capital of \$150,000. But the legislature reduced the capital to \$18,000 because the purchasers did not choose to show that the road had been actually sacrificed by the sale. But last winter they were here again, and the charter was renewed in such form as to give them a capital of \$500,000. He believed from these facts that the interest of the state had been sacrificed by the sale of that road—and that precisely the same results might be looked for in case the legislature was to be restricted, as proposed by this section to a peremptory sale of roads, that from temporary embarrassments might be unable to meet their engagements by the day.

Mr. HOFFMAN said he did not know what the proof was that half a million had been expended on this Ithaca and Owego railroad. But he had once had the pleasure of seeing it, and he could say that it was a very light rail indeed—and the quality was at least as bad as the quantity was small. Nor had he the least reason to suspect that a single dollar of the avails of the state stock ever got into the road in the shape of repairs. It needed at least \$300,000 of repairs, when the state loan was made. The road had no doubt been wearing out ever since, and the purchasers, on the usual principles of relief laws would be entitled to get back the money they paid for it. He believed the company did purchase engines and cars with some part of the state loan; but these being moveables and not fixtures, the purchasers had to pay \$13,000 more for these. He never thought the interests of the state had been sacrificed by this sale. It would have been a misfortune if the state had bought it—for the state would have been obliged to keep it in good operative condition, and to do this would have required all of \$300,000. It was true, the Comptroller did say that he should bid in the road. He would have been insane if he had said anything else—to say nothing of the morality of concealing from bidders what the real intent of the public officer was. Mr. H. confessed that among the last acts of his official life, he had signed a report in favor of a ship canal from Oswego to the Hudson, as against a canal eight feet by eighty. But he characterized as unfair, if not worse, in Mr. ASCHER, in reading from that report to conceal the scheme contemplated no debt. His views were still the same on the subject of public debt. The treasury had been largely foraged on by these railroad loans, and he could not believe that this had all been done through the honest mistakes of those who applied for them—and he insisted that if the legislature was so liable to be im-

posed upon as it had been, it was time the people were protected against the consequences of such mistakes. He had never objected to any of these rail-roads or canals. What he objected to was that the state should be made debtor, on the credit system, for making them—that the whole people should be sold into bondage to the fund mongers to carry on these projects. And he averred that it was only in cases where a rail-road project was doubtful that the state had been drawn into it to give it credit and countenance. He objected to none of these canals or rail-roads. Go on with them—but get the means in some other manner than by bringing the people in debt, and withering and blighting their industry. He insisted that the true policy was to give these companies due notice that they must pay—that they might prepare in time for it. If they did not, the state would operate severely, and should so operate.

Mr. F. F. BACKUS moved to amend the section so that it should read as follows:—[The amendments in brackets.]

“The claims of the state against any incorporated company [or individuals] to pay the interest and redeem the principal of the stock of the state loaned or advanced to such company [or of the interest or principal on moneys loaned to such individuals] shall be fairly and duly enforced, and not deferred, released or compromised, and the moneys arising from such claims shall be set apart and applied as part of the sinking provided in the fourth section of this article, [and in the case of individuals be credited to the several funds respectively from which the money was loaned.]

Mr. VAN SCHOONHOVEN replied briefly to Mr. HOFFMAN, when

The committee rose and reported, and the Convention adjourned to 8 1-2 o'clock on Monday morning.

MONDAY, SEPTEMBER 14.

Prayer by the Rev. Dr. WELCH.

Mr. BAKER called for the consideration of his resolution laid on the table on Friday, and modified it by striking out 16th and inserting 22d inst., as the day on which he proposes that the standing committees shall be required to report.

Mr. TOWNSEND desired to know what committees had not reported.

The PRESIDENT said he was unadvised on that subject.

Mr. TOWNSEND had no objection to the resolution. On the contrary it might with propriety have been offered before this. He mentioned several subjects on which it was desirable to have reports.

Mr. HOFFMAN made some explanations. He said the Convention had denied to the committees power to make written reports, and therefore they might find it difficult to comply with the resolution where they were equally divided, or where they thought it inexpedient to propose an article.

Mr. PATTERSON said it was due to the Convention that the committees should report, and it was no good answer to say that they could not report consistently in favor of a proposition. If any subject was of sufficient importance to be referred, it should be reported upon, if it were only to say that it was inexpedient to make any constitutional provision in relation to it. There was the subject of the independent treasury for the state, which the committee should not pass over in silence, and some others which had been mentioned. He hoped the resolution would be passed.

Mr. STETSON said there were important questions before the Convention, and he hoped the committees would not be driven out of this house while they were pending for the purpose of preparing reports.

Mr. KIRKLAND said it was necessary that the Convention should know what subjects were to be presented to it, before the adjournment,

and therefore the resolution should be adopted.

The resolution was adopted.

Mr. TOWNSEND offered the following additional section to the financial article, and moved its reference to the committee of the whole :

§—. The revenues of the state shall, after the first day of July, 1847, be collected in gold and silver coin, or in such cash evidences of debt as are secured by the faith of the state.

Mr. HOFFMAN hoped the resolution would not be referred, inasmuch as it had been decided that the committee should be called upon to report, and report without giving their reasons.— Besides, if the state would give banks authority to issue rags, it ought to take them.

Mr. TOWNSEND called for the reading of the section, as he was quite sure the gentleman from Herkimer had mis-understood it. The object of his resolution was to give preference for cash evidences of debt. He thought it must be obviously proper, and he hoped it would be referred. Its object was to save the state from the mortification of a suspension of specie payments. In 1837 the state had to pay \$60,000 to make up the deficiency caused by the depreciation of the currency issued by the trustees of the state. He would have all taxes collected in gold or silver, or such cash evidences of debt as the faith of the state was pledged to redeem.

Mr. SHEPARD understood that the proposition of his colleague had been long since referred to a committee. He proceeded to say that there were important considerations for the divorce of banks from the state, and he hoped the proposition would be postponed until the Convention should act upon the Article on currency and banking, when the discussion would be natural and necessary.

Mr. TOWNSEND said his colleague had evidently mis-understood the resolution, he therefore would lay it on the table that gentlemen might make themselves acquainted with it. He also moved that it be printed. Agreed to

CANAL FINANCES, &c.

The Convention again went into committee of the whole on the report of committee No. 3, Mr. W. TAYLOR in the chair.

The question pending was that under consideration at the adjournment on Saturday.

Mr. CHAMBERLAIN rose, and after some remarks on the vast importance of the subject under consideration, turned to an assertion made by the gentleman from Herkimer (Mr. HOFFMAN) on Friday and Saturday respecting the amount of expense that would be incurred in the completion of the Genesee Valley canal. On Friday that gentleman said it would cost \$1,800,000, and on Saturday he said it would cost \$300,000. That the effect of this statement might not operate to the injury of that work, he referred to documentary evidence, quoting the report of the Canal Commissioners in 1844, to show that the cost of completion was put down at \$1,414,869 81, estimated at prices from 15 to 20 per cent. higher than would now be required. He doubted not it could be completed for less than \$1,000,000, and that it would be one of the most productive works in the state.

Mr. ANGEL said he felt the weight of the responsibility resting upon him most sensibly. The duty I owe my constituents (said he), impels me to exert the feeble faculties I possess, to avert the frightful danger that threatens them. With them, sir, this is a question of life and death; it is a question upon the issue of which their dearest hopes are suspended; if the proposition offered by the gentleman from Herkimer is engrafted into the constitution, their hopes will wither and die. None but those who suffer the miseries we endure, can realize them, or fully sympathize with us. We have often implored relief from the legislature—we have represented our grievances and our afflictions to that body—but owing to the unfavorable state of the finances, we have found no relief. We have cherished the hope that with the return of prosperity, the wisdom and justice of the legislature would promptly and frankly grant the relief we desire. The proposition before us, and which we are now considering, is designed to tie up the hands of the legislature, and deprive it of the power to grant relief. It seems to me that there is no existing necessity for the rigid rule and iron rigor that is proposed to be adopted.—The entire debt of the state according to the documents furnished us by the Comptroller, is \$22,254,033 78. It is represented by the gentleman from Herkimer (Mr. HOFFMAN), to be \$23,401,663. It appears by the Comptroller's report, that on the first day of June last, there were funds in his hands applicable to the payment of the debt to the amount of \$1,291,514 17. I arrived at the amount of the public debt by deducting the contingent debt, as it is called, from the gross sum of all the debts and liabilities of the state, as stated in table A, in the Comptroller's report to this Convention of the 7th of July last. The gentleman from Herkimer took the amount from another table in the same document, but I understand him, that he made no allowance for the sum of \$1,291,514, which the Comptroller reported as funds on hand, applicable to the payment of the debt.—The contingent debt of the state is \$1,713,000.

This debt arose from the loan of the credit of the state for the benefit of the Delaware and Hudson canal, and for certain rail road companies; all of which continue to pay the interest on the loans, and I am informed that the companies are all sound and solvent, with one or two exceptions. The gentleman from Herkimer asserts that the state will lose \$300,000 by the anticipated failure of some of those companies, which assertion is disputed by other gentlemen. For myself I can say nothing of their solvency or insolvency, having no knowledge on the subject. The difference between myself and the gentleman in regard to the amount of the debt is not very essential. Call it \$22,500,000 or \$3,000,000 or \$3,400,000, and the difference is so small that we need have no bickering about it. The interest on the debt, as I have calculated it, is \$1,223,974 60 annually. This interest we must pay as it falls due. It is true and beyond all doubt that this is a serious concern. It is not to be wondered at, that the people should hesitate to incur further indebtedness with such an amount of debt already contracted staring them in the face; but, sir, when you compare the debt with the resources and ability of the state to pay it, it dwindles down and is stripped of its alarming features. Sir, I am not the friend of a public debt or of a rotten funding system, as the gentleman from Herkimer is pleased to style our present financial condition. I was never the friend of unnecessary taxation. I always abhorred it, knowing that taxes, direct or indirect, with their leaden weight, always find their way to, and settle down upon, the hand of labor. When we take into consideration our condition as it really and naturally is, I would enquire what necessity exists for conjuring up imaginary bankruptcy, and holding out frightful bugbears and hydras, in regard to the state debt? Sir, it can be paid with ease and without a resort to taxation. I am aware that it is a bad thing to be in debt, and the fact that the state owes over \$22,000,000, does not, in my humble opinion, justify any man in enlarging and magnifying it, and frightening people out of their wits about it. My friend from Herkimer has been many long years brooding over the dark side of this picture; he has been employed in calculating and compounding interest, and footing up millions; he has wandered so long among the mysteries of the Comptroller's reports, he has lost his balance, frightened himself, and now comes here to frighten others. Every thing appears dark and sombre to him. Sir, a few days ago, when we were considering the question whether we would first take up the judiciary or finance report, the gentleman came out with a solemn speech, fitted to a funeral; he told us that this subject of finance would not be exciting; that it would elicit feelings of a far different cast; that we should come to this discussion with heartfelt grief; that we should sit down to it in sorrow, and that the direful condition of the state would fill our hearts with a solemn gloom. Sir, so sad were the views he presented and so doleful was his tone, that I almost expected to hear him move a resolution that the Convention set apart a day for humiliation, fasting and prayer. His strong aversion to being in debt, and his dislike of those who run

into debt and do not pay, has given him the spleen against all infelicity, and led his judgment astray. Sir, I desire to invite the attention of the house to that side of the picture which the gentleman from Herkimer has kept out of view. Who are we? We are now nearly or quite three millions of people; we inhabit a state unparalleled in resources; we have a healthy climate, a productive soil, and our location and facilities for trade, commerce and manufactures is not surpassed by any region on the globe; who, if he owned the state of New York, would exchange it for the best other territory double in extent that could be selected on this continent? Sir, there are no two other states in this Union, possessing the intrinsic value that belongs to this state. A document laid upon our tables, from the Comptroller's office, informs us of the value of the public property of the state. It consists of your canals, your state house, your state halls, your public grounds, your lunatic asylums, your state prisons, your arsenals, your ordnance, your arms and munitions of war, and your salt springs of the aggregate value of \$54,340,481. In addition to all this, sir, public buildings and edifices abound throughout the state. Your court houses, your jails, your churches, your colleges, your academies and common school houses are worth millions more. You have a common school fund and literature fund, which, together, exceed two and a half millions of dollars; and canals that yield an annual revenue of \$2,700,000. This property, except the canal revenues, I know cannot be disposed of to pay the debt, but I mention it to show that it is in existence, and that we are not liable to be taxed for such things. It shows a flourishing and most flattering state of prosperity. The private property of the individual citizens and corporations in the state is assessed at \$605,646,095. This vast sum falls far short of the real value of private property in the state. Our condition may be likened to that of a man having a good improved farm, well stocked with good buildings, well furnished, worth \$10,000, himself in the vigor of manhood, enjoying perfect health, and in debt about \$200. This being our condition, what cause have we for alarm? Instead of mourning, we ought to rejoice; instead of fasting, we ought to give thanks. Thus situated, ought we to refuse to complete our unfinished works? The question is, whether we are so poor, so pauperized and ground down with poverty, that we cannot safely set apart \$4,000,000 or \$5,000,000 of the canal revenues to complete those works, and give relief to the complaining and suffering thousands whose condition so loudly demands it? My friend from Herkimer has sounded his note of alarm, and says that there is no certainty that the tolls will hold out to pay the public debt; that commerce may be diverted from the canals, and we may be obliged to resort to direct taxation to pay the debt; tax and terror is the burden of his argument. His argument was not addressed to the whole man; it went only in search of cold-hearted, frozen avarice. The better and more liberal feelings of the human heart were not addressed by it; they were frightened into the non-performance of their functions, by the ter-

rors which accompanied his appeal to avarice. I will not accuse my friend of intentionally putting forth an argument designed to deceive. I know him too well to believe that his honest heart would have any share in such an undertaking. I know that avarice will lie, will cheat, will steal, will plunder, rob and murder, and I will not be so unkind or so unjust as to charge him with intentionally invoking that infernal passion alone to his aid. I have long, intimately and favorably known my friend from Herkimer; I know his worth, and I love him; but when he yields to a strange delusion and goes counter to what appears to me to be right, I cannot go with him. When he tells us that the tolls upon the canals, after a few years, will diminish, and that there is such fearful danger of their falling below the sum necessary to pay the public debt, can I believe him? When he tells us that there is danger that insolvent Pennsylvania will construct canals and steal away our trade on the south, and that the Welland canal, the St. Lawrence and the Ogdenburgh railroad will steal it away on the north, can I believe that? When I am told that the western states will find other avenues to market, which they will prefer to our canals, shall I believe that? The commerce of the upper lakes runs as naturally into the Erie canal, as the Mohawk river runs into the Hudson; and it would be as difficult to divert the commerce of the canal, as it would be to turn the Mohawk into some other channel. Sir, in proportion as the fertile lands of the west are brought under cultivation, in that same proportion will the commerce of our canals increase. The progress of settlement in the western states is astonishingly rapid; emigrants are pouring into them by thousands daily. By a letter written from Germany, and published in the Washington Union, it appears that over 200,000 persons will emigrate from Europe to the United States this year; that many of them are wealthy, and will bring large fortunes with them. These emigrants will pitch their homes in the west. Another account, taken from a Milwaukee paper, states that over 1,500 passengers arrive in the steamboats from the east at that place daily; that most of them are emigrants, seeking homes in Wisconsin. With these evidences before me, how can I join with the gentleman from Herkimer in his belief? This report, sir, takes from the canal revenues yearly \$2,672,500. It fixes a fund of \$1,500,000 to sink the canal debt; a fund of \$500,000 to sink the general fund debt, and applies \$172,070 to the support of government. The sum to be taken from the tolls varies but little from the nett money from tolls for this year; so that under the provisions of this report, it is certain that there is nothing to enable the work to be started next year. If the tolls should increase \$100,000 or even \$200,000 next year, what would that increase perform of the work necessary to complete the canals? Sir, it seems to me idle to talk of performing this great work with the mere increase of tolls. I will refer my friend from Herkimer to a case in point, which he will undoubtedly acknowledge as good authority, for I have often heard him approve of it. He will recollect that in the spring of 1845, the legislature passed an act appropriating \$197,000 to the

public works, which was sent to the Governor for his approval, and it came back vetoed, with the Governor's reasons for the veto. If my recollection serves me rightly, one of the reasons assigned by the Governor was that the sum was too small to be of any practical benefit to the work. I do not pretend to quote the Governor's language literally, but the substance of it was that the whole would be swallowed up in engineering, and there would be nothing left to pay for the other labor. This proposition of the gentleman in effect suspends the execution of the public works until after the payment of the public debt, or nearly so; and this too upon principles which he has hitherto acknowledged to be correct. There seems to me to be a manifest inconsistency and unfairness upon the face of the proposition.— Whilst it excites expectations and hopes that the works will be resumed at no distant day, it reaches so far into the treasury as to defeat those hopes and expectations. It would be far more in accordance with fair plain dealing, to unveil the design, and come out openly, and declare in express terms, that the further prosecution of the public works shall be suspended until the state debt is paid and extinguished. I had rather vote for such a proposition than the one under consideration. The people would then know what to depend on, and they would be relieved from the tantalizing hopes and disappointments with which they have so long been harrassed. Sir, before the public works could be completed upon the plan the gentleman from Herkimer proposes, one half the men now alive would be dead. The injustice of the proposition is too palpable to be denied; the privations and hardships of the people in the south-western counties are to be continued for long years, and perhaps made perpetual, under a pretended fear that at some future day a half mill or a mill tax may fall upon the property of the people of the state. It is obvious to every intelligent mind that will take the trouble to look into the matter, that the unfinished works may be completed out of the canal revenues, without the slightest danger of a compulsory resort to taxation. I put the question to this committee, will you sit and look coldly on and see the people of Allegany and Cattaraugus pine in suffering and poverty, when they can be relieved without a call upon your pockets? Will you for fear that by some possibility you may be called upon at some unknown period to disgorge a sixpence or a shilling out of your abundance, tarnish the honor and violate the faith of this great state, with her ten hundred millions of wealth, by backing out of a work of the greatest public utility, which she stands pledged to execute, and which she has more than half completed? Will you bring such a stain upon her character, and leave a half finished, dilapidated canal to remain as a monument of her folly and parsimony, to be scoffed at by future generations, and will you do all of this through an unfounded fear of a little contemptible contingent tax? Sir, the sum of \$672,500 proposed by this report to be perpetually paid by the canals into general fund, is the interest of \$13,451,167 74, which the Comptroller claims to be due from the canal fund to the general fund. This interest, if this

report is adopted, will be payable for all time to come, by the canals to the general fund. I am willing that the canals should fully reimburse the general fund for every dollar, with interest, which the general fund has ever advanced for the benefit of the canals; but I deny that the canal fund owes anything like \$13,451,167 to the general fund. The claim to the extent insisted on is unjust and unfounded. Sir, my friend from Herkimer admits what is just and right in principle, that is, that the canals should only be taxed with their cost of construction, superintendence and repairs, and that they should in no wise be taxed for the support of government. This principle being admitted, we have only to look at the accounts between the two funds, strike the balance, calculate the interest, and thus liquidate the sum which the canals fairly and honestly owe to the general fund. These accounts, as stated to us by the Comptroller, stand as follows:

The Canal Fund Dr. to the General Fund,

To salt duties,	\$2,055,453 06
To auction duties,	3, 92, 32 05
To steamboat tax,	73 809 93
To land sales,	103 755 18
To benefits of lateral canals,	1,356,498 88
To direct tax of 1842,	250,561 74
Making a total of.....	7,491,824 74
Canal Fund Cr. by cash,	2,137,602 72
Balance,	5,354,222 01

Upon this balance the Comptroller compounds the interest and swells the debt due from the canals to the general fund to the sum of \$13,451,167. The interest of this latter sum, at 5 per cent., is a little over the sum of \$672,500, which this report requires shall be forever paid by the canals to the general fund. From these statements it will be perceived upon what this perpetual annuity of \$672,500, to be paid by the canals to the general fund, is based. The claim set up for the general fund against the canal fund is more than twice as large as it should be. The salt duties from 1803 to 1845 inclusive, should be charged to the general fund, as properly belonging to the canal fund. The steamboat tax belonged to the canal fund; and the general fund, in the charge for land sales against the canals, has included about \$40,000 which were the avails of the sale of lands which were given to the canal fund to encourage the construction of the canals. I insist that these three items, that is, the salt duties, the steamboat tax and \$40,000 of the land sales, properly and rightfully belong to the canal fund, and that the general fund has no claim whatever upon the canals for them. This is the history of the salt duties:—In 1803 the legislature passed an act levying a duty of 3 cents per bushel on all salt manufactured at the Onondaga springs. This duty was laid with a view to a revenue barely sufficient to indemnify the state against the expenses it should incur in the inspection of the salt and regulation of the works. The duty was continued down to 1817, during which time small accidental surplusses accrued, which were paid into the state treasury. These surplusses, in the aggregate, amounted to something over \$40,000. Down to 1817, it never entered into the imagination of any person that the salt was

taxed for the purpose of raising a revenue for the state. A tax for that purpose would not have been tolerated for an instant. The palpable and glaring injustice of such a partial tax would have produced a bloody revolution. A tax upon an indispensable necessary of life, and that falling upon less than one-half of the state, and upon the less wealthy part of it, could not have been sustained. The people in the eastern part of the state were wholly exempt from it, and it was entirely paid by the people of the western part. None of the salt scarcely came east of the central part of the state before the construction of the Erie canal, and but little has passed to the eastern part of the state since the canal was constructed. As an evidence that but a very trifling amount of Onondaga salt ever found its way to tide water, I will refer gentlemen to a document on our tables from the Comptroller's office, by which it appears that within the last three years, a large sum has been paid out of the treasury in the shape of bounties to encourage the transportation of salt on the canal from Onondaga to tide water. The tax on the salt has been almost exclusively paid by the western people. In 1817 it became necessary to provide funds for the construction of the Erie canal. The canal then as now had its deadly enemies and its friends were obliged to make the best shifts they could to get on with it. Among other expedients resorted to, the salt duty was increased by law to twelve and a half cents on the bushel; this increased duty was imposed expressly for the benefit of the canal, and unequal and burdensome as it was upon the western people, they consented to it for the sake of opening a way to the market for their produce. Had they been told and made to believe that this onerous and unequal tax was intended for the benefit of the general fund, was to be claimed by it and was to be a perpetual tax upon them and their children, for the support of government forever, they would have laid down their lives before they would have submitted to it. No, sir, the general fund has no more right in equity to the avails of the salt tax than the state has to levy a tax sufficient to defray one half of the expenses of government upon your single county — The avails of that tax, as I have said, is the rightful property of the canal fund. The steamboat tax, I am informed was likewise levied for the exclusive benefit of the canal. I have been told by a gentleman lately a member of the legislature, that the owners of the steamboats themselves petitioned for the imposition of this tax, and that he had within a very few years, seen the petitions on the files of the assembly; that the ground on which they desired the tax was to benefit and hasten the completion of the canal, which, when done, would augment the travel upon the river to an extent that would more than indemnify the boat owners and the public for whatever taxes they might pay under the law imposing them. I have looked for that petition but have been unable to find it. Now, sir, by what authority the claim of the general fund to these taxes has been instituted, I do not know; there has been no legislative action on the subject, and I am at a loss where the power, out of the legislature, exists to transfer these taxes

from the fund to which they rightfully belonged, to a fund having no foundation of a claim to them? It has been done sir, by the one man power in the comptroller's office. I will not use the harsh and grating epithets that my friend from Herkimer has used in respect to other transactions; I will not call this unauthorized transfer robbery, theft, pilfering, plundering or foraging the treasury. but I will give it its rightful name; it is downright injustice and rank usurpation. Does the gentleman suppose that the people of the western part of the state are so stupid, so void of understanding, and of respect for their rights, that they will sanction a principle like that contained in this attempt to enslave them to the eastern part of the state? — Does he think that this hocus pocus way of getting up a debt and saddling it upon them for all time to come, will go down with them without a manly struggle to resist it? The entire tire amount of salt duties received by the general fund and charged by it to the canal fund, is \$3,182,205 39. The steamboat tax is \$73,509.99, which, added to the \$40,000 improperly charged for land sales, makes up a total of \$3,295,715 38. This sum, deducted from the balance of principal claimed by the general fund, \$5,354,222 01, leaves a balance still in favor of the general fund of \$2,059,506 38. This sum, with the interest upon the several advances from time to time, as they were made, would, in my opinion, constitute the true sum due from the canal fund to the general fund. The heavy advances have been but recently made. I have no data by which I can calculate the interest, but from the best judgment that I have been able to form, the most rigid compound rule of interest would not increase the debt to much over four millions of dollars; it might raise it some higher. but could not possibly raise it to six. — I aver, sir, that the principle I have laid down in respect to the salt tax, the steamboat tax, and the \$40,000 of land sales, is correct, and would be sustained in a court of equity. I would willingly go to the trial of the question before the chancellor; or, if possible, I would willingly submit it to the chancery of heaven, nothing doubting but my position would be sustained. The gentleman has said that Governor Clinton, in 1817, pledged his word that the salt and auction duties should be restored to the general fund, and that the canal board, in 1843, had given a direction to that effect. The auction duties properly belong to the general fund, and it is right and proper that they should be restored; but Governor Clinton or the canal board had no right to make this unceremonious disposition of the constitutional rights of nearly half of the people of this state, in respect to salt duties. A different power from that which either of them possessed was necessary to give validity to such a promise or direction. The consent of the people themselves was necessary, which consent they have not given, never would give, or will give. My friend from Herkimer has had much to say about good faith. I desire to see good faith every where observed. In good faith we ought to regard the rights of every part of the state as equal, and we should act accordingly. We should proceed to our work in honesty and sincerity. I desire to know how the general fund

has accomplished so much as is claimed for it? I have heard much about the general fund being swallowed up and absorbed by the canals. I believed there was something in the assertion until I came here and looked into it. It was the argument we used to make against the canal in old times. I was a buck-tail and a young man. I heard my seniors talk it over, and took it for true, as most young men take things. Since I came here, I have taken pains to go to the records, and search this fund out. I began with the year 1817, at the time the public works were commenced. I find a statement of the whole fund in the Comptroller's report of that year. It consisted of the following items:

Debt due from Bank of the State,.....	\$126,231 46
Three per cent U. S. stock,.....	833,177 33
608 shares Bank of America,.....	60,000 00
100 do Ne v York,.....	50,000 00
10 do Albany,.....	41,000 00
60 do Farmers,.....	30,000 00
300 do N Y State,.....	1,000,000 00
1000 do Manu titan,.....	50,000 00
2000 do Mechanics' & Farmers',.....	50,000 00
2000 do Middle District,.....	50,000 00
1000 do Newburgh,.....	50,000 00
2000 do Troy,.....	16,000 00
100 do Lansingburgh,.....	6,000 00
Balance on loan of 1786,.....	63,000 76
do 1792,.....	50,000 00
do 1808,.....	449,76 10
Loan to Niagara sufferers and others,.....	112,421 75
Bonds and mortgages for land sold, ..	5,3,031 51
260 shares Inland lock Navigation Co.,.....	92,000 00
200 do Seneca do do,.....	12,500 00
Bond of Mayor, A. dermen, &c. of N. York,	30,000 00
Total,.....	\$4,470,169 80

In addition to which the state owned about 750,000 acres of land, the value of which is not stated. The same report gives the amount of the state debt at that period at \$2,905,335 00, which deducted from the amount of the general fund, leaves \$1,575,504 80, as the amount of the fund over the debt of the state. This million and a half and the 750,000 acres of land constituted the entire fund in 1817; considerable of the fund was unavailable; the stock in the lock navigation companies was good for nothing.—The Middle District bank failed, and that stock was lost, and large donations were made from time to time to the school fund of lands, loans, &c., which were taken from the general fund. The Comptroller reports to us that since 1817, there has been paid out of the treasury and for special appropriations, the sum of \$15,931,706 41. No part of this vast sum was paid for the benefit of the canals, and still this magical little fund of less than a million and an half, in 1817, has contrived to pay out for the support of government, &c., the enormous sum of \$15,931,706 41, and bring the canals in debt to the amount of \$13,451,167 74: making a total of \$29,382,874 15. The facts and figures show this state of things in regard to the general fund. I have endeavored to ascertain from what sources the general fund has been replenished since 1817, to enable it to disgorge so freely. A resolution some time ago was sent to the Comptroller, from this Convention, requiring him to report to us where the general fund got all this money to pay out. I am informed that his reply to the resolution was sent in a day or two ago, and that it is now in the hands of the printer. I have not seen it, and very much regret

that I am deprived of the benefit of it on this occasion. In searching for the accounts of moneys paid into the treasury since 1817, I find that the sum of about \$1,399,390 88 was collected from the half-mill tax which expired in 1826; that \$1,706,233 05 was collected under the tax law of 1842; that \$115,503 47 was collected under the law of 1844, imposing the one-tenth of a mill tax; that \$2,508,346 24 was received into the treasury from salt and auction duties since 1836. There are some other receipts which I have not been able to ascertain, but their amount cannot be large, say they might amount to \$2,000,000, and this I think is a very liberal allowance, and these receipts all put together amount to \$3,731,479 64; and out of this sum the general fund has paid in cold cash for the support of government, &c., the sum of \$15,931,706 41, and has got the canal in debt to it \$13,451,167 74. Now, sir, this seems strange to me; I cannot understand it; I impute no blame to any one about this matter, but I really want to know the manner of doing the thing. When a thing presents itself to me and stands up before me in the light this matter does, am I not justified in making the enquiry, how it can be so? Sir, if the committee will indulge me for a few moments, I will say a few words in regard to the Genesee Valley canal.—This work has been made odious by false and vindictive representations. Its enemies have lacked principle as well as information on the subject of it. They have acted as people sometimes act who have got a spleen against a particular dog; they go into the street and cry 'mad dog.' Every thing that ignorance combined with impudence and vindictive feeling could invent, has been said and done to disparage that work in the legislature. Its friends have been charged with fraud and corruption in getting the law passed for its construction and in getting appropriations to construct it; the country where it is located has been ridiculed and efforts have been made to disgrace it and its inhabitants. One miserable driveller has gone into calculations and pretended to show that it would be cheaper for the state to hire teams to do all the carrying for that region than to complete the canal. Sir, I do not desire to be censorious, but when I see what ought to be senatorial dignity, turned into a low, sneaking, lying species of pettifoggery, I cannot refrain from rebuking its perpetrator. I will now, sir, in my poor way, endeavor to give you a true description of that persecuted region. I regret my want of graphic power to do it justice. The Genesee valley canal commences at Rochester, and terminates at Olean, with a branch terminating at Dansville. The distance from Rochester to Mount Morris is thirty-seven miles, and from Mount Morris to Dansville fifteen miles; the distance from Mount Morris to Olean is sixty-six and a half miles, making in all, one hundred eighteen and a half miles. From Rochester to Dansville the canal is completed, and is doing as good a business as any of the lateral canals. From Mount Morris to Olean, it is unfinished. The state has expended over three and a half millions of dollars upon the work, and the estimates show that it will require about \$1,300,000 to complete the unfinished part. This estimate is based upon

the high prices at which the work was let in the years 1833—9. I have no skill in engineering, but I believe that the cost of the work to finish the canal, will fall far below the estimate. Gentlemen who are acquainted with the state of the unfinished part of the canal, and who are good judges, inform me that it will not cost over a million. The canal from Mount Morris to Belfast in Allegany county, is located in the valley of the Genesee river, and from Belfast to Olean it is located in the valleys of Black creek and Oil creek. There are no better lands in this state than those forming the entire margin of the canal; the surrounding country has everywhere a good and fertile soil. The unfinished canal and the desolation along its borders present a mournful appearance that begs description; you will there find mounds of earth and excavation grown over with grass, locks partly finished, piles and acres of stone, decaying timbers and plank prepared for finishing the work; you will find farms cut in two, the roads everywhere obstructed and in places rendered almost impassable; there sir, you will see the deserted shanties of the workmen, the forsaken homes of the injured victims of a cruel disappointment, and you will see those who continue to reside there brooding over their hard fate; and you would hear from them the anxious enquiry, an hundred times a day, is the Convention going to prevent the finishing of the canal? This, sir, is but a faint description of what exists along the line of the unfinished part of the Genesee Valley Canal. Sir, I believe that canal would yield a handsome revenue to the state and would much more than pay the interest of the sum it would cost to finish it and keep it in repair. There would be no lack of business on it. Allegany, Cattaraugus and the northern counties of Pennsylvania, afford the greatest quantity of pine timber, of the best quality that can be found upon an equal extent in the United States. There is oak timber enough to supply the demand for staves and ship building for many years. Were the canal completed, it would extend the navigation to the junction of Potato creek, with the Allegany river, a point not twenty miles distant from the richest beds of iron ore and stone coal in the state of Pennsylvania. These are articles that are used. Coal is now hauled by teams from the beds near Smithport to Nunda, a distance of eighty or ninety miles. It is preferred to any coal that can be procured by way of the canal. Perhaps I may be considered as visionary, when I say that I believe it would be but a very few years if the canal were finished, before the navigation of the Allegany river would be improved so that steamboats would pass from Olean to Pittsburg; could that river be improved and unite its navigation with the Erie Canal, through the valley of the Genesee, it would afford a line of communication but little inferior, if any, to that from Rochester to Buffalo. In 1837, seven years after the veto of General Jackson on the Maysville road bill, a survey was made by order of Congress, of the Allegany River from Potato creek, twenty miles above Olean to Pittsburgh. The survey was made by G. W. Hughes, Civil Engineer for the government of the United States. It resulted in a report from him that the naviga-

tion of the river could be improved so as to admit steamboats of over a hundred tons, to run from Pittsburg to the mouth of Potato Creek, for a cost of \$370,000. The Genesee Valley Canal should not be abandoned. It was one of the great avenues of communication that was often and earnestly recommended by that great man whose masterly mind conceived and carried out the construction of the Erie canal. However much the Genesee Valley canal may be disparaged by our little fry of small lights, it can boast of the friendship and patronage of the great and lamented Clinton. If the proposition we are considering is carried, it will operate as an extinguisher of our hope; and we, poor outcasts of Allegany and Cattaraugus, must pine away our lives in poverty and obscurity. We have paid our share of the taxes to build a splendid \$300,000 palace for your state officers; we have also paid our share of the taxes to embellish and adorn your public grounds; to make your geological survey; and to build your lunatic asylums, &c. When taxes are wanted we are sure to be remembered; the tax gatherer is as sure to find his way to our humble cabins as he is to find his way to the lordly mansions of the cities and more favored portions of the state. Would it not be good policy for you to make our canal and improve our condition, so that we may be able to lessen your burthen of taxation, by contributing more largely ourselves to the taxes that may be required? In lieu of this, we are told that the revenues of the state must be seized while they can be got hold of, and used up instantly in the payment of the state debt, and that our hopeless condition is past relief. Well, sir, I suppose we must grin and bear it. Nearly every other part of the state has been most bountifully provided for, and I find that modern morality teaches men that when their own ends are answered the rest of mankind may take care of themselves. Now, sir, I will turn my attention to the proposition I had the honor to submit to the Convention some days ago, and compare it with that of the gentleman from Herkimer. I propose, in the first place, to abolish the distinction between the general fund, and casual fund and get rid of the perplexities and financial mysteries that have given us so much trouble. I want to see business done in a plain way, so that we can all understand it without laborious study. If my faculties were as acute as those of some gentlemen, I might enjoy the same facility they do in being able to dive by intuition to the bottom of what appear to me to be deep and dark mysteries. Sir, I am told that the very simple manner in which our financial accounts are kept, constitutes the very reason that prevents me from understanding them. Perhaps this may be the case; for I have no exalted opinion of my capacity; it has failed me so often that I have great reason to distrust it; but notwithstanding the excellent simplicity which attends the keeping of those accounts, I desire to see that simplicity simplified. I propose to set apart a sinking fund of \$1,600,000, which will pay the interest and reduce the principal of the state debt in twenty-seven years and sixteen days; I have had the calculation carefully made by able experts, and I can with confidence assert that the sum by me

proposed, will extinguish the entire debt, as I understand the debt, in the time I have mentioned. Should this proposition be adopted, it secures the payment of the debt without the least danger of a resort to taxation. The canal revenues now up to nearly three millions, will never fall below \$1,600,000; and tax need not be dreaded. That word *TAX* seems to have a peculiar charm for my friend from Herkimer; he is able to make such admirable use of it, he ought to like it; it would spoil his trade if the word was struck out of the language; it is his battering ram to storm canals, and the most glorious bait to catch the votes of the miserly and avaricious that could be invented. With a sinking fund of \$1,600,000, we should have a respectable sum to begin the completion of the public works with; they could be resumed next year; the increasing revenues would enable us to expend a million a year upon them by 1849, and the Erie canal could be improved and Genesee and Black river canals completed within six years or seven at the farthest. A gentleman asks me, how are we to get on with the support of government if you appropriate all your surplus to the completion of the works? The half-mill tax will be continued; every gentleman that I have conversed with in this Convention has said that he was willing that tax should be continued until the works were finished; but all unite in objecting to an additional tax; there will be no necessity for an additional tax to support government. I will refer gentlemen to the Comptroller's report on that subject; he says the annual wants of the government are as follows:—

For ordinary expenses of government.....	\$300,000 00
Interest on railroad and treasury debts.....	237,321 76
For special appropriations.....	150,000 00

	\$687,321 76
The salt and auction duties, he says, are estimated at.....	\$150,000 00

Which leaves.....	\$537,321 76
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Now, the debts are to be assumed by the canals, and the treasury will be relieved from the payment of \$237,321.76 for interest on the railroad and treasury debt; deducting this there will remain but \$300,000. The half mill tax and other perquisites of the treasury will considerably overrun the \$300,000, so that gentlemen may see that the support of government is fully and fairly provided for. The gentleman from Herkimer insists that the comptroller's estimates in this respect are entirely too low; that support of government will call for a sum exceeding his estimate. But I will ask you, Sir, who ever knew our comptroller to err on that side of the question; the sum is amply sufficient. The expenses of government may be cheapened; it is not necessary to pay a \$3000 salary to get a good judge; experience shows it is unnecessary; you may put a judgeship with a \$1500 salary in the market, and the best lawyers we have would scramble for the prize, we have seen it done and know it so to be. Sir, I have not said all I could wish to say on this subject, but the state of my health admonishes me to proceed no further at present.

The question was then taken on Mr. JORDAN's motion, and the vote stood 27 to 27—no quorum.

That however being less than a quorum, the clerk "told" the House, and reported that a quorum was in attendance.

Mr. HOFFMAN now took the floor, and run over the cases of the railroads now having loans of the state credit, pointing to consequences of adopting an amendment to meet this particular case the H. & B. road. The Long Island road could now pay very well; but if the state should run through a parallel road on the main land, they would have an apology for not paying. The state had granted a bounty of three millions for the construction of the Erie road. That would in time be connected with the coal beds of Pennsylvania. The D. & H. canal company, under such circumstances, might have a strong apology for saying you have impaired our rights by your bounty and we ought not to pay. The Syracuse and Auburn and the Auburn and Rochester might pay very well now; but if a railroad were authorized from Syracuse to Rochester by the way of the canal valley, of which there would scarcely be a doubt, that too, might be made an apology for asking not merely an extension, but a release of the debt. He would willingly have avoided what he had said; but he had felt a strong desire that this section should be made strong—that these railroads should pay whenever they could—that early notice should be given to them, that they might prepare to do their duty. But if it was the pleasure of the Convention that a mere indulgent rule should be adopted in these cases, it was not his duty strongly to object to it, after stating clearly its probable result. His own mind was that the state having loaned its credit, without the hope of gain, it should be treated as honest men treat their endorsers, and that the strictest rule should be applied. But if the Convention thought a more lax rule should be adopted towards these railroads, he had nothing more to say.

Mr. JORDAN denied that his proposition gave the power to the legislature to release any of these debts. It simply gave the power to extend or compromise them as might be most conducive to the interests of the state, not of the roads. The counter proposition was to sacrifice all these concerns both to the state and to individuals concerned—many of whom had invested large sums in them. He insisted that he did not ask the rebate of a single dollar of interest or principal. He only asked that the state authorities should have power to deal with these roads as the interest of the state should require—securing something when they could instead of going on with a miser's grasp and a Shylock policy to the sacrifice both of the state and of individuals. The case of the Long Island railroad, as put by the gentleman from Herkimer, he urged, was a fair illustration of the harshness with which such a rule as this might operate, and of the policy of leaving it to the legislature to defer payment or otherwise relax the terms, as the interest of the state might seem to require, in case that road, under the effect of a rival road might find itself. He insisted too that some consideration was due to the individual corporators, who had embarked their property in these enterprises, from which the public at large were largely benefitted. For, like the

old turnpikes, these roads, though they might yield no return to the stockholders, they were and would be of immense benefit to the public. There certainly was nothing so very culpable in a man's investing money in these enterprises, that he should be made an object of vengeance to such a Shylock system as this. Let him live through it, if he could. It was enough to kill him off when he could not pay. No sane man having a debt due him, would treat his debtor in the way that this section proposed to treat these railroads. Better leave it to the legislature to defer or compromise these debts, if they could get more by such a course than by a sale and a sacrifice of the property. It would be leaning backwards, jumping from one extreme to another—after the legislature had pursued the course it had—after a liberal hand had been extended in aid of these enterprises, to turn round now and say, having got these roads in their possession, that without regard to the interest of the state, but from a mere matter of financial fancy, the very moment a debt is due we will put in the knife and cut them up root and branch. Better trust the representatives of the people of to-morrow with the interests of the people of to-morrow—not here assume to be wiser than to-morrow or to protect posterity against themselves.

Mr. STETSON thought we had better strike out the section, than amend it as proposed—for it would be regarded as a constitutional recommendation that there should be a compromise rather than enforcement of these claims. Mr. S. went on to repel the imputation that he and those who opposed the amendment were to be classed as Shylocks and misers. He showed from the returns that with the exception of the H. & B. rail-road, all these loans were to run some twenty years and more.

Mr. JORDAN explained that the loan to the Hudson and Berkshire was to be repaid by instalment yearly, and that it had already paid \$20,000 into its sinking fund, or reimbursed that much.

Mr. STETSON insisted that as we proposed to prohibit all these loans for the future, (for all parties seemed to assent to that,) as impolitic, consistency required that we should be diligent in collecting in these debts. To recommend a compromise would be to draw upon the state more of this contingent debt, and to throw further obstacles in the way of the enlargement and the completion of the lateral canals. Again to refuse to grant these loans for the future, and yet to say that those heretofore granted might be compromised or deferred would be unjust to the rail-roads hereafter to be constructed—and Mr. S. alluded to the Northern rail-road and to that section of the state, as having a right to complain of such a policy. Mr. S. closed with some general remarks on the debt paying policy saying that the feeling here was not what he could desire. He spoke of the change in this respect which had taken place since '12, when he said no voice dare rise and express opinions such as we heard here. Men then turned pale who had been concerned in bringing the state of New-York into insolvency. They trembled in their shoes. Not a voice was raised against the act of '42. He urged patience and a trial

of this system as a means of ensuring the enlargement, and scouted the dabbling policy of shaving off a few dollars here and there for that purpose.

Mr. JORDAN repelled the idea that his proposition held out an invitation to the legislature to compromise, or extend or release, any portion of these claims. He supposed the case of this H. & B. road, which was earning its \$15,000 a year, and paying its interest regularly, being by flood or fire or other accident compelled to expend \$100,000 in repairs—that by extending this loan, it might be able to raise the means of making repairs, resuming operations and ultimately paying the state its debt? His amendment would permit this. The section as it stood would compel the Comptroller to sell it at auction, for a mere pittance, for nobody would pay it, and thus lose nearly all the debt which a little indulgence would have saved. The policy of this section he had characterized as a Shylock policy, and such it was, whatever of Shylockism might or might not attach to its advocates. There was no way of accounting for this tenacity in favor of this section, as it stood. There was an idol set up here to be worshipped—an idea that we must sweep every thing off and begin anew—killing off all the faults of former legislatures by one death stab. The debt must be paid up at once, though your public works perished and your great canal was dried up. He would go with gentlemen to provide a fund for the extinguishment of this debt gradually, and to prevent the legislature from going on with further improvements until the means should be provided; but he would not go with them to stop the works already begun and on which millions had been expended, permitting them to perish rather than extend a few years the final extinguishment of the state debt. But he would assent to no course which should look like repudiation or for the postponement of a dollar beyond the time, unless by the consent and choice of the public creditors.

Mr. STETSON replied, saying that he agreed with the gentleman, that it was desirable to enlarge the Erie canal, and to do something for others as soon as it might be done wisely and safely. But that this sinking fund, and to the amount specified here, would be agreed to, he did not doubt at all. It was the policy of 1842, and of the explanatory act of 1844—that the debt should be paid in 22½ years. The question was one of mere computation—whether \$1,500,000 annually would pay the debt in that time.—Being assured of that, he should doubt the fidelity of gentlemen to the public sentiment, and to the act of 1842, if that sum should be reduced. He expected to see no democrat standing up there, and seriously recommending a sinking fund that would pay the debt in a longer time than 22½ years.

Mr. PATTERSON said he should be content to leave it to the legislature to enforce the payment of these debts when they fell due, instead of saying now twenty years in advance, that unless they were paid by the day, the companies owing them should be crushed. As to compromising these debts, there were two ways of doing this—one was to get all you could, if you could not get the whole; and the other to tell

these corporations that if they did not pay by the day, they should be sold under the hammer, and that the state would not be a competitor, and that persons who desired to bid had only to combine together and take the road at their own price. That was a kind of compromise that he would prevent if he thought it necessary to instruct the legislature on the subject. But he was opposed to the whole section. He believed the legislature thought, when they made these loans, that the security was ample. The loan to the Troy and Schenectady, for instance, was not only secured by a mortgage of the road, but by the bonds of the city of Troy.

Mr. STETSON did not doubt the security.

Mr. PATTERSON thought the gentleman did.

Mr. STETSON said expressly that he did not.

Mr. PATTERSON said he inferred as much from what the gentleman said of the refusal of the legislature to grant a bounty to the gentleman's constituents for building the northern railroad—as if the one project was deserving of more consideration than the other. But be this as it might, the gentleman's constituents had got a prison instead of a railroad, and it remained to be seen which was the better investment—the railroad or the state prison bounty. But the gentleman had thrown all the blame of these loans upon one party, and as he thought very unjustly. So in regard to his imputations in reference to the creation of state debt. If this was a sin, the gentleman himself was not free from the taint. He voted for the Black River canal.

Mr. STETSON confessed that he did—and added that he had regretted it ever since.

Mr. PATTERSON said he remembered that it was said at the time that the difference between that canal and some others, was that the Black River ran up north.

Mr. STETSON: Not within one hundred and fifty miles of me.

Mr. PATTERSON intended to make no charge against any body. Here was a debt incurred, and whether properly or improperly, it must be paid; but whether on that particular day or on this, was a matter of minor importance, so it was paid. He went on to argue further against the adoption of an iron rule here which would compel the sale of these roads, and the sacrifice of the interest of the state and of stockholders, if the loans were not paid by the day. He preferred leaving it to the legislature to say, when the exigency should arise, what would be best for the interests of the state.

Mr. RICHMOND preferred the amendment to the section as it stood; but he believed it would be as well to strike out the whole section. He did not like the idea of advertizing these rail roads, so long in advance that they need not pay up punctually; nor would he bind the legislature to enforce payment rigidly, without regard to consequences. Better say nothing about it.

The committee here rose, and the Convention took a recess.

AFTERNOON SESSION.

There appearing to be no quorum in attendance.

Mr. DANFORTH moved to adjourn and call-

ed the ayes and noes. There were ayes 8, noes 50.

After waiting until 4 o'clock, 66 members were obtained.

THE FINANCES.

The committee of the whole, Mr. W. TAYLOR in the chair, took up the financial report.

Mr. VAN SCHOONHOVEN addressed the committee at length in opposition to the fifth section of the report.

Mr. RICHMOND continued the debate in reply to some of the positions of Mr. V. S. and Mr. VAN SCHOONHOVEN replied.

The amendment of Mr. JORDAN was negatively, 31 to 39.

The amendment of Mr. F. F. BACKUS, applying the section to individuals as well as corporations, now coming up. [See yesterday's proceedings.]

Mr. F. F. BACKUS said he had offered this amendment, not because he intended to vote for the section if amended, but because he could not consent to extend to these companies a partial rule. No fault had been found with these companies, and yet they were selected out of the whole class of debtors, and were to be subjected to this iron rule. Several millions of dollars were owing the state by individuals, and why should they be exempted? These companies had, it is true, been found in bad company, but they had always been found faithfully fulfilling their own obligations. One of them—the Delaware and Hudson canal company—was itself a model for the state in the management of its financial concerns.

Mr. MARVIN moved to strike out the whole section. It seemed to him most unwise to fix any rule on this subject, which could not be modified by circumstances that might arise. It appeared to him that some in this Convention were disposed to act, as if all wisdom, present and to come, was contained in this Convention. He had no doubt that men would be found in future legislatures full as wise as we are ourselves, and he would leave them free to act as the best interests of the state at the time might dictate. He examined the operation of the section, and showed its folly if applied to the ordinary transactions of business. What man of ordinary prudence, who had loaned his money on the security of landed estate, would be so foolish as to foreclose his mortgage, and sell the farm at half its cost, when it would bring its full value six months afterwards? Adopt this section, and it would be an inducement for knaves to get control of these companies, refuse to pay the interest and then the Comptroller would sell out the road, this same combination being on hand to buy it for a mere song. He would have no iron rule on the subject.

Mr. HOFFMAN said when the enemies of the section proposed to amend, it was time to look after it. These corporations and corporate property seemed to have been held as something sacred. The artificial man that the legislature made had been constantly regarded and treated on a different principle from the natural man that God made. He had hoped that we had got over this partiality for the creature. But the state had not loaned its credit to these corporations for gain. The

state gained nothing by it. The gain was to be all on one side. The state, according to the promises made when the loans were asked for, was to lose nothing by the operation, and the advantage, if any, was all on the side of the road. Not so in the case of loans between individuals—there both parties were the gainers, and a different rule should be applied to them. But here debts to the amount of nearly four millions had been saddled on the people by the bankruptcy of the concerns that represented the security as ample. But again, we were making provision here for the payment of this debt which had been saddled on the treasury, and for the contingent debt which might fall upon it. And if we were obliged to make provision for the payment of this contingent debt, he held that it was perfectly right, and that it could not be regarded as Shylockism to say to these companies, you have got our credit, we have got to pay, and we give you notice to go on like honest men and prepare to meet it by the day. He said that in regard to the Erie railroad, which was not finished, he had no objection to allow that company time to complete its road—but all the rest being finished and in operation, he would retain the rule in regard to them. He warned the Convention that unless they made provision to coerce payment by these companies, whilst provision was made for paying their debts, not half of it would ever be paid. But the matter being now fully understood, the Convention would deal with it as they chose. He hoped, however, the section would be retained.

Mr. MARVIN said he had advanced no argument in favor of releasing, deferring or compromising any debt due from these corporations. He only contended that this should be left to future legislation—that by putting a fixed, iron rule in the constitution, you might twerk injury to the state itself. He believed the interests of the state might be trusted to its representatives in the halls of legislation.

Mr. RUSSELL: Does not the gentleman solemnly believe, that unless this is fixed in the constitution, all the companies will come here and get released?

Mr. MARVIN replied in the negative. Had he entertained such a sentiment, he would not avow it. If he was a member of the legislature and one of these companies should come there and ask for an improper release of its obligations, he would stand up and oppose it. He only claimed that this should be left to the representatives of the people. We had always had a legislature—we always were to have one, and when the day should come that they were not to be trusted with the interests of the people, he should cease to take any interest in the affairs of the state. Mr. M. did not pretend to say but what the legislature had acted unwisely at some

time. All of us had erred at some time. But all this might be trusted to the corrective hand of the people. The gentleman from Herkimer had given an illustration in his own argument. He had told us that in 1842 the state was on the verge of bankruptcy on account of extravagant expenditures on the canals. Mr. M. would not admit that this was so. But allowing the premises of the gentleman, still was not there found a Hercules on this floor, who was able to call those around him who had the ability and who did stop these expenditures short off? Mr. M. was not saying whether the law of that year was wise or not. It might have been good enough for a short time, and as such, might have been approved by the people. But that the people had endorsed the views of certain gentlemen here that the state of New York shall be put into swaddling clothes, and lully-by-babied to sleep for all time to come—that the energies of this great people are to be prostrated, and the state put to sleep in the lap of Delilah, and her locks and strength shorn off. He apprehended that this could not be done, though you might by compounding interest four times a year, placing your debt at the highest point to begin with.—These great works of internal improvement would be prosecuted to completion, not in the short time originally intended, but in due time, they would be completed, do what we would. The people of this state never would be content to see works on which so much had been expended, go to ruin for want of comparatively small expenditure that would be required to do it, and to save the state from reproach of having begun what it had not the energy or enterprise to finish.

Mr. F. F. BACKUS in reply to Mr. HOFFMAN, said he could see no distinction between the two classes of debts. All these loans to the companies had been made in pursuance of special acts of the Legislature. The State took into consideration the benefits to be derived from these works, and received its gain in that way. What he objected to, was that these companies, which had done nothing wrong, should be selected out and publicly branded in advance as probable defaulters. He would not like to have a friend who had loaned him a sum of money, proclaim in the public newspapers, that the moment the debt was due it should be enforced immediately. And yet we proposed to do that and even worse; for the constitution was more public than a newspaper. He objected to this principle, but if it was applied to one class of debtors, he contended it should be extended to all.

Mr. HOFFMAN continued the debate in reply.

The committee then rose and reported and the Convention adjourned to 8 1-2 o'clock to-morrow morning.

TUESDAY, SEPTEMBER 15.

Prayer by the Rev. Dr. WELCH.
CANALS, FINANCES, &c.

The Convention resolved itself into committee

of the whole on the report of committee No. 3, Mr. W. TAYLOR in the chair.

The pending question was the amendment of

Mr. F. F. BACKUS to the 5th section, to extend its provisions to individuals.

Mr. BASCOM said he should vote against this amendment and probably against all amendments. He had come to the conclusion that it should be left to the friends of the section to perfect it. He apprehended this section belonged legitimately to the report, and was calculated to effect the principal object of the report itself. If an amendment should be moved as indicated by the author of the report, to except from this section, the largest and worst of these debts, he (Mr. B.) should vote against it. He wanted the report to stand as a whole. He considered it all to be wrong. After the State had expended millions of dollars on the public works, he could not see the propriety of abandoning all idea of their completion. He did not feel so much anxiety about the speedy enlargement of the Erie canal, for that work running as it did through the most populous parts of the State, could at any time command the necessary influence to ensure any improvement that the experience of the future should prove to be necessary or wise; but not so as to the two unfinished canals. He was not prepared to say that after at least three-fourths of the necessary expenditure had been made, it was wisdom or economy to withhold the comparatively small sum required for their completion. Hopes and expectations had been created among the citizens of the section of the State particularly interested in these works which it was now intended to blast forever. He remembered too well the feelings of the people of Onondaga and the counties west of it, while the Erie canal was in an unfinished condition, not to sympathize with the anxieties of those similarly situated with respect to the present unfinished canals. He was not prepared to say after both the great political parties had united in spending so large a proportion of the means necessary for their completion, that it was right or just for this body to undertake to deprive the Legislature and the people of the power of expending the small amounts necessary to complete and make them useful. Regarding the attempts to prevent forever the completion of these works upon which so much had been expended as not only unwise, unjust, and unfeeling, he should vote against the proposed amendment, although he could see little difference between the debts of individuals and the liabilities referred to in the section, and perhaps against all others, upon the ground that he did not desire to increase the chance of adopting the article to which the section belonged.

Mr. PARISH rose to speak in relation to the Black river canal, which was of great important to the section of the country from which he came. He recapitulated the various schemes during the last 20 years for the improvement of that portion of the state which resulted in the project to construct the Black river canal which once numbered among its friends the chairman of standing committee number three.

Mr. HOFFMAN said the gentleman was entirely mistaken.

Mr. PARISH asked the gentleman from Herkimer if he had not attended a meeting in favor of it at the time referred to.

Mr. HOFFMAN said he was at the meeting

but he must not be understood as being in its favor.

Mr. PARISH proceeded observing that the meeting was of the friends of the canal, and the gentleman's presence had caused him to be numbered with its friends. He then described the proposed advantages of the Black river canal and its extent—its progress and the cause of the suspension of the work in 1842, after one and a half millions of dollars had been expended upon it and when but half a million more was required to complete it and to give to that section of the state all its advantages. True the gentleman from Herkimer had given as his estimate for its completion the sum of \$300,000, but he was at a loss to know how he arrived at such conclusions.

Mr. HOFFMAN derived his information from official documents—the estimates of the canal commissioners of 1842.

Mr. PARISH also derived his information from official documents, and he would refer gentlemen to the reports of the canal commissioners, particularly to the special report of 1845, which showed that \$600,000 only was necessary to complete the canal with stone locks and less than \$450,000 with composite locks. Mr. P. continued, pointing out the expenditures on the construction of the canal, locks and other works on the line, and he asked whether the suspension was to be temporary or permanent. Whether it was the policy of this state to sacrifice all that had been expended, and all the advantages in prospect, for the equivocal economy of saving the small amount that was necessary to complete the works. Much money had been expended in preserving the unfinished works, giving an indication that the suspension was only temporary, but the policy of the gentleman from Herkimer would blight all prospect of a resumption. At the last session even, over \$12,000 was appropriated by the legislature to preserve the unfinished works from decay. All this looked to a future resumption; when the state could do so without incurring a debt, and he thought the time had now come, whether we regarded the pledges of the act of 1842 or the true interest of the state.

The amendment of Mr. BACKUS was negatived.

Mr. VAN SCHOONHOVEN moved to strike out the words "and duly," and the word "deferred," so that the section would provide that the claims of the state shall be fairly enforced, instead of "fairly and duly enforced," and that they shall not be "released or compromised," leaving discretion to "defer" them.

Mr. RUSSELL approved of the amendment. There might be occasion when the interests of the state would be sacrificed by a foreclosure of mortgage and he thought this discretion should remain. It might be necessary to defer the execution of the lien on the Erie railroad.

The amendment was carried, 37 to 34.

Mr. VAN SCHOONHOVEN then moved to strike out the whole section.

The motion was advocated by Messrs. KIRKLAND, HAWLEY and PATTERSON; and opposed by Messrs. HOFFMAN, RUSSELL and STETSON.

Mr. STETSON said the gentleman from Cat-

taragus had affected to hold him responsible for the introduction of politics into this discussion; to this he rose to reply, and also to some remarks of the gentleman from Columbia (Mr. JORDAN) who had designated the advocates of the committees' report as Shylocks. Mr. S. then proceeded to vindicate the conduct and course of Mr. HOFFMAN and to show the yearly increase of the state debt from \$6,000,000 as stated in Governor Seward's first message in 1839, to \$28,068,431 16, as presented in 1844 as good ground for all he had said on this subject. He alluded also to Gov. Seward's promise that the debt he proposed to contract, should be paid off in '65, and called upon the friends of that functionary to redeem the promise.

Mr. JORDAN regretted that the gentleman from Clinton had found it necessary to misrepresent him in regard to the use of the term Shylock. Mr. J. had no disposition to raise a tempest in a tea-pot—

"—— To lash the waves on high,
To waft a feather or to drown a fly."

He rose chiefly to tell gentlemen who were not present yesterday, that he had been totally misrepresented by that gentleman. He regretted it, because he had avowed distinctly that he was as ready as any body could be, to go any reasonable length to uphold the state credit, by creating a sinking fund that should ultimately and surely pay off the debt. And how could the gentleman justify himself in bringing in a political discussion here—in drawing disparaging distinctions between democratic and whig legislatures, on the basis of any thing Mr. J. had said in connection with this classical word Shylock! Mr. J. went on to allude to the precise question which was up yesterday, under his amendment to the 5th section, and re-stated the positions he took in defence of it, as against the iron, rigid, harsh, and impolitic rule which the section proposed to establish—saying that he said then, what he repeated now, that the policy of crushing one of these corporations, and selling its property at a sacrifice, when by a little indulgence, the state might get its loan and the company save something—was a Shylock policy. But he did not apply this term to the general policy of this report—for the only point of difference was as to how soon the debt should be extinguished—or rather Mr. J. was for paying off and prosecuting the public works at the same time, and not leaving them to perish, when our reliance must be on them to pay. But on the other question—the policy of crushing and sacrificing these little rail roads for not being able to pay up at the day and hour—the Shylockism of the policy had been confessed by the motion made by the gentleman from Herkimer himself to strike out this word deferred.

Mr. STETSON:—He voted against it.

Mr. HOFFMAN did not oppose it.

Mr. JORDAN said the gentleman's vote may have opposed it—his speech did not—and by the vote of the Convention the obnoxious word that he desired to get rid of had been struck out—as a little too Shylocky for practical use. That matter having been disposed of, and that so far as the general principles of the report were concerned, the gentleman from Clinton would have

no further occasion to raise a whirlwind on the use of this word Shylock.

Mr. PATTERSON here obtained the floor.

Mr. STETSON desired to say one word.

Mr. PATTERSON had no objection if he could get the floor afterwards. If but one word he would yield the floor.

Mr. STETSON went on to say that the explanation of Mr. JORDAN showed that he intended this harsh word for those who upheld this report.

Mr. JORDAN said his explanation was that he did not intend to apply this term to the general subject of this article; but to its application to railroad and other loans.

Mr. STETSON said the explanation showed that the gentleman intended all those who went for this section—and that his denunciations were broader than Mr. S. supposed. But as he understood them they were levelled at those who sustained the act of '42 and '44, and hence it was that he called on them to fulfil the promises made by their Governor (Seward) that this debt should be paid off in 1865.

Mr. PATTERSON did not intend to occupy much time—but if he should measure time as the gentleman from Clinton did, it might take him a good while to get through—for it took that gentleman 13 minutes by the clock to say "one word." Mr. P. had a good many words to say.

Mr. STETSON begged pardon—

Mr. PATTERSON could not give way for another word.

Mr. STETSON: Then proceed without referring to me.

Mr. PATTERSON took the floor for that very purpose.

Mr. STETSON thought courtesy at least required—

Mr. PATTERSON said undoubtedly there was a great deal of courtesy about this matter. He should not have risen yesterday, but for the remarks of the gentleman from Clinton—for that gentleman had the honor of making the first allusions to party that had been made since this discussion commenced. He made the broad charge that the whole state debt was created by the party to which Mr. P. belonged.

Mr. STETSON denied this.

Mr. STRONG called him to order.

Mr. PATTERSON said he would take care of the gentleman himself—and went on to repeat that the gentleman charged distinctly that the whig party were responsible for the whole debt.

Mr. STETSON did not.

Mr. PATTERSON:—You did. I have the words here as I took them down at the time.—It was in reply to this charge that Mr. P. alluded to the gentleman's vote for the Black river canal—a sin of which the gentleman said he had repented, and called on others to do the same. Mr. P. voted for that canal, and for the Genesee Valley and for the enlargement, and he was ready to answer for it to his constituents. Mr. P. went into the circumstances under which he gave these votes. He pointed to the fact that in 1845, Mr. HOFFMAN, as canal commissioner, drew a report recommending the enlargement of the Erie canal. That was after the doubling of the locks had been authorized. The canal com-

missioners did nothing under a conviction no doubt that the locks must be enlarged—that it was absolutely necessary. The gentleman from Herkimer was the first to pen a report in favor of an enlargement. The legislature, under that recommendation, authorized an enlargement—the time when was left to the canal board. There was no whig in that board then, and but 30 in the assembly. The estimate of the cost of the enlargement was less than thirteen millions.—The highest estimate for the Genesee Valley canal was about two millions—for the Black river, one million. Had these canals been built within these estimates, he never should have regretted his votes for them—and he had every reason to believe that they were correct. In 1833, when the whigs for the first time had a majority in the assembly, the commissioners told the legislature that they could economically expend that year, one million over and above all that could be realized from canal tolls. The assembly passed a bill appropriating one million for the enlargement, and sent it to the senate, where the whigs had but four members. When the bill came back, the one million had grown to four. The assembly concurred.

Mr. LOOMIS said that amendment was made in committee of the whole in the house.

Mr. PATTERSON said the gentleman was mistaken. The second section of the house bill did place three millions more at the discretion of the commissioners—but the senate made this contingent appropriation absolute. Prior to 1840, when the whigs came into power, in all the branches of the government, contracts had been made on the canal to the extent of over fifteen millions. The whigs had to provide the means for fulfilling these contracts. When the other party came again into power, they took the course of violating these contracts, and instead of raising means to go on, they contented themselves with borrowing to pay contractors for breaking up contracts. So with the Genesee Valley and Black River canals. They were both entirely under contract prior to 1840. And since '40 but one million had been put under contract by the whigs. As for the Erie railroad loan, he voted for that also, and was in a minority here of seventeen members, all told—the democrats having all but seventeen in the house and four in the senate. As to this report, Mr. P. was willing to provide a sinking fund to pay off the debt—to limit the amount of debt to which the legislature should at any time go—and to provide for the support of government by other means than direct taxation—but he was not willing to tie up the legislature and say that they should expend only \$2,500,000 on the canal.

Mr. HOFFMAN denied that that was his proposition. It was imperative that they should appropriate that amount in the aggregate—leaving entirely to the legislature every thing beyond that.

Mr. PATTERSON understood the gentleman to give it as his deliberate opinion that \$1,000,000 was all that should be expended on the Erie canal.

Mr. HOFFMAN did say that two and a half millions would treble the power and capacity of the canal, enable you to reduce tolls one half,

and even surplusses enough to complete the enlargement and other works. Nobody thought of tying up the appropriation for the canal to two and a half millions.

Mr. PATTERSON was very glad to hear that. But he understood the gentleman to say that \$1,900,000 would be sufficient to enlarge the canal to such a size as would answer all the purposes of navigation.

Mr. HOFFMAN was satisfied that amount would be ample for the purpose he specified—but he did not intend to tie up the funds beyond that.

Mr. PATTERSON continued. He supposed it would be fifteen years before this aggregate of \$1,900,000 would be realized.

Mr. HOFFMAN said he had stated that on the lowest estimate of increase, it might be realized in ten years. According to Mr. RUGGLES' estimate, it would be sooner.

Mr. PATTERSON had understood all along that Mr. RUGGLES' estimates were repudiated entirely.

Mr. HOFFMAN: Not at all.

Mr. PATTERSON was very glad to hear that.

Mr. HOFFMAN continued. He stated the rule that he thought would apply—and that Mr. RUGGLES' estimate of the increased tolls, so far corresponded with the matter of fact. His error consisted in stating the current expenses of the canal at a lower rate than they were.

Mr. PATTERSON here gave way for a motion to rise—which prevailed.

The Convention took a recess.

AFTERNOON SESSION.

THE FINANCES, &c.

The committee of the whole, Mr. W. TAYLOR in the chair, resumed the consideration of the financial report.

Mr. PATTERSON resumed and concluded his remarks. He said the tolls of 1847, would fall short of the amount appropriated here.

Mr. HOFFMAN supposed there would be but very little difference either way—probably a small excess. In reply further to Mr. PATTERSON, Mr. H. said the surplusses he contemplated under this article, would make a line of enlarged locks from Albany to Buffalo—lengthen every short lock to 100 feet in the chamber, and give five feet of water. This would more than treble the power of the canal. The two and a half millions would do this.

Mr. PATTERSON did not understand how we were to get the money to deepen the canal to five feet, without taking some of the surplus beyond the ordinary expenses of superintendence and repairs.

Mr. HOFFMAN supposed it could be done without going beyond the ordinary expenditures.

Mr. PATTERSON said it might be that this might be the reason why the expense of repairs exceeded so much last year, the usual expense. It might be that the public officers were trying to enlarge the canal without letting the public know it.

Mr. HOFFMAN had tried hard to show that the canal had not been enlarged at all. The canal certainly was below the bottom water line.

Mr. PATTERSON: But the gentleman did

show us that the canal did now float boats of 66 tons—while in 1840, with the same sized canal exactly [Mr. HOFFMAN: That's begging the question]—with the canal as it then was—[Mr. HOFFMAN: That'll do]—the average tonnage was but 33 tons. [Mr. HOFFMAN: You've got that too high.] Have it as you please.

Mr. HOFFMAN: I believe it was thirty-one tons and a fraction. At all events, the commissioners made an order forbidding any boat travelling the canal with more than three feet draft.

Mr. PATTERSON continued. The canal, whilst the public had been unadvised that it had been enlarged or deepened a hair, now floated boats of more than double the tonnage that it did in 1840. Certain it was that those having charge of the canal, without the use of money, or without the public knowing that a dollar had been used for that purpose, had got one foot more of water into the canal. Mr. P. said he was in favor of the enlargement—but if the gentleman's friends could enlarge it so as to accommodate the trade of the west, without a dollar of money, that would be all the better. But he could not see how a foot or five inches had been taken out of the bottom of the canal, without using the canal revenues. The money must have been taken for it out of the surplus earnings, or out of the fund for ordinary repairs.

Mr. HOFFMAN said he had shown that there was not more than four feet in the canal after all—perhaps not, that all the way from Buffalo to Albany.

Mr. WATERBURY's amendment was lost without a division.

Mr. MARVIN's motion to strike out the 5th section was also lost—35 to 39.

§ 6. If the sinking funds, or either of them provided in this article, shall prove insufficient to enable the state on the credit of such fund, to procure the means to satisfy the claims of the creditors of the state as they become payable, the legislature shall by equitable taxes so increase the revenues of the said funds as to make them respectively sufficient perfectly to preserve the public faith. Every contribution or advance to the canals or their debt from any source other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the treasury for the use of the state out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt.

Mr. HOFFMAN explained the section. There would, under any plan that could be devised to pay the existing debt, be arrearages in some years. Ordinarily, under the plan proposed by the committee, these deficiencies could be met by temporary loans or advances from specific funds. He proceeded to explain the operation of this section. The creditors were pledged the canal tolls and the taxing power of the state. We were bound to keep that pledge good. State credit was different from an ordinary promissory note. Capitalists did not take our stocks for the mere sake of the interest, but because it was a vendible species of property, and that sovereign was guilty in the sight of God and man that did not keep its credit good. Pennsylvania might and probably would pay the interest on her stock, but as long as she allowed her stock to be below par, she robbed her creditors to that amount. Mr. H. said there was another reason for this section. The chances of war, of blighted harvests, or other contingencies, might, in

future years, reduce the current revenues. In such case we were bound to keep our faith good. This could only be done by taxation, and he held that whenever this should be done, the moneys thus raised, with the current rate of interest, should be refunded out of the revenues, when they should again become sufficient. He then went on at length to advocate the plan of the committee, as being the best that had been offered for the interest of the state. To prolong the day of payment would take additional millions of the moneys of the state.

Mr. MARVIN inquired if there was any necessity to retain the word "quarterly," in reference to the interest?

Mr. HOFFMAN explained that it was because the state paid interest quarterly on its loans.

Mr. MARVIN said this would be applying on behalf of the state, a rule to charge compound interest that was not allowed in the case of an individual. He moved to strike out that word.

Mr. PATTERSON supposed this was the rule applied to make up the sum of \$672,500 in this article.

Mr. TILDEN. No! that is based on annual interest.

Mr. PATTERSON. To make that up, I suppose you include the salt duties, which were created for the very purpose of constituting a canal fund?

Mr. TILDEN. All the state officers, from the beginning of the canals until now, have considered these salt duties as a part of the canal fund.

Mr. PATTERSON. Well! if they have so considered them it does not follow that the whole people of the state were so green as to believe that this duty of 12 cents a bushel, which was created for the express purpose of making the Canal Fund, belonged to the General Fund. Not a man believes it, here or elsewhere.

Mr. HOFFMAN. I believe it.

Mr. PATTERSON. Then I will put you down as No. 1. This tax was paid by the people of Western New York for the sole purpose of building the canals. Not a dollar belonged to the General Fund. The canals had made these duties. In 1817 they were only some \$8000, and from that they had increased to \$250,000.

Mr. LOOMIS. You might as well credit the canal fund with the increased value of the farms in Western New York.

Mr. PATTERSON:—If the gentleman insists that the increased value of these farms belongs to the general fund, then the rule will apply.—He (Mr. P.) could not assent to any such doctrine as was contained in this proposition, and charge the canal fund with funds that were created expressly for it.

Messrs. HOFFMAN and TILDEN farther contended that the salt duty belonged to the general fund; and Messrs. RHOADES, VAN SCHOONHOVEN and BASCOM urged that it was wholly a creation of the canals, and legitimately belonged to the canal fund.

The amendment of Mr. MARVIN was negatived.

The seventh section was then read, as follows:

§7. The legislature shall not sell, lease or otherwise dispose of any of the canals of the state, so far as the same are now finished and navigable; but they shall remain the property of the state and under its management forever.

Mr. PATTERSON moved to strike out the words "so far as the same are now finished and navigable." There was something in the section, as it stood, that looked like a permission to the legislature to sell out the unfinished canals. He did not know whether such was the object or not. But he would provide against such a course. He hoped there would be no opposition to the motion.

Mr. HOFFMAN said there would be. The Black River canal was unfinished. It was uncertain that the state could go on and complete it. If the inhabitants of that region should find it to their interest to complete the canal, by a company or otherwise, he would not tie up the hands of the legislature so that they could not comply with such a request. So too with the Genesee Valley canal. It would be unjust to fix such a rule in the constitution. So far as the canals were finished and productive of revenue, he would guard against any alienation of it by the legislature. He objected most decidedly to the amendment. It might be that the state could not go on with these works for six, eight or ten years. The people in the vicinity might have the ability in a year or two.

Mr. PATTERSON now saw that what he anticipated was true—that this section of the report looked forward to the sale of the unfinished canals.

Mr. HOFFMAN: Not at all.

Mr. PATTERSON: Yes sir—yes sir. The gentleman objects to striking out. Why? Because the legislature would then be so tied up by the constitution that they cannot dispose of these canals—cannot put them up under the hammer and sell them to the highest bidder—because, as the gentleman stated, if individuals in the localities wanted to complete them at their own expense, the state would be tied up by this section and could not permit them to do it. He wanted it to be distinctly understood whether the gentleman from Herkimer and those who went with him—whether this Convention did really propose to sell out these canals. On that point, the people had the right to demand that the gentleman and this Convention should show their hands. The faith of the state had been pledged to complete these canals. The people expected that pledge to be fulfilled. Property had changed hands in that expectation. Now if you profess to sell out these canals, say so openly and not in this indirect way. Let the people understand that these canals are to be completed at some time—if not soon, yet at some future day. They were the veins which led to the main artery. And will you say to the people of that section that they may tax themselves to complete these works, which will bring money to our own pockets? Such was the section as it stood, and he desired it should be so understood.

Mr. WORDEN took the floor, but the hour of adjournment having arrived, he gave way for a motion to rise and report progress.

Adjourned to half-past 8 o'clock to-morrow morning.

WEDNESDAY, SEPTEMBER 16.

Prayer by the Rev. Dr. POTTER.

CANALS, FINANCES, &c.

The Convention resolved itself into committee of the whole on the report of committee number 3, Mr. W. TAYLOR in the chair.

The question was on the amendment of Mr. PATTERSON to strike out of the 7th section the words "so far as the same are now finished and navigable."

Mr. HOFFMAN said in regard to the amendment, he would not tie up the hands of the legislature from disposing of the unfinished works; if the district of country where they were located was desirous to complete them at their own expense. He went on to argue that the lateral canals had not paid the expense of superintendence, repair, and construction.

Mr. PATTERSON desired to ask the gentleman a question, which he had no doubt he could answer from the facts before him. He wanted to know if the line of the Erie canal between Utica and Albaey, if it should be credited only to the produce carried on it, which was bro't to it from all the points between here and Utica, and the merchandize transported to all the points between Albany and Utica—applying the same rule which had been applied by the Comptroller to the lateral canals—whether that line of the

canal had ever paid the expense of superintendence and repairs and the interest on its cost, or whether it had ever paid half that amount?

Mr. HOFFMAN said he could only answer by conjecture.

Mr. WORDEN remarked that there was no difficulty in answering the question.

Mr. HOFFMAN replied that the gentleman from Ontario could answer it then when it was put to him. He then proceeded to speak of the utility of the lateral canals and said he wished the unfinished canals to remain in the hands of the legislature. He wished to enter into no controversy as to how or when they would be finished by the state.

Mr. WORDEN commenced with some remarks on the importance of the subject before them, and then stated the issue to be whether the state would put an end to all works of internal improvement, by the adoption of the report of the gentleman from Herkimer. It was a question of total abandonment of the policy commenced in 1835, and continued down to the present day. And what was it that was to be abandoned; and how much had been expended upon it? \$1,652,039 03, as appeared from the report of the commissioners. The sum of \$30,487 was all that was required to complete these works

when they were suspended, and he asked if they should go on and complete these works at such a cost and secure all their advantages, or sacrifice the amount already expended. Again, \$1,807,000 and a fraction had been expended on the unfinished works of the Genesee Valley canal, while \$923,000 would have completed it; and he again asked if they would throw away all that had been expended there, rather than make a small expenditure to avail themselves of the advantages of the debt already incurred? He referred to the Oneida River improvement, on which \$14,000 had been expended and which \$13,000 would complete—to the Erie Enlargement, which were in like condition. He was not there to censure the course pursued in 1842; but he proceeded to notice the condition of things in 1841, the reasons for suspending the works at that time, the amounts expended upon them, the amounts necessary to finish them, and the amount paid and due to contractors for damages. The Erie and Champlain Canal was virtually paid for, though for some late improvements a stock was created of \$300,000. The Erie Canal enlargement, which it was proposed to put an end to, had cost \$12,800,851. He enumerated the amounts expended on the other canals, the total of which was \$30,723,335 94 of which there was paid \$14,078,520 37, leaving as the amount of the debt \$16,647,815 57; to which must be added the \$300,000, the amount of the loan authorized by the act of the last winter. The origin of this canal policy, its progress, and the opinions of the gentleman from Herkimer thereon when he was one of the canal commissioners, he reviewed at some length, showing that Mr. HOFFMAN was in favor of the Erie enlargement. He referred particularly to the opinions of that gentleman on that subject, and also on the subject of a petition from Oneida for a ship canal from the Hudson to Oswego, which met with the approval of the canal commissioners, resulting in a proposition for the enlargement of the Erie canal. Nothing was then heard of the present policy of the gentleman from Herkimer. The name of the gentleman from Herkimer was appended to the recommendation to apply every dollar of the surplus revenues of the canals to the prosecution of this enlargement, and there was not a whisper heard of the claim of the general fund on the canals. He read documentary testimony to maintain the position that the gentleman from Herkimer had recommended such a disposition of the surplus after the year 1837.

Mr. HOFFMAN said at that time he was a Canal Commissioner, and the question was not put to him why such recommendation was made. If he had been a member of the legislature he should probably have done as he now proposed.

Mr. WORDEN, in reply, read from that report where reference was made to the salt and auction duties, and allusion made to the fact that they would soon be restored to the general fund. Not a word was said about any arrearages. Mr. W. could only account for this on the supposition that the gentleman was fully aware that no such claim could be founded in justice or equity. Mr. W. went on with his review of the history of the enlargement, referring to the

resolutions of inquiry in 1837, whether the enlargement could not be proceeded with more rapidly. He read from the report in answer, which was signed by Jonas Earll, jr., John A. Dix, Samuel Beardsley and by the present Comptroller. The question was whether it would be expedient to borrow money to complete that enlargement. The answer was distinct and decisive, that it was expedient to proceed faster with the enlargement than had been provided for in 1835. Nothing was done on this subject until 1838. At the opening of the session in that year, Gov. Marcy brought to the notice of the legislature the importance of more speedy enlargement. Mr. W. read from that message, and said this was the language of a wise statesman, whose recommendations had always been received with favor by the people of this state. He then referred to his special message in that year, when the finances were deranged. He then recommended the issue of \$7,500,000 of state stocks to be loaned to the banks, the proceeds to be used in the prosecution of the public works as fast as could wisely be done. Mr. W. commented at length upon this recommendation, referring to what he doubted not would be the verdict of posterity upon its wisdom and patriotism. The gentleman from Herkimer had undertaken to prove that the Erie canal did not need to be enlarged. Had he forgotten all the arguments that had been used from 1835 to 1838? Mr. W. would come no lower down. Was not the consideration of the value of the western trade as potent now as in 1835? Has not that trade increased vastly more than was then predicted?—But the gentleman says rival routes will draw off this trade. Is this so? What say the delegates from New York to this? Is there to be a northern railroad to take the trade to Boston? Shall the southern road take it to Pennsylvania? Shall Calhoun's western canal divert it to New Orleans? And shall this state slumber on its resources, when by the completion of the Erie enlargement the whole world may be defied to compete with us? Complete this enlarged canal and you will never hear of these rival routes again. As to the competition of railroads, Mr. W. read from the statements of the actual results in England, showing that in the transportation of freight, railroads could never compete with canals. He then went on to speak of the immense trade of the west, which was seeking—yes, asking an avenue through your canal. He showed that the canal as proposed to be improved by the gentleman from Herkimer, could never accommodate this vastly increased trade of the west. That gentleman said that boats now navigated the canal of double the tonnage of those in 1836. This was so, and the tonnage on the canals was also double in amount. The tonnage then had only increased in the same ratio as the trade. Where then was the proposition to accommodate the future increase? The trade of the last twenty years had increased more than 600 per cent. and he had shown that there would be at least that increase for the next twenty years. If then the amount named by the gentleman (\$2,500,000) should, as he alleged, triple the capacity of the canal, he (Mr. W.) had proved that on that basis the capacity of the canal would only be sufficient for the next ten

years. That section of the report was intended to prohibit the expenditure of any further sum upon the enlargement.

Mr. HOFFMAN rose, much excited, and denied that any such thing was intended. This provision was affirmative that the legislature should spend £2,500,000. Beyond that, the legislature might do what it pleased with the surpluses.

Mr. WORDEN used the word *intended* in its good sense. He referred not to the *quo animo* of the gentleman, but to the effect of the proposition. He would go on then tinkering up the canal when at the end of ten years, you must undo all you have done and go to work upon the enlargement. He will double the locks—one set being on the enlarged plan and the other on the present size, merely lengthening the chamber. That was his great panacea. Now if he will go to the most scientific engineers of the country, they will tell him that to double the locks on the present size of the canal, would only double the mischief. Attempt to feed a double set of locks with the present capacity, and let there be a crowd of boats above a lock, and before you can pass them, you draw off the water on the lock above, and the canal is powerless. Such would be the practical operation of the gentleman's plan—such the way in which he proposes to triple the capacity of the canal.—But, Mr. W. said, he was not mistaken in supposing that the gentleman proposed the abandonment of the Black River and Genesee Valley canals, for he said yesterday he was willing to sell them out. Mr. W. referred to the fact that the faith of the state was pledged to their completion—to the arrangements made in consequence, &c., &c., and asked if we were prepared to repudiate these obligations? Not only did we pledge our faith to the citizens of our own state that we would complete the works, but we sent our circulars abroad in Europe, inviting thousands of the oppressed citizens of that country to come here, promising them employment. Mr. W. then proceeded to enter into a minute consideration of the state debt, the funds within the control of the state and the way in which that debt could and would be paid. Mr. W. in conclusion would ask what patriotism and an enlightened policy demanded of us? He waged no war with the main policy of 1842. He desired not to leave the halls of this capitol until, with the gentleman from Herkimer, he could say to the people a rule had been established which would certainly pay the debt beyond controversy. But while doing this, he did not want to place an axe at the root of all our prosperity. He would not say to the people in the Genesee Valley and Black river country, that those works had been forever abandoned. He would not say to the city of New-York that a limit had been placed to the capacity of the great avenue which was pouring untold millions of trade into that commercial metropolis. He would secure beyond contingency the payment of every dollar of the state debt, and yet would in a reasonable and safe way, progress to completion the works yet unfinished. This done, and the people would not only be saved from the contingency of taxation, but you would secure to them the blessings which these works would bring

to them. It needed not to attain these objects, that a given day should be fixed in the Constitution, when the debt was to be paid. No sinking fund could be devised by the ingenuity of man, that would pay off the state debt as it fell due. The stocks had never been issued with any view to a sinking fund. The gentleman from Herkimer admitted that under his own plan, money must be borrowed in some years. Mr. W., in connection with this, examined the several plans, showing that a sinking fund of \$1,500,000 for ten years was abundant. Beyond this, there would, in these ten years, be a surplus amounting to \$10,000,000, to be expended as the legislature should direct upon the enlargement and the other works. If it was thought best, he would consent to a proposition to limit the legislature in the expenditure of this surplus. He would leave it to the gentleman to say if this more liberal plan would not be equally efficient, and yet would confer manifold blessings upon the people waiting for the completion of these works. This sum would pay the interest on the entire state debt. Beyond that ten years appropriate \$2,000,000 annually, and the debt would certainly, within the most reasonable time, be wiped out. This done, we shall have satisfied the people. We shall have done what we were sent here to do—secure the payment of the state debt, and yet at the same time fulfil the equally plighted faith of the state to complete its unfinished works. The ingenuity of man could not devise a plan that would pay the debt more surely than the annual appropriation of \$1,500,000. If you had the money now in the treasury, you could not so well invest it to secure the sum at the end of the ten years, as would this annual appropriation. No one believed for a moment but what by that time the net revenues of the canals would be at least \$2,000,000. Every calculation of the probable increase of these revenues had fallen far short of the actual result. Even the far-grasping mind of Mr. Ruggles had failed to anticipate the actual result. Mr. W. deprecated the dragging in of party considerations here. He came not here to carry out his own views, but to compromise with the gentleman from Herkimer and those who acted with him. To apply a sinking fund of \$1,500,000 for ten years and \$2,000,000 yearly thereafter, would pay off every dollar of the state debt in 1869. This plan would more certainly secure the payment of that debt, than if we should place the entire control of the state revenues with the Comptroller. Mr. W. appealed to gentlemen to go for this liberal, enlightened and certainly safe policy, the best that could be devised for the interest of the creditors of the state, while at the same time it would ensure to the people of the state advantages, the immensity of which no man could estimate.

Mr. HOFFMAN briefly replied, contending that the plan proposed by the gentleman would require a payment by the state for principal and interest on extension of the round sum of \$45,000,000. In his opinion, no sane man would assent to such a compromise.

Mr. PATTERSON'S amendment was carried, 44 to 34.

Mr. BROWN moved to strike out the entire section. .

Mr. TILDEN begged gentlemen to remember the design of this section. It was to secure to the state the payment of the debt.

Mr. RICHMOND said there was another reason. The Erie Canal was the only productive property in the state, and the people would be glad to preserve something that was good. Even the public lands had been frittered away.

Mr. BURR did not know that purchasers would be found for our canals. But if it were possible, was it good policy to wash our hands of them? He did not know that his motion would meet with much favor, but he would leave it to the legislature to dispose of these works if they should think it proper to do so.

Mr. MARVIN said it had struck him that this was a very singular provision to insert in a constitution, especially at the end of such an article as this. If the miserable canals have run the state so much into debt, and the holding of them was likely to impoverish and ruin the whole state, it seemed to him if they could get rid of them—if any individuals were foolish enough to take them and pay the whole debt which had been created to make them—if in addition to all that they could find somebody to pay back to the state the amount of debt arising out of the salt tax, and the auction duties—if some miserable men from Western New York, or Michigan, or Ohio, and the country about the Lakes, would come forward and take from the poor state of New York these miserable canals, paying not only the debt but interest compounded every three months, and a million or more besides to cover contingencies, and thus relieve some gentlemen here from the distressing night mare under which they labored, and the state of New York from becoming bankrupt, it seemed to him it would be good policy for the state to get rid of them as soon as possible. He confessed he had felt for some days past, inclined to get up and say to gentlemen that if they were so much distressed about these financial matters, there would be no difficulty at all in finding men who would come and assume the whole debt of the state of New York, every dollar of it and something more, and take the canals—the Erie, and Genesee Valley, and Black River, and enter into obligations to complete them.

Mr. RICHMOND enquired whether, if such gentlemen should come forward, it would relieve the people of the State from the responsibility of paying the debt?

Mr. MARVIN repeated that individuals could be found to take the canals and give ample security both for the completion of the unfinished works and the payment of the debts, and to give a few millions over and above. Mr. M. then proceeded to say a word or two in relation to some remarks which had fallen from Mr. HOFFMAN who had said that the plan of the gentleman from Ontario, (Mr. WORDEN,) was worse than the plan of the committee, and that so were the plans of the gentlemen from Alleghany, Schoharie and others. The position which the gentleman took and urged was that by postponing the payment of the debt, they would be obliged to pay a larger amount of money in the shape of interest, and the gentleman produced tables to show how much more money we shall

be obliged to pay under any of these than under his own plan. That was undoubtedly so. No body doubted it. If an individual borrowed a thousand dollars for a year and postponed the payment for one hundred years, we know that the aggregate amount of dollars and cents would be greater than if it were paid in a year; but what argument was this? What was going on in the mean time? Had they forgot the property in hand in which the money was invested? Had not the State of New-York got her canals and internal improvements? And were they not investments which would pay well to a dead certainty during all that very time? So that if they postponed the payment six or ten years were they not raising a much larger sum as a revenue from the canals than the interest of the debt postponed? The gentleman from Herkimer however, would pay the debt, save the interest, but lose all the advantages of the investment. Now he had expected that while provision would be made to pay the debts within a reasonable time, and the annual accruing interest, the balance of the revenues of the canals would be allowed to go to the completion of the works for a few years, and then all the revenues might be taken for the entire extinguishment of all claims—and when such a plan was brought forward as that which his friend from Ontario had foreshadowed, he thought every gentleman would conclude that it was high toned, honorable, and safe. By that plan the canals could be completed and the integrity of the State preserved. But how were they met? Why if he could understand the matter, the gentleman from Herkimer proposed that the entire debt of the State should be paid off in less than twenty years. And how could it operate? Why it would take all the fruit of the canals and appropriate them for that purpose, and postpone for many years the completion of the system of internal improvement. Now he thought we could pay off the debt, postponing its entire extinguishment a few years, and in the next ten or twelve years complete the unfinished works, afterwards taking all the revenues for the payment of the unpaid claims. The gentleman from Alleghany had shown that \$1,500,000 for ten years and \$2,000,000 afterwards would be sufficient to complete the works and pay the debt in twenty-four or twenty-five years, and he was a gentleman who appreciated as highly as any man here the honor of the State of New-York. Mr. M. then proceeded to examine the *projet* of the gentleman from Herkimer and particularly his fears that in ten or twelve years the Erie Canal would have arrived at its culminating point. He said the argument of the gentleman from Herkimer was ingenious, but it rested on an assumption of a single fact. If the fact were established that at the end of eight or ten years the revenues of the canal were to commence their decline, he agreed with the gentleman that they should husband their resources, that they should make the most of the sunshine of prosperity, and in that time reduce the debt to an amount which could be controlled by a small revenue at a subsequent period. The gentleman from Herkimer had undoubtedly brought himself to believe that the revenues would decline in eight or ten years. Mr. M. believed the

result would be very different. If it were not that he was not now disposed to detain the committee he could demonstrate it. The typography of the whole globe presented no spot which which could compare with the state of New-York in the advantage of position. There was no portion of the United States where the great West could be successfully connected by water communication with the Atlantic, except where the Erie canal passed the Allegheny range of mountains, without going as far south as Georgia. He proceeded to describe the country which must seek a market by means of the Erie canal, embracing several of the western states, and urged the enlargement of the canal as the natural avenue of the commerce of those states. Mr. M. closed with the remark, that if any gentleman imagined that he, with the feeling of that pride which he felt in contemplating this great enterprise of the age—the Erie canal—the source of countless millions of revenue, and of eminent prosperity to this great state—he begged to disabuse their minds of any such idea. He hoped to see our canals remain ever the property of the state—believing that they would prove the richest and most honorable legacy which any government ever left to posterity.

Mr. ALLEN said that gentlemen had stated that the members from the city of New York come forward here in phalanx to sustain this project of the gentleman from Herkimer. He could only state that so far as he knew, there had been no consultation between the members from the city, on any subject that had come before the Convention. They acted from their own impressions on the subject before us without consultation in any way whatever. Several speakers had been inclined to instruct them how they should vote. He believed they were able to judge for themselves. They believed they knew what the interest of New York was.

Mr. WORDEN asked if the gentleman alluded to any thing he had said?

Mr. ALLEN: I intended to allude to you generally—to all alike. That was all. There had been no consultation among us. We voted independently.

Mr. BURR's motion to strike out the 7th section was lost without a division.

The article having been gone through with,

Mr. WORDEN suggested that it would be advisable to take up the other report from the finance committee. There was something in that that might have some influence on this.

Mr. RICHMOND suggested that there were one or two sections in this article that had not been acted on.

Mr. HOFFMAN said no question had been taken on any of the sections; but if no amendments were proposed they had been passed over.

Mr. WORDEN: With the understanding that if gentlemen desired to propose amendments to any of the sections, they could be offered.

Mr. HOFFMAN said that when the question was put on reporting the article to the Convention, the whole of it was open to debate and amendment. If any gentleman desired to speak, he hoped it would be done now. Gentlemen had alluded to him in a personal manner. He desired to reply when others were through.

Mr. HARRISON said, that before the article

was laid aside, he desired to offer an amendment. He wanted to restrict the legislature from authorizing any canal or railroad, at the expense of the state, until the present canal debt should be extinguished.

The CHAIR suggested that it would be in order now.

Mr. HARRISON went on to say that the people of his county had complained occasionally of the sacrifices they had been called on to make to the canal policy—that they had been called upon to pay it. This debt had been incurred in consequence of a departure from the original intentions of the projectors of the canal. His section of the state, as was well known, were originally opposed to the construction of the Erie and Champlain canals. They doubted the ability of the state to construct them. But after it was demonstrated that the project was possible, they acquiesced. But they did not suppose that these lateral canals were to follow, and they complained that the greater portion of the debt had arisen from the construction of these canals. Their property had depreciated from 1817 down to 1830 or '35; indeed until the overflow of the population of New-York began to affect the neighboring counties. They thought no reflections should be cast on them for complaining of taxation. They did protest against being taxed either for this debt, or for carrying out this canal policy. He proposed therefore to amend by adding at the end of this section, as follows:—

“But the legislature shall have no power to authorize, hereafter, any canal or railway to be constructed at the expense of the state, until the present canal debt is fully liquidated and paid.”

Mr. RICHMOND said he went with the gentleman half-way—to prohibit the legislature from authorizing the construction of any railroad by the state, until the state debt was paid. On the other question, he reserved his opinion. It was the worst kind of policy for the state to construct railroads. The time had gone by when there was much danger of it. There was a time when the state came pretty near it. A bill for the construction of a railroad by the state was defeated in the Assembly of 1841, by a very small majority. He recollected that he drew upon himself some odium for voting against it. But time had shown that he was right. Mr. R. went on to allude to Mr. ANGEL's proposition—which he described as a consolidation of all the state funds into one. He said he had always been an internal improvement man; but he was for going on cautiously and steadily, and not by impulses. All admitted that we had gone on too fast. But he had this to say, that if the gentleman from Allegheny wanted to see the canal system perfected, it could never be done by a consolidation of funds. He did not know whether the gentleman desired to see the School Fund consolidated with the rest.

Mr. ANGEL wanted only one fund to support government. He would leave all other funds to stand as they are.

Mr. RICHMOND went on to urge the policy of keeping these funds separate, and of making specific applications of it. When these funds were set apart for specific objects, they could not be so easily got hold of by the sharks that

always hung about the legislature—especially when the U. States deposite fund came into the hands of the state. Mr. R. was opposed to saddling the support of education on the canals, or on any locality. He opposed also making the canals pay back the salt duty. But for the canals, not one-fourth part of the salt would have been manufactured that was now. The canals had made this salt revenue what it was, and were entitled to it. It was moreover, a local tax, which the people of the western part of the state never would have submitted to, but for the fact that it was to be laid out on the Erie canal. Then that canal had benefitted the western part of the state—but no more than it had benefitted the city of New York. Western New York had paid their full share of the benefit they received from it. They paid the tolls on their products—not the consumer. The tolls were so much deducted from the market price, and came out of their products. Mr. R., in this connection, repudiated the idea of throwing this railroad debt on the canals. Other parts of the state had as much agency in these railroad loans as western New York—and it would be unjust to levy upon the west indirect taxes, by means of canal tolls, to pay off this debt.

Mr. STOW here obtained the floor, and moved that the committee rise. Agreed to.

A communication from the Secretary of State, inviting the Convention to attend the closing exercises of the State Normal school, was read.

The Convention then took a recess.

AFTERNOON SESSION.

THE FINANCES, &c.

The committee of the whole resumed the consideration of the financial report.

The amendment of Mr. HARRISON was rejected.

Mr. STOW moved to amend the first section so that it should read as follows:—

§ 1. After paying the expenses of collection, superintendence and ordinary repairs, \$1,600,000 of the revenues of the state canals shall, in each fiscal year, and at that year for a shorter period, commencing on the 1st day of June, 1846, be set apart as a sinking fund to pay the interest and redeem the principal of [the state debt until the first day of July, 1856, after which \$2,000,000 of said revenues shall continue to be applied or set apart annually] until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

[The matter proposed to be inserted is in brackets, and takes place of the words "of that part of the state debt called the canal debt, as it existed at the time aforesaid, and including \$300,000 then to be borrowed."]

Mr. STOW remarked that his proposition, in substance was, that we should set apart a million and a half annually for ten years, and thereafter two millions for the payment of the debt of the state. Mr. S. then proceeded at length, to sustain his proposition. Though he differed very essentially with the gentleman from Herkimer in some respects, yet he assented to many of his views. But of the truths which that gentleman had uttered, none struck him more forcibly than that which he uttered several weeks ago—and that was that this was a cold, lifeless, dreamless matter of calculation, with which imagination and fancy had nothing to do—

that we were to deal in figures and fact and to consult calm judgment, and the sober convictions of experience. He concurred also in the position, though not in the manner of carrying it out, that the debt shall be paid, and the public condition abundantly secured. He agreed also that the canals should pay for themselves—and that the debt of the state, beyond the debt of the canals, should be paid from the general fund. He made these distinctions because they were forced upon him—and not because he pretended to understand the distinction between the canals and the state. The gentleman from Herkimer told us distinctly that the canals were to pay no debt that they did not themselves owe. And the question was not how much the general fund owed, but how much the canals owed the general fund. Whether what the canals owed the general fund, would pay its debt, was immaterial. Whatever that amount was, it must be paid, and that alone. The canals asked no favors—nothing but strict and exact justice.—The canal debt in round numbers was \$17,000,000—the general fund debt \$5,000,000. The canals were said to owe the general fund a large sum of money—over \$13,000,000.—Mr. S. insisted, to begin with, that if forced to state an amount, justice and equity required that the whole of it should be stated—that a distinction should be made between the Erie and Champlain canals and the lateral canals. When these were constructed, they could not under the constitution, be made a charge on the Erie and Champlain canals. They were chargeable on the general fund—and if the E. and C. canals were to assume this debt which the general fund was obliged to pay—most certainly the amount should be stated on a liberal footing. But if the charge of principal was unjust, much more unjust and exorbitant was the charge of compound interest at 5 per cent—that money could be borrowed at a less rate on the security of the canals—that no court of justice would enforce such a claim for interest, though matter of agreement between parties—that the canals never made an agreement—that no business could live under such a charge of interest—that an investment, at that rate, in a dwelling or in the tools of one's trade, would eat up the owner. Mr. S. run over the items of this account against the canals. He assented to the charge for the land sales and for the direct tax—though he might well urge that the canals had enhanced the value of real estate, throughout the state full enough to balance the account. But he protested against the charge of the steamboat tax. It was levied expressly for the building of the canals, and which never would have been levied but for that purpose. The ground on which it was laid was that those who had the exclusive right of navigating the Hudson by steam, Fulton and his associates, could well afford to pay something for the increased travel and business which the canals would throw upon the river. It was an unjust tax, levied upon a particular interest, to aid in a great object—and if it was to be repaid at all by the canal, he submitted that it belonged rather to the heirs of Fulton, from whom it had been wrung, rather than to the general fund. Mr. S. went at length into the history of the

salt duty—dwelling upon its operation and amount in 1817, and its increase in 1827—its being laid not only on salt manufactured at the state springs, but on all salt manufactured in the western district—its having been paid almost exclusively by the localities chiefly interested in the construction of the canal—and urging that the increase in the manufacture and the extension of the market, were the results of the canal solely—that this increase was in spite of the tax on the article—that whilst the canals gave the salt a market, and transported free of toll the wood used in the manufacture, the salt itself was charged with but half the toll on other articles—that but for the canal (assuming that the population of the state would have increased to its present number) the salt duty from 1817 to 1835 would have amounted in the aggregate to no more than \$175,000—that one of the main grounds urged for the construction of the lateral canals, which were originally a charge on the general fund, and which had now become a charge on the Erie canal, was that it would extend the sale of salt. And yet for all the burthens which the Erie canal had been made to bear, to extend the manufacture and sale of salt, it was not to receive any credit. As to the admission of Governor Clinton, that these duties would be restored to the general fund, Mr. S. denied that any such bargain had been made by the party interested—the party that paid the tax—and that nothing could be more unjust now than to make the western district chargeable with a local tax for the support of government—to say nothing of the injustice of doing this without giving them credit for the debt of the general fund, thrown upon the canal on account of the lateral canals. To know the injustice of this charge, on the precise ground that it was paid almost exclusively by a locality, Mr. S. quoted a joint report to the two houses in 1825. He also quoted from the Comptroller's reports in '33 and '34, to show that this salt duty charge had been at one time stated at five millions and at another five millions and a fraction. Now it was stated at seven millions—making with compound interest up to this time a difference of five millions. As to the auction duty, Mr. S. urged that that too was a local tax, a tax on the business of New-York—so far regarded as a local tax that half of it was conceded to belong to New-York for local purposes. It was a tax levied then for a great public object, but peculiarly beneficial to New-York—and hence it was that Mr. Clinton protested against any interference on the part of Congress with this duty. Mr. S. nevertheless was willing to say that the canals should pay a large portion of the debt. But he did insist that \$5,000,000 was the utmost sum that could be charged upon the canals on account of these duties—and that the canals were willing to pay, not as a matter of strict justice and right, but as a matter of concession and generosity. As to the state debt—the canal debt proper—Mr. S. said he would not dispute with gentlemen as to who was to blame for that. He imputed no dishonor to any body for it. Indeed, in view of the results which presented themselves on every side, of the canal policy, he was willing to assume his share of the one with the honor of the other—let others

do as they pleased. Mr. S. here glanced at the question of good faith to the public creditor—insisting that the creditor had the law to rely on, to begin with, and had no right to demand additional constitutional security—that so long as we did not impair that security, the creditor had no right to complain—but that his proposition, so far from impairing this security, would strengthen and establish it beyond all hazard—that it gave him a mortgage on all the canals, worth at this moment forty millions, to secure a debt of twenty-three millions—that it would render absolutely certain the extinguishment of the debt in 23 years—and from what he had heard personally from large holders of state stocks, he was satisfied that it would enhance largely the value of these stocks. He went on to urge that good policy and true economy required that a portion of the canal revenues should be used for other purposes than the payment of the debt—unless indeed gentlemen were prepared to say that the suspension act of '42 was intended as an abandonment of our internal improvements—or that it was more for the interest of the state to pay a portion of the debt drawing five per cent interest, than to expend the money in completing an improvement which would bring at least ten per cent. Mr. S. now proceeded to examine Mr. HOFFMAN's plan for improving the Erie canal. He dissented from that gentleman's position, that the tolls would begin to culminate after ten years. He showed that thus far the canal trade within this state had gone on increasing; and that the commerce of the west, which naturally sought this channel to market, could not possibly decrease after that time; that the locks now were too wide for the present canal; and that the difficulty would only be increased by enlarging the locks, leaving the canal essentially as it was; that the increasing trade of the west required additional capacity in the canal; that the enlargement, by cheapening transportation, would secure it; that the immense increase of products at Buffalo, on which tolls had been reduced, showed that the true policy was, to reduce charges on the canal by an increase of capacity; that the detentions now at Lockport, for want of a double set of locks, were a subject of great complaint, and a serious impediment to navigation; that the extent of the lockages there was one hundred and twenty a day, when the locks were fully employed; that the plan of the gentleman from Herkimer would make no adequate provision for the trade that was every day increasing in volume from the great west; that it would by no means double the capacity of the canal; and that if it did, it would only stop an interest of a few hundred dollars more than completing the enlargement, and increasing that capacity to the extent demanded by the exigencies of trade.—[But we cannot follow Mr. S. further in this portion of his speech, in the course of which he referred often to statistics and documents, in support of his positions.]

LAND TENURES.

Mr. HARRIS, from committee No. 18, submitted the following report:—

ARTICLE —.

§ 1. All feudal tenures of any description, with all their incidents, are abolished.

§ 2. Any lease or grant of agricultural land for a longer period than ten years, hereafter made, in which shall be reserved any rent or service of any kind, shall be void.

§ 3. All covenants or conditions in any grant of land

whereby the right of the grantee to alien is in any manner restrained, and all fines, quarter sales and other charges upon alienation, reserved in any grant of land hereafter to be made, shall be void.

The report was referred, and the Convention adjourned to 8 1-2 o'clock to-morrow morning.

THURSDAY, SEPTEMBER 17.

Prayer by the Rev. Dr. POTTER.

CANALS, FINANCES, &c.

The Convention resolved itself into committee of the whole on the report of committee, No. 3. Mr. W. TAYLOR in the chair, the pending question being on the amendment offered by Mr. STOW, setting aside \$1,500,000 of canal revenues annually for ten years, as a sinking fund for the extinguishment of the state debt, and \$2,000,000 thereafter until the same is wholly paid.

Mr. HOFFMAN said if no other gentleman desired to take the floor he should proceed to reply to the remarks of gentlemen who had taken part in this debate. No gentleman rising he proceeded. He said he had long desired to see the people of this state become the merchant, the bank, and the carrier of this union. With this impression in 1835, he desired to see an enlargement of the Erie canal, but he concurred with the canal board, that to do this no debt should be contracted. And when our financial condition became embarrassed, he lent his feeble aid to prevent the consequences of the bankruptcy of our state. In 1841, as had been shewn by Mr. WORDEN, he sought to limit appropriations for these canals. He had then the valuable assistance of the gentleman from Ontario, and Mr. H. regretted that that gentleman could not go further. At the time referred to he endeavored to establish a sinking fund to pay the debt which had been created, when the state was in the delirium tremens arising out of the fiscal debauch which had prevailed. Having done all this, and having persisted for four or five years in endeavoring to establish the policy which had been adopted, he could not now consent to abandon it for another which experience proved led to ruin. He went on to speak of his efforts in 1841, and of the necessity of adopting the propositions now submitted by the standing committee. Under it the canals would be relieved from the burden of debt and tolls, and a free passage be opened for the trade of the west. He hoped there would be no postponement of the public debt—no British system of funding—but that the debt would be paid. He alluded to some remarks made by the gentleman from Chautauque (Mr. MARVIN) who had complimented his ability. To that gentleman he would give the secret of his influence if he had any—it was by placing himself on the firm rock of truth where alone there was safety. He replied at some length to Messrs. MARVIN, STOW and WORDEN, and reiterated the statements of his opening speech on this subject, which he complained had been disingenuously quoted.

Mr. KIRKLAND was one of those who desired to see the canal debt paid; yet he believed the gentleman from Herkimer was laboring under serious error, and hence he concurred with the gentleman from Erie (Mr. STOW), in his argument of last night. Thousands were looking to their action on this subject, as one deeply affecting their best interests; and therefore it should be approached with becoming seriousness and sincerity. The gentleman from Herkimer had alarmed himself with bugbears; but notwithstanding the warnings of that gentleman, he believed a majority of this Convention would sustain the amendment of the gentleman from Erie. It was a duty to provide for the extinction of the public debt, but such provision must be made with a distinct appreciation of our condition and prospects; and it was demonstrable that one could be accomplished consistently with the advancement of the other.—But a due regard to this would not be consistent with a provision which would tie up the hands of the legislature from making such improvements in the Erie canal as would retain to us the commerce of the great West. He recapitulated the amounts expended on these canals and the amounts required for their completion, and asked the Convention if for such considerations the advantages to be derived from all that had been expended should be lost. The Genesee Valley and the Black River canals were examined as to their cost and utility, dwelling on the value of the latter as a feeder to the Erie canal, in addition to its importance as opening an avenue to market to a large and important section of the state. He rapidly glanced at all our works, finished and unfinished, compared their advantages with their cost, and contended that the only question, in fact, now to be settled was, whether the debt should be paid in eighteen or twenty-three years—a difference only of five years, but a difference which would exert a good or a malign influence over the interests of large sections of the state. Mr. K. urged at much length the importance and economy of carrying forward steadily to completion, our great works of internal improvement, and as rapidly as our means and the ultimate payment of the public debt would permit.

Mr. STOW said he had been alluded to in a manner hardly comporting with the courtesy of debate, by the gentleman from Herkimer (Mr. HOFFMAN). That gentleman's charges, in his views, were not quite consistent with his own general character for fairness, the proprieties of the subject, or with what was due from one member to another. But he should proceed at once to matters of more consequence—for he

should not be driven from the subject in hand by mere personal considerations. He preferred to examine this subject in a manner due to its importance—and should not change the subject of the finances and the enlargement into a petty personal controversy. If any such controversy arose here, it must be with some other man—That gentleman remarked in the outset that if his argument had any force or weight, it was from no genius or talent of his own, but from the importance of truth. But the gentleman, he must be permitted to say, after taking that position, seemed to have used it only as a point of departure—for from that point his statements were exceedingly erroneous. Mr. S. denied that he had admitted that the canals should pay all except what they had created. He did admit that they should pay all they owed the general fund, and sought to show what that was; and that by assuming and paying the general fund debt, the canals cancelled all claim that the treasury could justly make against them. He believed then the canals would pay more than the treasury had a right to demand—for the scope of his argument was that whatever tax had been laid particularly in reference to the canals, especially if it was one that could not have been equitably levied except for that specific purpose, and was laid on a locality, as the salt and auction duties were—it was no equitable charge against the canals. Mr. S. repeated that position now, and he stood corroborated in it by the whole argument of the gentleman himself—for if these were iniquitous taxes, as the gentleman said they were, and if you could not equitably tax the city of New York and the western part of the state, the one by auction duties and the other by salt duties, for general purposes—how was it that the specific object for which this tax was laid could be made equitably to refund the whole for general purposes? Therein the gentleman misconceived the force of his argument. Mr. S. insisted also that compound interest was an unreasonable charge—that it would be so regarded as between man and man, and that the state could not equitably insist on it. The gentleman's answer was, that an individual could sustain a suit at the end of every year, and in effect secure to himself the benefit of the rule. But the gentleman knew that a contract in advance to pay compound interest was voidable, and could not be enforced—and because no human labor could sustain such a tax.—Again, Mr. S. quoted divers authorities to show that it was not a settled thing, as the gentleman claimed, almost universally conceded—that the salt and auction duties should be charged over against the canals—that whenever this charge had been made, it had been just as flatly denied. And if the opinions of comptrollers were to have any weight, which he quoted on this subject, what was to be said of acts of legislation? Mr. S. pointed to the act of 41, entitled “an act to regulate the amounts between certain funds belonging to the state”—and to the fact that in the settlement then made between the canal and general fund, \$200,000 was the amount annually to be paid by the canal to the general fund in liquidation of all claims. This was a virtual acknowledgment that no thirteen millions was due from the canal fund—for it was

preposterous that the party having a just claim to that amount, should have settled upon it an annuity so small. If legislative acts were so sacred that they could not be reconsidered, then here was this matter of account settled and liquidated irrevocably. But another subject of complaint was that Mr. S. used the same old argument that had always been used heretofore in reference to the enlargement. Mr. S. said he claimed no originality for it. He avowedly consulted the past and the able men who projected and advised this project. He consulted the gentleman himself when he advised the enlargement to six feet by sixty. Had he undertaken to be original, the Convention might well perhaps have received his positions with distrust. He claimed no such genius. Had he been original, he should have been in the position of the gentleman himself—erroneous also. But the gentleman accused him of proposing a new debt by extending the old. So did the gentleman himself. The only difference was the gentleman proposed an extension from time to time—Mr. S., for a period of time and for a great public purpose. But the gentleman complained of misrepresentation, in the manner in which Mr. S. had treated the assertion that after ten years, the canal tolls would probably decline. Mr. S. was not aware that he had done more in reply to this than to show thus far we had gone on increasing within this state, and that the revenue from other states must increase. The convention would judge whether in appealing to the gentleman to say whether he supposed that foreign sources of revenue would decline, he had not properly met the argument that the canal tolls would culminate after ten years. But the gentleman complained of an entire misstatement in attributing to him a remark that he had got certain information about easiest traction from a boatman.

Mr. HOFFMAN explained what he understood the gentleman to attribute to him, and what he actually did say. [It seems that Mr. H. stated from papers which he held in his hand, in relation to the tonnage of boats and the draft of water, what was apparent from them, that the boatman and the carrier held in sovereign contempt all that had been said in the books and report, including some of his own, in regard to the easiest traction.]

Mr. STOW insisted, whatever papers the gentleman had, might show as to what boatmen and carriers thought of the teachings of science, that he could show on the authority of the gentleman himself, that this doctrine of easiest traction was true. The matter of fact remained that the canal was too narrow for large boats—and he showed moreover yesterday, by the statements of scientific men, that the present locks were too wide for the present canal. But the gentleman sought to get rid of the palpable truth that every new avenue in the west to the lakes, instead of diverting commerce south, had had the effect to bring it this way. Mr. S. briefly reinforced his position on this subject, and also in reply to Mr. H. that the increasing commerce of Buffalo this year was to be attributed to a considerable extent to the threatened hostilities between this country and Great Britain. He showed that it was owing to other causes, and

that in fact New Orleans had kept up with Buffalo, except in regard to articles in which we had reduced tolls—that it was the cheapening of the canal transportation, that had drawn this increase to our canal—that the better way to reduce tolls was to enlarge the canals, &c. But Mr. S. denied the gentleman's position that the capacity of the canal was large enough. Mr. S. ran over his positions and authorities on this point—the increasing number of clearances at Buffalo this year—the detentions at Lockport—the want of capacity in the locks to pass boats, &c. As to the 'shrieks of locality,' on which the gentleman from Herkimer had dwelt so long, Mr. S. had heard them, and of them before. He recollected when the shrieks of locality were heard in favor of terminating the Black River canal at Herkimer, and that very respectable gentleman joined in those shrieks. But now nothing but groans were sent up from that quarter, in relation to this canal and its termination. Mr. Stow went on to examine Mr. HOFFMAN's plan for improving the canal—instituting that as a financial plan it was at war with true economy, based as it was on the idea of stopping a little interest, which would be more than saved by the expenditure of the principal on the enlargement—that the sum proposed to be expended in improving the canal was inadequate—that it was in conflict with one of the gentleman's own report as canal commissioner—and above all that it contemplated a partial enlargement of the locks, and an unequal enlargement, without any corresponding increase of the volume of water in the canal.

Mr. GARDINER said he had not intended to take part in this debate, but having been personally appealed to by the gentleman from Erie, in reference to the detentions at Lockport, he felt called upon to state what had come to his knowledge, as a resident of Lockport. It was known to gentlemen there were there five locks rising consecutively one above another, and so combined that they must be used together. In consequence of the removal of the old locks, there was now but one tier there. In consequence of this, the arrangement was to lock through one way for an hour, and then the other way for an hour—so that boats arriving within the hour, had to wait their turn, and if there was a crowd of boats waiting, might be detained beyond the hour. He had seen there, day after day, an accumulation of boats at each end of the locks, detained from five to six hours, in number from five to twenty. This fact he knew from his own observation, and he stated them in consequence of having been appealed to by the gentleman from Erie. It was for the Convention to form its own conclusions from the fact.

Mr. HOFFMAN said he never had and never would be drawn into a personal controversy in debate; and all he had said in reference to the gentleman from Erie, he thought justified from the fact that he called the gentleman's attention at the time to an error under which the gentleman was laboring, in regard to one of his own positions, and because the gentleman did not correct himself, but compelled him to do it. Mr. H. said he should not go over the argument again. He knew by historical results what a

poor old single lock, west of Schenectady had done, and he knew what it could do, if improved as others had been. He knew from the sworn returns in the public offices that three minutes was enough to pass a boat through a lock—and that this would allow 200 lockages a day. If one single lock could get along with 30,000 lockages in a season—no man could induce him to believe that the detentions at Lockport, with half that number of lockages, could be any thing serious, if there was proper care in arranging, fixing and working the locks. The complaint, if well founded, was a complaint of want of skill in working the locks.—Though combined locks might not be as efficient as single locks, yet he believed that for a series of years the combined locks at Lockport, if rightly fixed and properly worked, would answer the public purposes. As to the salt tax, he would only add to what he had said, that in 1835, the annuity settled on the state was \$300,000; and that the act of 1841 did nothing more than make it an annuity in form, as it was in fact; that in 1836 it was raised to \$400,000 a year, and that it was in fact and in substance an annuity; that it expressed at that time the sense of the legislature as to the indebtedness, not of the canals as a system, but of the Erie and Champlain canals alone. If the gentleman was right, that the canals were not to be charged with this annuity, then the state must provide for its own debt and current expenses by a direct tax, in addition to what was now imposed. Mr. H., in support of his plan for improving the canal, stated that it had been proved by actual practice, that a large boat can be drawn with considerable facility and great ease, through the canal from Rochester to Buffalo—a boat seventeen feet broad, ninety-five feet long, drawing three feet three inches, and carrying one hundred and twenty tons; and that if it had four feet of water, it could carry one hundred and eighty tons. Its travelling speed was from two and a half to three miles an hour. He repeated that his \$2,500,000 would complete a line of enlarged locks from Albany to Buffalo, extend the locks to one hundred feet in the chamber, and so enlarge the capacity of the canal as to give five feet of water.

Mr. WORDEN enquired, if with the increased depth, he proposed to widen the canal still.

Mr. HOFFMAN replied, precisely what width the slope would be, and Mr. H. went into some explanations of the mode in which strength would be given to the canal, by deepening it. He concluded by saying that he planted himself on the distinct position that the canal could be, without any extraordinary expense, made sufficient for public use and for any increase of trade which was likely to come to it—that it could earn $2\frac{1}{2}$ millions in the time he anticipated—that money applied in its improvement would enable it to earn any thing, if you could get the business—that it would treble the capacity of the canal, cheapen transportation as far as could reasonably be expected, enable you to reduce tolls one half, and get a revenue of four millions—that it was wiser and better to prepare for enlarging the canal or any thing else, in this way, than to defer the debt at the expense of ten millions of interest.

Mr. TILDEN here obtained the floor, and the committee rose.

The convention then took a recess.

AFTERNOON SESSION.

Mr. TILDEN, having the floor addressed the committee until near 6 o'clock, in support of the

project of the financial committee—going over the ground previously occupied by Mr. HOFFMAN.

Mr. STRONG then obtained the floor, and the committee rose.

Adjourned to 8½ o'clock to-morrow morning.

FRIDAY, SEPTEMBER 18.

Prayer by the Rev. Dr. POTTER.

The PRESIDENT laid before the Convention a communication, commenting on the proceedings of the Convention, and the length of time consumed on questions which the writer considered of but little consequence. The appointment or election of judges he thought an immaterial matter, if the judges were honest and able. The duties of surrogate he thought should be discharged by the overseers of the poor, and the office of surrogate abolished. He stated that he had not consulted his neighbors on the subjects discussed in his communication, for his contemporaries were all dead, and he was surrounded by a second generation. It was the communication of a very old man, (Geo. LAWSON, of Hamilton.) The Convention refused to agree to a motion made by Mr. HOFFMAN, to lay it on the table without being read through. It was read through and then laid on the table.

OATHS AND AFFIRMATIONS.

Mr. RHOADES, from the majority of committee number Nine, made the following report, which was referred to the committee of the whole, and ordered to be printed:—

§ 1 Members of the legislature and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm, as the case may be.) that I will support the constitution of the United States, and the constitution of the state of New York; and that I will faithfully discharge the duties of — according to the best of my ability

And no other oath, declaration or test shall be required as a qualification for any office of public trust.

Mr. CORNELL from the same committee, made the following minority report, which was also disposed of as was the majority report:—

§ 1. No man shall be deemed incompetent as a witness in any court, matter or proceeding, on account of his opinions on the subject of religion, nor shall any witness be questioned, nor any testimony be taken or received in relation thereto, either before or after such witness shall have been sworn or affirmed

DEBATE ON THE FINANCIAL ARTICLE.

Mr. RUSSELL rose to offer a resolution to remove, he said, the suspicion existing in the public mind that certain gentlemen desired to defeat the objects of the Convention by everlasting talk. If gentlemen desired to work, the resolution would be adopted. He read it as follows, leaving a blank for the day on which the debate is to cease in Convention:—

Resolved, That the committee of the whole be instructed to report to the Convention, on or before the hour of four o'clock, p. m. this day, the two articles reported by the committee on finance, now referred

to the committee of the whole, with the amendments proposed thereto, or to be proposed before that time; and that the Convention proceed on the — day of September instant, at 10 o'clock, a. m., to vote upon amendments and articles, and that no new amendments shall be thereafter proposed.

Mr. PATTERSON said the latter part of the resolution should be left out. He had an amendment to offer to the second section, and this resolution might cut him off from doing so.

Mr. RUSSELL agreed to strike out the latter part of the resolution.

Mr. HUTCHINSON moved to fill the blank with "the 22d inst."

Mr. HOFFMAN reminded the gentleman from St. Lawrence that on the second report mentioned in his resolution there had not been one word said, and hence it should be excluded from the resolution.

Mr. ANGEL also opposed the adoption of such a resolution on such important propositions, which would have the effect of changing the course of our government, without thorough debate. He thought the utmost latitude should be given

Mr. RUSSELL said his resolution did not limit debate in the Convention. It proposed that the articles should be taken out of committee of the whole, and in Convention legitimate and proper debate could be continued, though he did not think a single vote would be changed by any discussion, no matter how protracted it might be, the members having all long since examined it and arrived at conclusions in relation to it.

Mr. CHAMBERLAIN believed there were very few gentlemen that desired to speak on the subject before the committee, and they, himself among the number, were those who had not obstructed the business of the Convention: on the contrary they had sat for 3 1-2 months listening to the speeches of others, and therefore should not now be thus cut off. He suggested that the resolution should lie over until to-morrow.

Mr. RUSSELL acceded, and the resolution was laid on the table.

RIGHTS AND PRIVILEGES.

Mr. BRUCE offered the following resolution. He said the Convention had passed articles defining the powers and duties and privileges of the Executive, the Legislative, and Judicial Departments, and before adjourning they should say who the people were, and what were their powers, privileges, and duties.

Resolved, That the Convention will, after disposing of the report of standing committee No. 3, next pass to the consideration of the report of committee No. 4.

"on the elective franchise, the qualification to vote, and hold office."

Mr. SWACKHAMER moved to lay the resolution on the table.

Mr. RHOADES called for the yeas and nays, and there were yeas 54, nays 43. So the resolution was laid on the table.

CANALS, FINANCES, &c.

Mr. LOOMIS rose to submit a proposition in relation to the financial reports. It was evident that there was a wide difference of opinion between members on this important subject. It had been our good fortune hitherto to avoid the array of political parties and to adopt what had been agreed to by most decided majorities. He trusted such a result would be attained on this financial question. He should seriously deprecate any action that should array either one of the great political parties against the Constitution on account of the article we might adopt. To avoid this disastrous result, he had prepared a modification of the report of the standing committee, which he trusted would meet with favor as a compromise measure. Mr. L. referred to the extreme views of members and explained what the effect of his measure would be. He proposed to establish such a sinking fund as would pay the canal debt in the time contemplated by the acts of 1842 and 1844, leaving the payment of the general fund debt, to be postponed to a period about equal to that proposed by the rival plans which had been submitted. Mr. L. further explained his proposition, which is as follows:—

Amend the report by striking out of section 1, the first six lines, and insert as follows:—

§ 1. After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart out of the revenues of the state canals in each year, commencing on first June 1846, the sum of \$1,300,000 until 1st June 1855, and from that time the sum of \$1,700,000 in each year, as a sinking fund to pay the interest, &c.

Strike out sections 2 and 3.

In section 4, strike out the first six lines and insert as follows:—

§ 2 After complying with the provisions of the first section of this article, there shall be appropriated and set apart out of the surplus revenue of the state canals in each year, commencing on the 1st of January, 1846, the sum of \$300,000, until the time when a sufficient sum shall have been appropriated and set apart under said first section to pay the interest and extinguish the entire principal of the canal debt, and after that period the sum of \$1,500,000 in each year as a sinking fund to pay the interest &c.

Line 16 strike out "\$500,000" and insert "sinking fund."

Line 18 strike out "second" and insert "first."

Insert a new section as follows:—

§ 3. The surplus revenues of the canals, after complying with the provisions of the two last preceding sections shall be appropriated at the discretion of the legislature to defray the ordinary expenses of the government and for other purposes—but no law shall be passed appropriating or pledging for the construction or improvement of any canal or railroad any part of said revenues beyond those of the year current at the time of the passing such law.

Mr. WORDEN said if he understood this plan it appropriated a certain amount out of the canal revenues to pay the debt of the state, the canal and the general fund debt, leaving the surpluses to be disposed of as the legislature might direct. Mr. W. thought the argument of

the gentleman would apply with equal force to entrusting the legislature with taking care of the public debt. But he did not did not propose to enter into a debate on this at this time, nor to say whether he should or should not give the plan of his friend his support, for from the casual hearing of it read, he could not fully understand its whole bearing. He only rose at this time to offer the following additional section to the plan just submitted:—

§ —. The residue of the surplus revenues of the canals after complying with the provisions herein contained shall, until the canal debt of this state and interest is fully paid, be applied and appropriated to the completion of the unfinished canals of this state

Mr. PATTERSON moved a reference of both to the committee of the whole on the financial reports.

Mr. STOW begged only to say, that in the amendment he had offered, he had acted in a spirit of compromise. It was not by any means the proposition, which his own judgment dictated as that demanded by the true interests of the canals. In that same spirit of compromise, he desired to examine these propositions of his friend from Herkimer—and to do so fully and impartially. While willing to agree to a compromise on this subject, he by no manner of means admitted that the friends of the canal were compelled to submit to a hard compromise. They came not here as an insolvent debtor to beg for a favor; they had the power to appeal to a higher power than this Convention. But Mr. S. would not pursue this subject. He only asked that this plan just submitted, might not be pressed to a vote, until he with others had had full time to examine its operations in all its bearings. He hoped it would be laid on the table and it could be called up to-morrow.

Mr. PATTERSON suggested that it might be printed and laid on the tables this afternoon.

Mr. STOW said he wished a night to sleep upon it.

Mr. RICHMOND thought all this subject might with great propriety be laid on the table for a day, to give time for reflection, and the Convention could take up some other subject.

Mr. STOW concurred in the suggestion.

The question on referring to the committee of the whole was then carried.

Mr. CHAMBERLAIN moved that the Convention proceed to the unfinished business, and the Convention accordingly went into committee of the whole on the report of committee No. three, Mr. W. TAYLOR in the chair.

Mr. STRONG, important as was the subject, had not intended to occupy the time of the committee until yesterday. But when the gentleman from New York (Mr. TILDEN) took the floor, he was somewhat alarmed and felt inclined to say a few words in reply. That gentleman had assumed that New York had a great interest in this work, and that would be conceded by every one. That gentleman started off upon pretty high grounds, by saying he was willing to do all he could do to advance the interests of trade and commerce. This was all right, but before he got through, Mr. S. was sorry to find that all this was nothing but lip service. He went on to show that New York was deeply interested in the prosperity of the

Erie canal. Mr. S. said all this was true. The interests of New York city were vitally connected with that canal. He was glad to hear that this avowal came from a representative from that city. Mr. S. wanted to appeal to the delegates from that city, and show the truth of this assertion of their colleague. He referred to the action of 1835. The mighty west was seeking to pour its immense wealth into the lap of the queen of cities. The state officers—Mr. Hoffman among the number—represented these facts to the legislature and urged the necessity of the enlargement of the Erie canal. The legislature believed this, and passed the law. The people sanctioned that action, and he asked when they had repudiated that policy? Never. Why then, this effort to fix this iron rule in the constitution that would prohibit the consummation of that work? The only reason he could conceive of, was that gentlemen began to perceive their boasted policy of 1842 was weakening and needed this bolstering up. The people began to perceive that their debt was within their grasp, and that there were surpluses subject to the direction of the legislature. Mr. S. next answered the assertion of that gentleman, that the canal had never been excavated to its original depth. This was a broad charge, brought at one fell swoop against canal commissioners, engineers, contractors, &c. Mr. S. could tell the gentleman there was not the semblance of truth in this charge. And he had said that in 1842 the canal was first bottomed out. Why, any boy on the line of the canal would laugh at such an assertion. They knew that every spring since it was made, the superintendents bottomed out the canal. Mr. S. next commented upon the answers to the allegations of Messrs. Stow and Gardner about the detention at Lockport. The chairman of the committee and his lieutenant had given a most conclusive answer to this, and what was it? Why, that the lock-tenders were lounging around the groceries. Why, did the gentleman believe the canal board would keep in lock-tenders that would do that? Mr. S. did not, if they did. Such a pretence was preposterous. But the gentleman from New York, admitting the delay, said he could remedy this by marshalling the boatmen into line! Mr. S. would like to see him trying to marshal the boatmen on the Erie canal into line. He rather thought the gentleman didn't know much about these boatmen. Why it would take more men to marshal them into line, than would be necessary to kill every live Mexican! They were rather rough customers to handle in that way. Mr. S. said the gentleman had got so far when a friend put into his hands a printed copy of his speech in advance. Here it is (holding up a copy of the New York Democrat, yesterday laid on the tables of members) and Mr S. had read the whole of his speech an hour and a half before he got through! Here was all about Alexander's lock, the time to pass a lock, and all the tolls—in fact everything the gentleman said, except the little trimmings thrown in, like that about "marshalling the boatmen into line," and such matters. This was something new to him—for a man to get his speech printed before it was delivered. Mr. S. then proceeded to comment upon the law of 1842, and the ne-

cessity of completing the unfinished works.—The act, policy and principles of 1842 had been so much spoken of that the words had become singularly familiar. It appeared that any deviation from that act and that policy would be held to be as criminal as wilful disobedience of the inspired scriptures; but be that as it may, it was certain that in 1844 it was necessary to pass an act to interpret it. And the people that could interpret could repeal, modify, or change it.—He had understood that the principles of Tammany Hall were those of progressive democracy, and hence he should expect to have gentlemen from Tammany Hall with him on this question. On the subject of the Black River canal he made some observations, deprecating sectional feelings, in regard to either railroads or canals. The Black River canal had been represented by the engineer to be necessary as a feeder to the Erie canal irrespective of its other advantages. The title of the bill for its construction proved that, and he said that when constructing a feeder it was deemed wise and prudent to add to the expenditure and make a navigable canal, the amount added being inconsiderable in comparison with the good to be accomplished. The Genesee valley canal too had been commenced and he thought it should be finished, otherwise the faith of the state would be violated. In preserving the one and accomplishing the other, he thought the proposition of the gentleman from Erie (Mr. Stow,) was one which recommended itself to his best judgment. The plan which had been suggested by the gentleman from Herkimer to raise the banks, would be unwise, for it would cause the waters to overflow the locks. The object could only be accomplished by the enlargement which had been commenced. Without the enlargement, the canal was taxed beyond its capacity; and one break last year caused an expenditure to the state of \$36,000. He appealed to the convention not to blight the hopes and the interests of the distant sections of the state, but to prosecute these great works.

Mr. WARD said the gentleman from Monroe had spoken of the river counties in a way that required some notice from him. Now, as a representative of one of those counties, he only wanted to be satisfied that the revenues of the canal would be sufficient to save the state from taxation, to go to the fullest extent with the friends of the canals, not only for the postponement of the payment of some portion of the debt, but for the completion of the unfinished works. But he could not see how this could be done. He asked for information.

Mr. STRONG said, on looking at the revenues, it was evident they would pay the debt and interest of the canals.

Mr. WARD said the gentleman made omissions. The plans proposed certain things, but there was nothing said of the ordinary and extraordinary expenses of the government, which had now swelled up to a large amount—being over \$600,000—to meet which a tax was imposed upon the people.

Mr. STRONG explained that a short time to pay would require taxation, but the postponement for a few years would enable the canal to pay its own debts, without taxation,

Mr. WARD professed himself still unsatisfied. Provision should be made for the extinguishment of the debt, the interest accruing thereon, the repairs which from time to time will be necessary, and the gradual enlargement of this great work, but whence were the means to be derived? That was the question to be determined. There was nothing left but the salt tax and the auction duties, while the expenses of the government were rolling up, and should they burthen their constituents with a direct tax? If proper provision was not made to release them from a direct, he feared the people would not ratify this instrument. We were surrounded with dangers on every side. This was the most important subject that had come before us. The judiciary in comparison did not weigh a feather. The Legislative and Executive Departments were of little comparative consequence. While liberal to a fault as a representative, as he had been, he must still consider what he knew to be the wish of his constituents. He referred to the action of the representatives from the river counties, Long Island and New York against the building of the original Erie and Champlain canals. They were mistaken in their apprehensions, and he returned thanks to those who had the firmness to stand by the canal. The debt for that purpose had been paid by the canal. And now even with the large debt of \$23,000,000, if the canal was blocked up and could yield no revenue, his constituents and those of the river counties, would submit to taxation to pay every dollar of it. But while they would do so if necessary, did it follow that they should submit to an unnecessary tax? He referred to the amount of tax paid by the river counties and of its hardships; and said notwithstanding this, he would be liberal—his constituents would be so. They were willing to postpone the payment of the debt, not only for 20 but for 30 years, if thereby this canal could be enlarged. He admitted and averred that there was a necessity for such enlargement. What was the condition of that work now? The Erie canal was divided into four large divisions:—

1st, Commencing at Albany, and ending at Little Falls, Herkimer county, 90 miles.

2nd, Beginning at Little Falls, and ending at Canastota, in the county of Madison 58 miles.

3rd, From Canastota to Cartersville, in Wayne county, 106 miles.

4th, From Cartersville to Buffalo, Erie county, 105 miles.

Of the first section, from Albany to Little Falls, 30 miles remained to be enlarged—7 miles of which was between Albany and Schenectady. It would require, to complete these 7 miles, \$210,000—7½ locks on this section were to be entirely doubled—7 other pair of locks were nearly completed, but not in use. The 1st lock was 6 miles from Schenectady; the 2d lock, 3 miles west of Amsterdam; the 3d lock, at Spraker's Basin; the 4th lock, at St. Johnsville; the 5th lock, at Fort Plain; the 6th lock, 6 miles west of St. Johnsville; the 7th lock, 5 miles east of Little Falls. The 30 miles of canal which remained to be enlarged on this section, would cost about \$1,000,000. The Champlain canal entered into this section, but below the locks at Cohoes. Of the second section, from Little Falls to Canastota, passing through the counties

of Herkimer, Oneida and Madison, 32 miles remained to be enlarged, with 7 pair of locks begun and nearly completed, but not in use. These locks, with those on the first section, would require, as estimated, the sum of \$295,000 to complete them. These were all the locks on which labor is required, upon this section. The 32 miles of the canal might be enlarged for about \$1,000,000. This section received the following laterals—the Chenango, the Oneida Lake, and the Black River canals. Of the third section, from Canastota to Cartersville, only 16 miles had been completed. The remaining 90 miles had never been put under contract. The number of locks on this section, to be completed, was 5½ double, on 11 single locks. These had never been put under contract. The estimated cost of these locks was \$500,000. The lateral canals that fall into this section, were the Oswego, the Cayuga and Seneca, the Oneida River improvement, the Seneca River towing-path, the Chemung, and Crooked Lake. Of the fourth section, from Cartersville to Buffalo, a distance of 105 miles, only 8 miles had been completed. The remaining 97 miles had never been put under contract. Five single locks on this section had been completed—5 pair of locks had had no work done upon them, and never had been put under contract; and the estimated cost to complete these locks was \$500,000. There were 6 locks partly completed, the estimated cost for completing which was \$300,000. The Genesee Valley canal fell into this section. The whole number of miles of canal between Albany and Buffalo, which remained to be enlarged, was 250 miles, and had never been put under contract. The estimated cost per mile for completing the enlargement of the canal, was \$30,000, independent of the locks. Mr. W. only asked that during the ensuing twenty years the people might not be subjected to the annual tax of \$500,000 for the support of the government. First make an appropriation for this purpose, and he would go with gentlemen in the expenditure of every dollar of surplus to the completion of this great work. The gentleman from Erie had given a glowing picture of the probable increase of business on the canal. Mr. W. believed all of it. He had not a doubt but what, in 20 years, the produce coming from the mighty West would be more than could be transported on the Erie canal, even if enlarged, and upon the railroad upon its banks. Why, 200,000 emigrants alone had arrived in this country this year, 50,000 more than the population of this state in the revolutionary war. This population alone would build up cities larger than Albany, Hudson, Troy, Utica, Rochester and Buffalo combined. He spoke of the certain increase of the trade of the mighty west, showing that it must seek an outlet this way and not by the Mississippi river. He doubted not but the fullest expectations of the friends of the canal would be more than realized. Why then should they object to such an appropriation from the revenues of the canal as would save the people from the burdens of taxation? Let them bring forward a plan embodying the views he had submitted, and he would go with them cheerfully for any such postponement of the public debt as they might deem necessary. But

unless they did, he should be compelled to vote for the report of the standing committee.

Mr. F. F. BACKUS spoke briefly in opposition to the report of the standing committee.

Mr. CHAMBERLAIN then took the floor.—He commenced by expressing his conscientious inability to do justice to this great subject; and threw himself on its indulgence; for though he had been sometime in public life, he was not one of those known as speaking members of such bodies. He then proceeded to the subject before the committee, but more particularly to the Genesee Valley canal, in which his constituents had a more immediate interest. In the senate of the state he had had occasion to describe this work, from Rochester to Mount Morris, thence to Olean, and the means of communication which it opened with Pittsburgh, and 1,500 miles of river and steamboat navigation beyond; together with the surrounding country, and the resources which it possessed. On this occasion he should restrict his remarks to a narrower field. The first thing he should present to the consideration of the committee, would be the cost of the completion of the unfinished part of the Genesee Valley canal; and secondly, the probable revenue from that source, after its completion. The first he should show from documents which he presumed would not be disputed by any gentleman here. The first document to which he should refer was the report of the canal commissioners to the senate on the 27th March, 1844, document 111. On the second page of that document would be found the following table, of which, however, he would say that the contract prices were those of 1833-'39, when every one knew that the materials necessary to construct a canal were higher than they now are by 25 per cent. Why, at the time at which these estimates were made, they had to pay from \$8 to \$10 a barrel for flour, and from \$15 to \$20 a barrel for pork. He need not remind gentlemen of what they now were. The statement he was about to make then, of work let in 1833-'39, it must be borne in mind, was based on such prices, and was as follows:—

Sections.....	\$435,373 35
Locks.....	421,777 78
Aqueducts.....	83,042 34
Culverts.....	9,069 48
Bridges.....	36,240 69
Waste weirs.....	9,975 8
Dams and Bulkheads.....	4,090 00
Total.....	\$1,019,569 22

The work which has not been put under contract at estimated prices was as follows:—

Sections.....	\$98,779 59
Locks.....	66,900 00
Aqueducts.....	5,900 00
Culverts.....	11,000 00
Bridges.....	13,980 00
Waste weirs.....	6,000 00
Lock houses.....	6,000 00
Reservoirs.....	96,400 00
Total.....	\$395,300 59

Total..... \$1,314,869 81

This included all the work to be done on that canal, and for convenience he would call it \$1,315,000. But from this he proposed to strike 25 per cent for the difference of prices now of provisions and labor and all the other things

that were necessary to construct a canal, and he appealed to the judgment of gentlemen if it was not a reasonable deduction from the high prices of '38 and '39. The amount to be deducted then was \$323,750, leaving a balance of \$986,250, as the cost of the completion of that canal at this time. This however did not include the reduction to be produced by a change of plan of mechanical structure, extra land damages, or the amounts paid by the canal board for violated contracts on the part of the state. But he proposed to test this matter in another way.—Call the amount necessary for the completion of the canal, as above stated, \$1,315,000, then the state has paid on the contracted part of the work \$167,000, as was shown by the Comptroller's report of 1846; deduct for a change of plan of mechanical structure—see canal commissioners report for 1844, document three—the sum of \$85,000, also deduct 25 per cent from that portion not under contract, but estimated at contract prices for similar work, amounting to \$295,000, as referred to before, being the sum of \$73,750, and for extra land damages in case the canal is abandoned at least \$50,000; and there was a sum of \$376,250, which leaves a balance necessary to complete the canal of \$938,750 only. If his calculations were correct, and of their correctness he had no doubt, the work could be completed for less than \$1,000,000, including engineering and all contingencies.

Mr. W. B. WRIGHT enquired if the gentleman took into the account the expenses necessary to repair the tunnel which had fallen?

Mr. CHAMBERLAIN replied that his calculation included every thing to be done on the canal; but what the gentleman meant by a fallen tunnel, he was at a loss to know, for he had never heard of such a thing.

Mr. W. B. WRIGHT said he had received information that a portion of the tunnel had fallen in.

Mr. HARRIS said he was there in August 1845, and it was not so then.

Mr. CHAMBERLAIN said the information of the gentlemen from Sullivan was news to him, and would be to the inhabitants of that part of the country from which he came. While on this subject he would say a word to the gentleman from Herkimer (Mr. HOFFMAN,) respecting the land slides of which that gentleman had spoken; for he desired fully to meet every objection, and to remove all that could be removed fairly and truthfully. It was true that in 1841, there was a land slide of which a description was given in the canal commissioners report of 1841. Some twenty rods gave way where by the operation of the water, the land became soft, in section fifty-eight, if his recollection served him, and that was all the foundation for these stories of land slides. He hoped after this explanation they should hear no more of the caving in of tunnels or of land slides, for he declared the statements to be untrue. The works all stood as they were when the work was abandoned, with such injury only as the natural decay of the materials was ever subject to. He then proposed to show the probable revenue resulting from the completion of this work; and said he should claim the tolls through to tide water, deducting a reasonable proportion for superintend-

ence and repairs on the Erie canal. By a careful estimate, he had the quantities of lumber manufactured on the waters of the Alleghany and Genesee rivers which would find a market eastward through the canal if completed, and which he had no doubt was entirely correct. Mr. C. read, as follows:—

Statement of lumber manufactured on the Alleghany river above Warren.

There are now forty-five saw-mills on the river, cutting on an average one million of feet each making in all 45,000,000 feet. On the same territory are manufactured at least the same quantity of shingles, 45,000,000. Included in the same territory there is at least 200,000 feet of square lumber.

On tributary streams of the Alleghany river, of which there are eleven that he would mention, he had estimated the amounts of the several kinds of lumber as follows:—

The Hengua creek 10,000,000 of boards, 10,000,000 of shingles and 50,000 feet of timber. The Sugar Run 5,000,000 of boards and 5,000,000 of shingles. Quaker Creek, 2,000,000 of boards and 2,000,000 of shingles. Backtooth Run, 1,000,000 of boards and 1,000,000 of shingles. The Great Valley, 5,000,000 of boards and 5,000,000 of shingles. The Tunangwant, 15,000,000 of boards, 20,000,000 shingles and 100,000 feet of timber. The Olean, 10,000,000 of boards and 15,000,000 of shingles. Dodge's Creek, 8,000,000 of boards and 10,000,000 of shingles. Haskill Creek, 5,000,000 of boards and 7,000,000 shingles. The Oswago Creek, 20,000,000 of boards, 20,000,000 shingles and 50,000 feet of timber. Potatoe Creek, 10,000,000 of boards, 10,000,000 shingles and 50,000 feet of timber. Also on the Alleghany river above Potatoe Creek, 8,000,000 of boards, 8,000,000 of shingles and 100,000 feet of timber.—Making in all on the Alleghany and its tributaries:—

144,000,000	of boards.
153,000,000	shingles.
553,000	feet of square lumber.

One half of this amount would be transported the whole distance of the Genesee Valley canal (107 miles) to Rochester, if the same were completed. The tolls on

One half would be	72,000,000 of boards	\$38,520 00
" " "	75,000,000 of shingles	8,453 00
" " "	275,000 ft. sq timber	2,942 50
		<u>\$49,915 50</u>

He had also made an estimate of the quantity of lumber on the Genesee river as follows: 50,000,000 of sawed lumber, 50,000,000 of shingles, 500,000 feet of square timber; the whole of which would be transported on the Genesee Valley canal to Rochester, a distance of 80 miles, if the same were completed. The tolls on

50,000,000 of lumber	would be	\$20,000 00
50,000,000 of shingles	"	4,000 00
300,000 ft. of sq timber	"	2,400 00

Making in all \$26,400 00

Making in all three articles of lumber, timber, and shingles:—

On the Alleghany and its tributaries	\$49,915 50
On the Genesee	26,400 00
	<u>\$76,315 50</u>

Now if we give credit to the Genesee Valley canal for tolls on the Erie canal 245 miles more, it would amount

On 122,000,000 of boards to	\$149,450 00
" 122,000,000 shingles	31,605 00
" 775,000 ft. of sq. timber	18,957 50

\$200,042 50

Add to this the tolls on the G.V. canal 76,315 50

And you have the sum of \$276,358 00

Giving then the Genesee Valley canal credit for the revenues it brought to the Erie canal, deducting 25 per cent to cover the expense of collection, repairs, &c. of the Erie canal, and there would be then a revenue which would certainly pay the interest of constructing this canal, and to form a sinking fund which would pay the debt in a very few years. He had a table of tolls showing the amounts which had been credited to the part in operation since the fall of 1840, when it was opened for navigation, and which showed that the tolls had doubled in the last three, over the three years preceding them. The tolls were in 1840 \$6,930, in 1841, \$9,257, in 1842, \$13,204, total, \$29,430, on an average of \$9,810. In 1843 they were \$15,291; in 1844, \$19,641, and in 1845, \$25,173; being a total of \$53,105 or an average of \$19,360; besides a large amount which, it must be recollected had been embezzled by the canal officers, the sum total of which had never been ascertained. Now suppose the increase of tolls should continue in the same ratio up to 1860, and they would have \$184,000 from that "pauper canal" alone. (Laughter.) The increase up to the first of August had been over \$6600 more than the whole of last year as he learned from official documents.

The next question was will this business continue? What were the resources of that part of the state which was to furnish business for this canal, if it should be completed—for that was an important matter if, as was stated, they intended to run a canal to the foot of the Alleghany mountains, and there connect with—nothing. He then asserted that the resources of that part of the country were almost illimitable, and he proposed to shew some facts in connection with it. He had a statement showing the number of acres of pine timbered land which would be accessible on the completion the Genesee Valley canal, with the estimated of quantity of lumber which would be manufactured from the same. He read as follows:—In Warren county, Pa., 100,000 at 20,000 feet per acre, would be 2,000,000,000 of feet, or 2,000,000 thousands of feet. Cattaraugus county, 100,000 acres at 20,000 feet per acre, would be 2,000,000,000 of feet, or 2,000,000 thousands of feet. In Alleghany county, 125,000 of land at 20,000 feet per acre, would be 2,500,000,000 of feet, or 2,500,000 thousands of feet. McKean county, Pa., 150,000 acres of land at 20,000 feet per acre, would be 3,000,000,000 of feet, or 3,000,000 thousands of feet. Potter county, Pa., 175,000 acres of land, 3,500,000,000 of feet, or 3,500,000 thousands of feet. In all 650,000 acres of land, and 13,000,000,000 of feet, or 13,000,000 thousands of feet of lumber; and to consume the above quantity, at the rate of 150,000,000 per year, would take 86 years and

over. But assume this amount to be cut down one half, then it would require over 40 years to consume this one article of tonnage alone, and it would more than pay for the completion of the canal, twice over, in tolls, aside from the tolls it would bring to the Erie canal.

The inducements to transport this lumber to the eastern markets would be apparent to all, when he presented a few facts to the committee relating to prices in Albany and in Cincinnati, and the cost, risk and loss of transportation. The cost of rafting, running and delivering at Cincinnati from Olean was about \$4 per thousand feet, the loss and risk at least 20 per cent., and the average price at that market might reach the sum of \$16 for the three first qualities.

Deduct the price of running, delivering, &c

and you had left,

Deduct risk and loss (20 per cent),

\$12 00

3 20

Which leaves

\$9 80

He next proceeded to show the result on the canals and the eastern market. The cost of transportation on the Genesee Valley canal and the Erie canal to Albany would be about \$5 to \$6 per M. feet, and the average price at Albany for such lumber was about \$27. There was no loss or damage to be sustained. The boards would be worth for this market more than double the sum for the other—say \$21 per thousand feet. Now, suppose the opening of this immense region of lumber to market should reduce the price in the eastern market \$5 per thousand feet, it would then give the manufacturer at home \$16 per thousand feet—full as much as it would bring in Cincinnati. And who would get the benefit of this reduction? Certainly the consumer at Albany and other eastern cities—And would it be said that this statement is not correct? He asked a refutation of it. Nay, he challenged it. Now, he had not in this estimate of business to be done on this canal, made any calculations on the immense amount of other property which would pay toll on it; nor the revenue arising therefrom. But he thought it would be ample to pay all expense of superintendence and repairs, if well constructed. He presented the following facts, found in the Comptroller's report, assembly document No. 113, which shows a balance in favor of this canal of \$72,000. He also referred to the report of the commissioners of the canal fund on trade and tonnage. On the 29th page would be found that of the Genesee Valley canal, and it was as follows:—

Boards,	27,000,000 of feet.
Shingles,	19,000,000.
Square timber,	106,000 cubic feet.
Staves,	8,000 tons.
Atches,	1,000 tons.

And other articles amounting in all to ninety thousand tons. And all this without penetrating the main timbered region of the Genesee or Allegany rivers. The advantages of this canal, not only to that part of the state, but to the people of the whole state, surpassed his ability adequately to present. But let any man look at these statements, and unless he was blinded by deep-rooted prejudices, he would decide at once that no time should be lost in completing it. He well knew these prejudices were strong and abiding; yet he had entire confidence that they

would be overcome by an examination of these statements and facts. And if he should succeed in doing this, he should be satisfied, for he should have rendered his constituents a great service.

Mr. C. said he had another matter to notice, and he trusted the Convention would continue its patient attention a few moments longer. It had been said that the laws for the construction of the Genesee Valley and Black River canals were procured by fraud. Such a statement he was bound to notice for many reasons. One was that he was a member of the Assembly at the time the Genesee Valley canal bill passed, and he there stated that if fraud was connected with it it was without his knowledge. But he denied the statement: it was a slander on the legislature of which he was a member, and of the constituency that he represented. No canal act ever passed with greater unanimity than that for the Genesee Valley canal. And after being passed by a large majority—in fact it was almost unanimous—it was sent to the executive, than whom a more upright man was not to be found in the State; and if there had been fraud in the matter, that Governor never would have sanctioned it. He again most emphatically denied that there was fraud in the matter. Mr. C. then referred to some action taken in the legislature of 1837, on a resolution introduced by Dr. CASH of Orange, of the 27th February, of that year, in relation to the postponement of the works on this canal, and after an able argument on the 3rd March 1837, it was almost unanimously voted down, only five being found to sustain it, while ninety-four were found voting on the other side. After this expression of the legislature, had not the people the right to believe that it was the settled policy of the State to go on and complete these works? And what was the action of the government in relation to it? Why money was permitted to be used for the construction of these canals, and they were so far advanced that at one time but about \$500,000 was necessary to put the Black River canal in operation. For the Genesee Valley Canal too, three-fourths of all that was required was expended, which by the policy now proposed was to be scattered to the winds. It was true that our embarrassed financial condition required a pause in our expenditures, and the avowed object—to raise the credit of the state that money might be obtained at par for the completion of the works,—was a good one. They did not complain of the provisions of the suspension act of '42. In fact he did not venture to say that they were distinctly understood; nor did he understand the "policy of '42." The "policy" and "the law" appeared to him to be two different things. If the "policy of '42" were to abandon the public works commenced—if it were to abandon the enlargement of the Erie canal, and the completion of the Genesee Valley and Black River canals, the people in his section of the country were opposed to it, and never would consent to it, nor be satisfied with it. But he desired to read to the Convention something in this connection which would show that they had a right to expect that as soon as the credit of the state had been raised, the public works would be resumed and completed—and that the embarrass-

ment of state stocks had passed away, and money become cheap, could not be denied. The extract to which he alluded was from the Legislative Address of this memorable year '42. It was as follows :—

"In this emergency, we have been impelled to the alternative of *suspending for the present*, our public works, except so far as is necessary to preserve the same; and to call upon you, fellow citizens, to come forward and, by a direct tax, to sustain your own credit. We are aware that the alternative presented to you is an unpleasant one; that the *suspension* of the public works will produce pecuniary embarrassment among some portions of our constituents; and that an increase of taxes at this season of financial depression, will subject you to inconvenience. But which of you would not rather submit to almost any pecuniary sacrifice, than that the honor of the state should be impaired, or its credit fail?"

Now did that carry the idea that the works were to be abandoned, or even suspended for any great length of time? He submitted to the judgment of gentlemen whether they had not good reason to suppose that the works would be continued as soon as the stocks were brought up to par, and money could be procured at a reasonable rate of interest? But he had another address from which he would read an extract to show that on this subject there could be no mistake. It was an extract from the Address of the democratic state convention of the same year, '42, the delegates holding the following language :—

"This *suspension* of further expenditures on the public works, which had taken place in fact, was declared by law, except so far as it was necessary to *preserve* the work already done from dilapidation. This course was inevitable: *not indeed as a permanent measure*, but until the resources of the state could be called out and its prostrate credit invigorated and restored."

He again asked the Convention if there was any indication of an abandonment of the works in this, or even a long extended suspension of them? Should they then be met by the statement that stocks were below par and that money could not be obtained but at a great sacrifice? No. No one there would say that, nor any man elsewhere. It was known to the world that our state stocks were as good as gold.—There were no better stocks in the country. In saying this, he did not wish to be understood to intimate that he would have the state issue its credit or increase its debt to go on and finish the canals, though strict justice would require that it should do so. They would submit with all patience and humility to the fair working of the canals, but they required the canals to have a fair chance. There was a feeling in the state against the increase of the state debt, and he considered it his duty to sustain that principle, but justice could be done to the sections of country of which he had spoken, consistently with that sentiment. It had been suggested by the gentleman from Herkimer that the whole revenues of this state which are produced by the canals alone—for there are no other worthy of notice—should be pledged for the extinguishment of the debt of the state in the time he has specified; and the reason assigned was that the tolls would fall off. Now he (Mr. C.) did not believe that there would be any diminution of revenue from the canals. To that subject however, ample justice had been done by his friends from Erie, Ontario and Chautauque, and there-

fore he should not attempt to do that which they had done so well. He should merely say that we had two great objects to effect—one was to secure beyond all contingency the payment of the public debt, and the other was to secure the completion of the unfinished works within a reasonable time. And in view of the facts which he had submitted to the committee he asked if there was not something due to the portion of the state whence he came; and if the revenues should not be so managed as to secure the accomplishment of both the objects he had just specified. It could readily be done, but not by the proposition of the gentleman from Herkimer. Whoever voted for that proposition voted to abandon the canals, and it remained for the Convention to say if such manifest injustice should be perpetrated. There was no danger of a falling off in the revenues of the canals—nay they might go on and complete the canals; and add to them railroads, and the business of the state would increase faster than the facilities of transit. If the proposition of the gentleman from Erie (Mr. Stow) were adopted, both the enumerated desirable objects would be accomplished. He proposed to appropriate \$1,500,000 for the first ten years, to pay the interest and create a sinking fund to redeem the principal of the debt, and the best calculation of the Comptroller did not make the debt more than \$22,000,000. The proposition of the gentleman from Erie, would pay the whole of that debt in 23 years, and afford a sufficient sum to enable the state to go on prudently and economically with the enlargement of the Erie canal, and complete the two unfinished canals; and thus save the four millions of dollars to the state that have been expended upon them. But this was not all. The gentleman from Herkimer again and again had told them that good faith was a jewel. Mr. C. joined with the gentleman in the reiteration of that truth, and he called upon the Convention to act with good faith to the neglected portion of the state for which he had been pleading. Did the gentleman from Herkimer intend to do this? No; on the contrary he desired effectually to provide for the sale of those unfinished works; he would alienate them and sell them out body and breeches. [Laughter.] Did the gentleman from Herkimer ever intend to prosecute the enlargement of the Erie canal?—No such thing. The word "enlargement" was carefully excluded from the report. He proposed an appropriation for the "improvement" of the Erie canal, and what was meant by "improvement." He proposed to lengthen the locks—take out the upper or the lower gate and splice them—clean out or bottom out the canal. And would gentlemen be caught with such a bait? His constituents and the people of Western New York never would submit to such a proposition as that. He had fairly and plainly presented the facts of the case to the Convention. He had shown the origin of this work, and its situation. He had read what was said of it in the Legislative address of 1842, and also by the democratic convention of that year, and would the convention say, when it came here to do justice to every part of the state, aside from party predilections, that important parts of it should be sold out, and alienated, and that all

the improvement to the Erie canal should be the lengthening of the locks? He however would say nothing further on that subject.—There were gentlemen here much better qualified for the task than he was; but he had a duty to discharge, and he should do it firmly, relying on the good sense, intelligence and justice of the Convention to sustain him. Was it possible that the gentleman from Herkimer could be deluded into the belief that the delegates to this Convention would be brought to support his proposition? Did he suppose that he could have the support of the friends of the Erie enlargement? The gentleman from Clinton (Mr. STERSON) had said there was no democrat here that would vote against the article reported by the committee. This he denied; and he asserted that no democrat who was governed by just principles would vote for it. He was at issue with the gentleman from Clinton on that subject. But if this proposition was to prevail—if his opinion was erroneously founded—he would say to this body, take away the emblem of justice that now stands in such bold relief on your capitol—haul down the flag with its stars and stripes, and run up in its stead the black flag of REPUTATION, for it would be nothing less than a repudiation of contracts solemnly entered into, and faith plighted to a respectable portion of our citizens.

Mr. BURR had one word to say. If that meant fourteen minutes he might want as much time. He desired only to define his position. Mr. B. went on to remark that when the project of constructing a canal from the Hudson river to Lake Erie was first started, it found little favor in that section of the state to which he belonged. It was (said he) ridiculed by prominent men among us, and strenuously opposed by our representatives on this floor. A large majority of my neighbors deemed it a visionary scheme. But, sir, I sometimes form my own opinions without stopping to enquire whether they coincide with those of my neighbors. I did so in this case. I believed in the practicability of such a work. I believed that the state might borrow the necessary means to construct it with a reasonable prospect that, when finished, it would yield a revenue sufficient to pay the interest of its debt, and gradually to reimburse the principal. I believed that such a work would greatly increase the population and wealth of that portion of the state through which it passes; when, at the same time, it might diminish both in other sections remote from it; that therefore it would be unjust to raise the necessary funds by a general tax upon the people of the state. When this great work was completed, I doubted the policy of adding *side cuts* to it, for I believed that every branch that could be added, except the Champlain canal, would diminish its value. But one branch after another was added, and at length the magnificent scheme of the enlargement was projected and pursued, until, in 1842, all was "brought up standing" as a sailor would say. Now, sir, I confess I am not quite such an ardent canal man as I once was. I should be willing to have the state sell out the whole establishment, if purchasers could be found who would take it, even at cost. But, sir, I am not

altogether hostile to the canals—and as I am satisfied that they are to remain the property of the state, I should be glad to see them finished, and placed in a situation to produce the greatest amount of revenue, if it can be done without increasing the debt, or subjecting the people of the state to a direct tax; and shall endeavor to vote in accordance with these views.

Mr. BASCOM said he had not intended until this morning to say a word on this subject, feeling that there were those here who had something like a local interest to look after, that would lead them to give to it the necessary attention, and feeling also that as the debate was soon to close he should not be justified in going at large into details, with which perhaps he was not as conversant as some others. But there were considerations that had not been dwelt upon to the extent at least that seemed to be called for, under the circumstances in which we found ourselves—for it was not to be disguised that we had local and conflicting opinions, perhaps local prejudices long indulged, growing out of local interests, that were to be conciliated and harmonized on this question. Mr. B. said he happened to be so situated that he had no such feeling to indulge—no interest or feeling that was not common to every gentleman here—for the little county that he represented had all that she could ask or desire in the way of internal improvement, and nothing that we could do could impair her position. But he could not participate in the feeling that would shut down the gate against the people of the Genesee Valley or the Black River. He could not but turn back to other times, when the county of Seneca was differently situated. He was one of the two or three in this body who were born and reared west of the county of Oneida—and he could remember when that section of the State was not only shut out from the eastern markets, but cut off almost from intercourse with the people of the eastern section. He could remember with what gratitude the efforts and influence of the great and noble hearted men of the east in favor of the canal policy was received there; for at that time, the people of Onondaga were hesitating whether to remain at home and struggle with their position as best they could, or emigrate to the far off and then dangerous and fatal climate to them of the west—and many of them did emigrate only to lay their bones, after a few years of trial, on the banks of the Wabash, and other points of emigration westward. The people of the western section of this state had omitted no opportunity to repay the debt of gratitude they owed to their eastern brethren, and to the people of the whole state; and Mr. B. glanced rapidly over the evidences which legislation presented of the liberal, generous and enlightened course which the representatives of the western section had ever pursued, in reference to the lateral improvements and other enterprises in which other sections of the state were interested—and this too with the knowledge that the last of these improvements and enterprises must ultimately be a charge on their resources. Mr. B. urged the cultivation of a similar spirit of mutual sympathy and regard between all sections of the state. But what, he asked, was this proposition

of the standing committee, (Mr. HOFFMAN'S?) It was on its face a cold, heartless proposition, having for its object, if not the entire prostration, at least the abandonment of the long cherished canal policy of this state. It did not provide for the enlargement. It was silent in regard to the two unfinished canals. Nor was there any thing in the whole argument of the gentleman from Herkimer, (Mr. HOFFMAN,) about the propriety or the possibility of the enlargement. On the contrary, the burthen of that argument was that it was entirely unnecessary—that there was to be a calumniating point in the canal revenues and that we ought to struggle along for some ten years, as well as we could, and that by that time trade would have sought and found other channels to market, and thus relieve us from the necessity of going on with the work.—Mr. B. went on to contrast the different propositions with which a compromise had been sought to be effected between extreme opinions on the subject of the debt. All, he said, concurred in the policy of making entire and adequate provision for the payment of the public debt—and the only question presented was a question of time—and how long policy and economy called for an extension of the debt. But these propositions of compromise were such by calculations of interest, and we had been shown how many millions it would cost to postpone the payment of a debt—as if it was an argument why we should not make improvements which the public interest demanded, that we must do it on similar terms with individuals who undertook any enterprise. If there was any thing in this interest argument, it was this—that the state being able to borrow money at a less rate than individuals, should in the shortest possible time, draw from those who had to pay more for the use of money the means of payment. But he would not go into this interest argument, nor the salt argument, which had already been elaborately argued. He was happy to see that gentleman who sympathised with the gentleman from Herkimer (Mr. HOFFMAN) had seen fit to change ground and change tone on this question, and to give a little hope to the friends of the enlargement and of the two unfinished canals, that they might look forward ultimately to the completion of these works—though he confessed the hope was small enough. Mr. B. alluded to the compromise offered by Mr. Srow, and to the appeal which it had become the duty of that gentleman to make, in the absence of any champion of the canal interest from the quarter where all were looking for it and had a right to expect it. He asked where was the city of New York on this question? Why it was that the queen city of the west was compelled to come forward unaided by the valuable co-operation of any of the able representatives from the city of New-York in behalf of the canal interest? He insisted that it was the city of New-York that was mainly interested in keeping this great channel of business in efficient order to meet all the demands of trade—that the interest of Buffalo was a comparatively minor matter—and that from New York, of all other places in this Union, it was proper that this appeal should have come. And yet, we heard a note of another description

from that great city, (alluding to Mr. TILDEN'S speech yesterday.) We had an essay on canalising from that quarter, and coupled with an avowal that the delegation from the city were all internal improvement men, entertaining no hostility to the completion of the public works—we had a labored argument to show that a little lengthening of the locks and a little deepening of the canal were all that was necessary to the interests of New York or of the State! And this too whilst a rival city, with but a portion of the wealth of our great commercial emporium, was putting forth all her energies to counteract the natural advantages of that great mart of the Union. He confessed to a little state pride in contemplating our noble works of internal improvement, and the position of the state as the great highway through which the inexhaustible products of the illimitable west, must, unless obstructed by a narrow policy and a still narrower canal, flow in its course to the seaboard. And he confessed also to some surprise to see these great works, the pride and glory of the State and of the Union, made the object of local and illiberal jealousies and saddled with what had been well termed trumped up amounts of indebtedness calculated, if not designed, to bring them into odium and contempt with the people. As to direct taxation of which so much had been said in the course of this debate, Mr. B. said that was not by far the worst evil that could befall us. He denied the necessity for direct taxation to support government, or that such would necessarily be the effect of certain propositions before us—but he wondered at the objection to direct taxation as a matter of principle, coupled with a leaning towards the principle taxing the right of way to do it—towards the principle of taxing labor rather than property to support government. All knew the effect of direct taxation to excite a greater scrutiny on the part of those who paid it, to its expenditure, and to promote economy in public expenditure—and all must see that if the rich revenues of the Erie canal were to be salaried and fed, the tendency would be to profuse and lavish expenditure, at the expense of the toiling million. He trusted we had done something towards the reduction of the expense of government; and that this should satisfy gentlemen that we were not to be taxed to death. Let this be carried out in your counties and towns, and his word for it, your taxes, which now run up to four millions, would be reduced one million, and without any injustice to your official list. He scouted the idea of the great state of New York, with her immense resources and with her position in the Union, being bankrupted, and her high credit prostrated, by the completion of the enlargement and of the two unfinished canals. He rejoiced to see a prospect that the compromise offered by the gentleman from Erie, or something like it, was likely to be adopted, which, without the issue of a new bond, or the increase of the public debt one dollar, would ultimately lead to the completion of the great system of internal improvement, in which not the state only, but the Union, were so largely interested.

The committee here rose and reported progress. The Convention then took a recess.

AFTERNOON SESSION.

Mr. VAN SCHOONHOVEN addressed the committee at length in support of the proposition offered by Mr. Stow. [A sketch is deferred.]

Mr. MARVIN then obtained the floor and moved that the committee rise.

The committee rose and the Convention Adj. to 8½ o'clock to-morrow morning.

SATURDAY, SEPTEMBER 19.

No clergyman present.

Mr. ALLEN presented a remonstrance from about 50 citizens of New-York against any provision to make individual stock holders in banks liable to more than the amount of their stock. Referred to the appropriate committee of the whole.

Mr. ALLEN moved that it be printed. Lost.

The PRESIDENT presented a communication from T. Clowes, of Hempstead, Queens co., who desired to give the Convention a lecture on arithmetic, in which after years of study he had made some singular discoveries. He asked for the use of the Assembly Chamber for that purpose. Laid on the table.

ADDRESS TO THE PEOPLE.

Mr. YOUNGS offered the following. —

Resolved, That a committee of five be appointed to prepare an address to the people of the state to be published at the close of the session of this Convention.

Mr. WORDEN did not know what they had to address the people upon. They would give the people the result of their labors and that must be sufficient.

Mr. RUSSELL hoped the gentleman would allow his resolution to lie on the table.

Mr. YOUNGS consented and it was laid on the table.

DEBATE IN COMMITTEE.

Mr. STETSON offered the following: —

Resolved, That the committee of the whole be instructed to report this day as early as 12 o'clock, the first article reported by the committee on finances together with the several amendments adopted or proposed and the several propositions as substitutes or amendments referred to said committee, and that all such propositions be considered as pending amendments. And that the debates on said article or any amendments to committee and Convention be limited to 15 minutes to each speech to be made thereon.

Mr. S. said there were but 13 working days of the session left, and the debate for the last few days was confined to the opponents of the report.

Mr. CHAMBERLAIN moved to amend the resolution by striking out "this day as early as twelve o'clock," and inserting "on Monday next at six o'clock p. m." He hoped gentlemen would have an opportunity to be heard on this important subject, and hence he had moved his amendment. The gentleman from Clinton was one of those ten or a dozen who had talked away three months of the session, and now, forsooth, he was ready to terminate debate! Mr. C. protested against such a proceeding on such an important matter. Perhaps the gentleman from Clinton did not like to hear the discussion. Mr. C. meant to be plain. He hoped the Convention would not tolerate any such proposition. He asked that gentlemen who had not been in the habit of occupying much of the time of the Con-

vention, would be permitted to be heard on a subject in which they were so deeply interested, especially as they had uncomplainingly allowed other gentlemen hitherto to talk away all the time.

Mr. LOOMIS was one of those who had occupied, but not long at any time, the attention of the Convention, and therefore he had been unwilling to vote for restrictions on debate; but the time had now come when he was not only prepared to go for the restriction of this debate, but to restrict debate on all other subjects, to fifteen minutes.

Mr. CHAMBERLAIN said he had no objection to speeches of fifteen minutes.

Mr. WORDEN asked the gentleman from Herkimer if these attempts to restrict debate had resulted in anything but a waste of time.

Mr. LOOMIS said they had had speeches day after day which were not listened to by the Convention—speeches which had not furnished any instruction—and he asked if the yhad time now to waste in this manner? Were they to go home, to the eternal disgrace of every one, by leaving many important subjects untouched, merely that certain gentlemen might gain an immortality by making speeches, which it was said somebody was going to publish in a book. The time had come for voting, and he was willing to take the sense of the Convention on any proposition, after an explanation of fifteen minutes.

Mr. MARVIN did not intend to debate the question, nor did he wish to spend two or three hours in the discussion of a simple resolution. He therefore moved the previous question.

There was a second, 57 to 19, and the main question was ordered to be now put.

Mr. CHAMBERLAIN desired permission to change his amendment so as to fix 12 M. on Monday.

Mr. TOWNSEND desired it to be 6 this evening and that an evening session be held.

Mr. ANGEL desired the yeas and nays on these questions.

Some conversation ensued and the question was taken on the amendment of Mr. CHAMBERLAIN, and it was lost 34 to 53.

Mr. RUSSELL called for the yeas and nays on the adoption of the resolution and they were ordered, and it was carried 67 to 26.

EVENING SESSIONS.

Mr. BAKER offered the following:—

"Ordered that on and after Tuesday next, this Convention will hold evening sessions to commence at half-past 7 o'clock

Mr. CHATFIELD moved to lay the resolution on the table.

The yeas and nays were called for and Mr. C. withdrew his motion.

Mr. SWACKHAMER moved to amend by striking out "Tuesday" and inserting "Monday" and to add "and such evening sessions shall be devoted to the report of committee number eleven."

Mr. RICHMOND inquired what that report was about?

Mr. SWACKHAMER said it was on the subject of rights and privileges on which the committee of the whole had spent several days.

The amendment was lost.

Mr. NICOLL called for the yeas and nays on the adoption of the order, and there were yeas 54, nays 41.

Mr. KINGSLEY moved that when the Convention adjourn it adjourn to meet again this afternoon at half-past 3 o'clock. Agreed to.

CANALS, FINANCES, &c

The Convention resolved itself into committee of the whole on the report of committee No. 3, Mr. W. TAYLOR in the chair.

The question was taken on Mr. Stow's amendment and it was lost—41 to 52.

Mr. WORDEN now moved as a substitute, for the 1st, 2nd, 3rd and 4th sections; the following, which he briefly explained.

The legislature at its first session after this constitution takes effect shall provide by law in the manner herein provided for the creation of a sinking fund to pay the canal debt and the general fund debt of this State and the interest on such debts—and for such purposes for the period of ten years from and after 1st of January 1877, the sum of \$1,500,000 and from and after the 1st January 1857 \$2,000,000 until such debts and interest are fully paid shall, in each fiscal year, and at that rate for a shorter period, from the revenues and tolls of the state after paying the expenses of collection, superintendence and repairs be set apart for such sinking fund and pledged to the payment of such debts and interest, in such manner that all the preferences and pledges in favor of the creditors of this state shall be preserved and continued. After applying the aforesaid sums, to supply the said sinking funds, there shall be paid of the remaining net revenues and tolls of the said canals \$200,000 annually into the treasury of this state. The remaining net revenues and tolls of the canals shall be appropriated and applied to the completion of the enlargement or improvement of the Erie canal and the completion of the other unfinished canals of the state.

Mr. CHATFIELD continued the debate.

Mr. LOOMIS followed and moved to amend the report—speaking in favor of his proposition until his 15 minutes had expired. His amendment is as follows—being part of his proposition submitted a day or two since—to strike out the first six lines of section 1, and insert—

After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart out of the revenues of the state canals in each year, commencing on the first June 1846, the sum of \$1,500,000 until first June 1855 and from that time the sum of \$1,700,000 in each year, as a sinking fund to pay the interest, &c

Mr. WORDEN rose to a point of order. How did the gentleman's proposition differ from his own?

The CHAIR said the gentleman from Ontario had offered a substitute, the gentleman from Herkimer had offered an amendment, and the amendment took precedence of a substitute.

Mr. WORDEN explained.

Mr. LOOMIS replied, and stated that he should be under the necessity of modifying his amendment having discovered an error in the computation of interest which, instead of \$237,-

000 per annum, should be \$337,000 or \$324,000 as he had seen it stated.

Mr. TALLMADGE spoke to the question. in its general bearings, until the expiration of his time.

Mr. HOFFMAN said the amendment of the gentleman from Ontario was but the revival of a proposition which had been voted down. It was a proposition to increase the debt and bring the state into disgrace by lengthening the time in which it was pledged to pay its debt. The proposition of his colleague would pay the debt within the prescribed limit, but it would increase the amount to be paid in the shape of interest, by more than a million of dollars.

Mr. TILDEN called attention to an issue of fact between himself and the gentleman from Ontario of some importance. When he stated the average trip to Buffalo and back to be 18 days, he was contradicted by the gentleman from Ontario who said it was 22 days. Now he deemed it necessary to vindicate his reputation for accuracy on such a subject, and he proceeded to sustain himself by documents which he had collected from official sources.

Mr. TALLMADGE here obtained the floor and resumed his speech at the point at which he was interrupted by the expiration of his fifteen minutes when up before, and proceeded to shew from an examination of this continent, from the Gulf to the Canadas, that the commerce of the great west must come through this state. The God of Heaven and of nature had given us advantages of which we could not be deprived, and instead of complaining that Boston tapped this commerce at Albany, we should help her to tap the commerce on the St. Lawrence at Montreal. He depicted the joyful hallelujahs through this state on the passage of the first boat from Buffalo to Albany, mothers standing on the banks and dating the ages of their children from that day—and contrasted this feeling with the funeral dirge that would be heard through the state if the policy should now be changed. He entreated the Convention to let the enlargement of the Erie canal go on peacefully and certainly.

Mr. HOFFMAN in reference to the idea of the general government regulating our canal commerce, as he was an officer of the government at this time, felt it necessary to defend himself from any sneer or imputation of being an officer of a government so mean.

Mr. MARVIN spoke of the proposition of the gentleman from Erie as a proposition based on a spirit of compromise, on which the friends of canals from the west were united, and therefore it was entitled to more respect than it had met with. He protested against the accusations against its friends which had been made, that they were desirous to repudiate the faith of the state, and to break its promises. He spoke with great warmth against the injustice to be done to the west, where he assured them a fire would be kindled which not only the waters of the Erie canal but of the Atlantic would not be able to extinguish.

Mr. BOUCK entreated the gentleman to give way, that he might offer an amendment, the hour of 12 when the article must be reported having nearly arrived.

Mr. MARVIN yielded.

Mr. BOUCK submitted a modification of Mr. Loomis' proposition, by making the appropriation for the canal debt \$1,200,000, (instead of \$1,300,000,)—to increase the appropriation for the General Fund debt to \$325,000, (instead of \$300,000,) and then beyond these amounts appropriate \$172,500 for the ordinary purposes of government.

Mr. VAN SCHOONHOVEN moved to strike out of the 3d section the following: "but no law shall be passed appropriating or pledging for the construction or improvement of any canal or railroad, any part of such revenues, beyond those of the year current, and the time of passing such law."

Mr. MARVIN resumed his remarks, and concluded by sending up an amendment at the request of Mr. ANGEL, which he said he had not read, and therefore he could not answer for it.

Mr. J. J. TAYLOR also desired to send up an amendment.

Messrs. TOWNSEND and MURPHY said it would be in order in Convention.

Mr. WORDEN also desired to amend his proposition by inserting the year in which the payments, by his plan, were to be commenced.

The hour of 12 having arrived, none of these propositions could be received in committee—the Convention, by its resolution, having directed the committee of the whole to rise and report at that time.

The committee rose accordingly, and its chairman reported the original article to the Convention, and progress on the other, asking leave to sit again thereon.

Mr. CHATFIELD moved to discharge the committee of the whole from the second report also. Carried, 49 to 40.

The PRESIDENT then stated the question to be on the first section of the committee's report.

Mr. LOOMIS moved to amend by striking out the first section, and inserting his amendment. [Given above.]

Mr. MARVIN supposed the question would first be taken on the amendment he had offered in committee, on behalf of Mr. Stow.

Mr. TILDEN contended that the motion of Mr. Loomis was first in order.

Mr. MARVIN thought they were to be taken in the order in which they were offered in committee.

The PRESIDENT decided that they took precedence as they were moved.

Some further conversation ensued on this point, in which several members took part, in the course of which the PRESIDENT referred to the rule governing this body, which, he said, differed from the general parliamentary law. In this case, Mr. Stow's amendment took precedence, because it had been acted upon in committee, and Mr. Loomis' had not.

Mr. MARVIN then briefly advocated the amendment, and warned gentlemen of the consequences of rejecting this important compromise. If the plan of the committee should be adopted there would be a flame, a tornado, and an upheaving of the waters throughout the state.

Mr. HOFFMAN stated briefly his objections to the amendment of Mr. Stow.

Mr. CAMBRELENG did not see any occa-

sion for so much excitement as had been exhibited by the gentleman from Chautauque.—(Mr. MARVIN:—"I am not excited.") The gentleman had talked of "flames," "tornadoes," and "uphevings of the waters," in a way which looked very much like excitement; but if there was any question which should be decided without excitement it was this. The gentleman forgot that the people of the western section of the state were now in the precise position that the people of the river and southern counties were some twenty five years ago—and that the question was not now between sections of our own state, but between the state at large, and the great west bordering the lakes. For one, he wished the Erie canal was as broad as the Hudson below the Highlands—for the west would soon fill up with its trade all the avenues we and other states would furnish. He begged gentlemen, when addressing themselves to local feelings and interests, to consider that we were all alike interested in this question—that if the western portion of the state was entitled to the credit of paying a large share of the revenues of the canal, so other portions of the state had contributed their share. He showed that the agriculturists of Long Island had a great and a common interest now in the matter with the people of Chautauque. All alike were interested in the payment of the debt contracted in the construction of the canals, and all agree that the debt must be paid. With respect to the culminating point of which the gentleman from Herkimer (Mr. HOFFMAN) had spoken, Mr. C. said there was no such point in the business of a canal whose extent was commensurate with the great lakes, bordered, as they were, by a region inexhaustible in its resources, as it was illimitable about its geographical boundaries. We had in these canals a proud monument of the enterprise of the state, and we had now a proud duty to discharge in extinguishing the debt. Such was the language of De Witt Clinton, and such should be our language. On all sides there was a desire to pay the debt which had been contracted, and to cherish these great works; but there was a desire also in doing this, to avoid imposing direct taxes, which would be felt in the west as well as in the east. He hoped we should see the time when we shall have a government without a debt, and a government supported without taxation, not altogether without taxation, but with incidental taxation only which all could afford to pay. He begged western gentlemen to remember that of \$2,775,000 collected by taxation the city of New-York paid \$1,000,000. Whereas the people of the west did not send a barrel of flour to New-York without getting back the amount paid for sending it there. It was useless to attempt in this discussion to gainsay the great truth, that the consumer paid the indirect tax, and that was the only tax he wished to see in the state.

Mr. RICHMOND controverted this doctrine—insisting that the tolls on the produce of the west came directly out of the pocket of the producers, and that this was susceptible of demonstration. He insisted also that the southern section of the state were immensely benefitted by the canal—the great cities directly, and all the adjoining counties indirectly.

Mr. MANN moved the previous question.

Mr. BOUCK who rose at the same time, said he was going to appeal to the gentleman from Chautauque (Mr. MARVIN) to withdraw his amendment, (Mr. Stow's) for the present, in order to allow the amendment he had the honor to submit, to be entertained as a modification of that of Mr. Loomis.

Mr. WORDEN requested the gentleman from Schoharie to state to the Convention wherein his proposition differed from that of Mr. Loomis.

The PRESIDENT interposed—the previous question having been moved.

Mr. WORDEN hoped that would not be passed now.

Mr. MANN declined to withdraw his call for the previous question.

Mr. WORDEN: The gentleman from New York certainly will not insist on that?

Mr. PATTERSON called for the ayes and noes on seconding the call—and they were ordered.

Mr. LOOMIS hoped the call would be withdrawn for the present.

Mr. MANN, for the purpose of giving Mr. Bouck an opportunity to present his amendment, withdrew the call. [Cries of "You cannot do it now."]]

The Convention refused to second the call—ayes 12, noes 92.

Mr. BOUCK asked that his amendment might be read: he would then appeal to the gentleman from Chautauque to withdraw his.

Mr. Bouck's amendment was read. It proposes to reduce the appropriation for a sinking fund for the canal debt from \$1,300,000 to \$1,200,000—to increase the annual payment towards the sinking fund for the general fund debt, from \$300,000 to \$325,000—and appropriates, in addition, \$172,5000 annually to the support of government—all from the canal revenues.

Mr. MARVIN, in a spirit of concession, and with the consent of Mr. Stow, whose proposition he had renewed in that gentleman's absence from indisposition—waived a vote on that proposition, with a view to a vote on Mr. Bouck's.

Mr. BOUCK then moved his amendment to Mr. Loomis' first section.

Mr. LOOMIS explained that he offered his first section as an amendment to the 1st section of the original article, because that was the section under consideration, and not because he intended to abandon the residue of his amendments. This proposition of Mr. Bouck, he added, whether adopted or not, would not probably indicate the sense of the Convention in regard to the amendments applicable to the other sections.

Mr. CHATFIELD said he moved to strike out the third section of the original report, because he would not consent to pledge the surplus revenues to the improvement of canals of any description, as that would of course impose upon us the necessity of perpetuating direct taxation. He preferred making provision for the debts of the state—then, if specific provision was made, he would make it for the general fund, leaving the legislature to dispose of the next. Mr. C. went at some length into the matter of the account between the canals and the general fund—insisting that instead of being a

trumped up account, as stated by Mr. MARVIN, it was a just and equitable account. And he went over the items of the account, in the report from the public officers—insisting that, giving the canals credit for all that was due to them, they were in debt to the general fund to the extent of seven millions and upwards, with interest.

Mr. STETSON gave his reasons for sustaining the proposition of Mr. Loomis, reducing the payments into the sinking fund on account of the canal debt, from \$1,500,000 to \$1,300,000 for nine years, and \$1,700,000 thereafter. This would extinguish the canal debt within the time limited by the act of 1842 and the act of 1844, and leave a surplus at the disposal of the legislature. The proposition of Mr. Bouck he opposed, on the ground that it was in conflict with the pledges of the two acts referred to, and because, he insisted, its appropriation to the general fund of \$172,500, with the addition of the auction and salt duties, would leave a large deficiency to be provided for by direct taxation.

Mr. ANGEL said he did not know that it was in order; but he desired, before the present question should be sprang upon us again, to place his amendment in such a situation that it might be voted on. If in order, he would move it now—and he wanted to say a word in explanation of it. He wanted to call attention to it—and in offering it, he knew that he appeared in a very suppliant, beggarly attitude—asking, as he did, the smallest pittance that tight-fisted officers would possibly give. But he was forced to this. It was repulsive to him, and were it a matter that he was personally interested in, he should disdain it. But he appeared here in behalf of suffering thousands that would be glad of a quarter of a loaf, rather than no bread at all. His amendment proposed, that if money could not be raised on the credit of the sinking fund, that the surplus tolls might be used for that purpose. He desired to place this surplus within reach, so that it might be thus applied, if the state should be so miserably poor that it could not raise money on the credit of a sinking fund. Next, it proposed to pay into the treasury for the support of government, \$200,000 a year. That was a more liberal proposition than that of the gentleman from Herkimer (Mr. HOFFMAN) for the support of government—for that gentleman proposed \$172,500 only—and in his explanation of that portion of his article, he said it would be, or might be necessary to increase the half-mill tax to a mill tax, to support government. Next, his proposition was to apply the residue of the surplus tolls, for ten years, to the improvement or enlargement of the Erie canal and the completion of the unfinished canals.

Mr. WARD asked the gentleman to read it again.

Mr. ANGEL called on the Secretary to read it, and it having been read, went on to say that the committee understood it. The speeches made in that hall fell to the ground without effect. He had as lief hammer on an anvil with an india rubber mallet, as to undertake to make any impression on this Convention by any speech he could make. He was exceedingly glad that gentlemen had discovered at last the cause that

had kept us here so long. If they had taken this hint early in the session, we should not have been tied up to fifteen minutes on the most important question that had come before us. And he was not a little surprised to hear complaints of this rule from certain quarters—for they who made these complaints had occupied as much time as any three other members—and it had been their good or ill fortune to talk to so many empty chairs. He wanted to bring this Convention to a direct vote on the question whether they did intend that these public works should be killed, slaughtered and annihilated, or whether they intended, if there was a possibility of getting along with them, that they might be constructed. This proposition would enable him to get that vote. He wanted it. And, if not allowed to occupy more than fifteen minutes, he had said all he desired to say. But he gave the gentleman notice that there were places where he could talk without having his mouth closed by the rap of a hammer.

Mr. PATTERSON said, though the proposition of Mr. BOUCK was not what he should prefer, it seemed to him that members in a spirit of compromise, ought to be willing to adopt it, or something like it. He preferred the proposition of Mr. STOW but as that had been withdrawn for the present, he hoped it would not be renewed if this was adopted. As he understood this proposition, it made ample provision for the payment of the canal and general fund debts.—It then appropriated annually \$172,500 to the general fund for the ordinary expenses of government. That was precisely the sum appropriated by Mr. HOFFMAN in his original report. The gentleman from Allegany (Mr. ANGEL) proposed to increase this by \$27,500. Mr. P. was indifferent about this small sum, and in a spirit of compromise would go even that. That would make an aggregate, with the auction and salt duties, of from \$300,000, to \$350,000 for the ordinary expenses of government. That was as much as these ordinary expenses should amount to, for the expenses of the legislative, judicial and executive departments—though the legislature, it was true, might by extraordinary appropriations, swell the expenditures to a million. Mr. P. insisted, in reply to Mr. STETSON, that the proposition of Mr. BOUCK did carry out the pledges of the act of 1842 and that of 1844, so far as the debt-paying was concerned—and that it went farther. It carried out another pledge, and that was that after a sufficient amount had been appropriated to pay the debt, then your public works should be completed. Did the gentleman from Clinton propose to carry out that part of the pledge? Mr. P. did not understand that to be the gentleman's position. He trusted, however, that these pledges would not be partially fulfilled—but that we should provide for both objects here—for the payment of the debt and the completion of the public works—not make provision for the payment of the debt, and then leave the revenues of the canals to be appropriated to any purpose the legislature might deem proper. Such a provision would be an invitation to every medical college, every literary institution, every theological seminary in the state, to come here and ask for a share of the people's funds—and where would be the

money to complete your public works? Better go on and finish your canals first, and then if there was money left, leave it to the legislature to dispose of. Mr. P. adverted to the position of the gentleman from Otsego, that the salt and auction duties belonged to the general fund, remarking that the gentleman had not been here during the discussion of this subject, and probably was not acquainted with the merits of it. He characterized the appropriation of these revenues to the general fund, not as petit larceny, but as grand larceny. But it was of little consequence to what fund these duties belonged, if as the amendment of Mr. BOUCK proposed, provision was made for the payment of the entire debt of the state. Taxation would not necessarily result from that proposition, unless the legislature should appropriate profusely for local purposes. The auction and salt duties, with the addition of \$172,500 would make an aggregate of \$322,500—and this was as much as should be expended for the ordinary purposes of government.

Mr. MARVIN here obtained the floor and moved a recess, which was agreed to.

AFTERNOON SESSION.

Mr. MARVIN continued the debate. He reiterated his remark, that this account of thirteen millions against the canals, was a trumped up account—particularly so far as it was made up of salt duties, and interest—insisting that this was a tax raised especially with a view to the canal, and paid by a locality interested in the canal. So with respect to the auction duties—Mr. M. contended that this was a local tax, which was made tributary to the canal and for like reasons as the salt tax. The people of the west consented to the salt tax, increased as it was in 1817, from three to twelve cents a bushel, solely because it was appropriated to canal purposes. As to the land sales, which formed some portion of this account, Mr. M. said he knew that at least a portion of these sales were sales of land which had been donated to the state for canal purposes, and they stood on the same footing with the other items in this account. At all events, Mr. M. claimed that the railroad debt, which had been saddled on the canal fund, and the auction and salt duties that had been diverted into the general fund since 1836, formed at least an equitable set-off against any claim which the general fund might have upon the canals—especially if, as was probable, the expense of the support of government would ultimately be placed upon the canals.

Mr. HOFFMAN said if this was a trumped up account, it was trumped up by some of the most honorable men in the state; and if the gentleman chose to calumniate them, he left him to settle that matter with the gentleman from Schoharie, who had endorsed not only these charges, but the mode of computing interest.—If the west had paid this tax, so had the people of other counties—Otsego, for instance—and when gentlemen sought to get rid of restoring it to the treasury to keep down taxation, it was they who trumped up an excuse, not others who trumped up the account.

Mr. RHOADES enquired how much they paid for salt in Herkimer before the canal was built?

Mr. HOFFMAN did not recollect; but he was glad the gentleman had asked the question, as it reminded him of a matter he intended to have presented. He went on to insist that the consumer paid the tax in all these cases. And he argued that nothing could be fairer than that the state should have the salt tax and the canal the tolls on it. He went on to oppose Mr. BOUCK's amendment, so far as it related to the payment into the general fund—saying that to make it equivalent to the original proposition, it should provide that after '65, the sum of \$672,500 should go to the general fund.

Mr. WORDEN asked if the gentleman would accept Mr. BOUCK's amendment with that modification?

Mr. HOFFMAN preferred to see and consider the whole proposition. He did not want to take Prussic acid because the gentleman offered him a little wine with it. He urged that the current expenses of the government would not be less than 6 or \$700,000 for ten years to come. They might go to a million.

Mr. BOUCK said, if it would be more satisfactory to the Convention, he would amend his proposition so as to provide that after the public debt shall have been paid, the sum of \$672,000, the amount specified in Mr. HOFFMAN's proposition, should be set apart annually for the support of government.

Mr. WORDEN—make it \$800,000.

Mr. BOUCK had no objection—or he would provide for the payment of the expenses of government from the canal revenues, without specifying the amount.

Mr. CAMBRELENG asked what we were to do in the mean time! Whether we were to have direct taxation until the public debt was paid?

Mr. BOUCK replied that that was a feature of the original article—but if the gentleman had looked through his proposition, he would have found that after the completion of the unfinished works, which would be in eight or ten years, the entire surplus of revenue would be at the disposal of the legislature.

Mr. CAMBRELENG said the canal was said to be finished in 1825. It was now 1846, and we were a little further off from it now than then. We at first began to enlarge the old canal; then to double the locks; and then to make new canals; and the next thing would be to widen every lateral canal in the state. If gentlemen would tell him when the canals would be finished, and when we should be relieved from taxation, he would go with them.

Mr. BOUCK was entirely willing to meet the gentleman, and to say that the appropriations should be applied to the completion of the unfinished works on the present plan of construction.

Mr. CAMBRELENG:—When will that be done?

Mr. BOUCK: If the surpluses are large, these works might be completed in eight years.

Mr. CAMBRELENG: At all events, we must have taxation in the mean time.

Mr. WORDEN said the gentleman would be in the same position in that respect, under the proposition of Mr. BOUCK as under that of Mr. HOFFMAN. The latter gentleman had admitted

over and over again in debate, that under his plan the present tax was to continue. Mr. BOUCK's proposition relieved the state from the tax, just as soon as that of Mr. HOFFMAN, if not a little sooner. As to the proposition of Mr. LOOMIS, it was not as favorable for the canal interest as that of Mr. HOFFMAN. It was not intended to be so. Instead of securing the surpluses for the completion of the unfinished works, it left the door open to seize on them for general purposes. That of Mr. HOFFMAN was far more liberal than that of Mr. LOOMIS, for it did make substantial provision for the completion of these works. And he understood the gentleman from Clinton to say the other day, that Mr. HOFFMAN's was the only democratic proposition.

Mr. STETSON did not say that. That remark applied to that portion of Mr. HOFFMAN's plan which contemplated the payment of the canal debt within the period contemplated by the acts of 1842 and 1844.

Mr. WORDEN said then the gentleman used language that did not express his ideas. Be that as it might, that proposition contemplated a direct tax for the support of government. But he would not occupy time. The proposition of the gentleman from Schoharie covered the whole ground; and he hoped it would be offered and accepted in the spirit of compromise that had been so often invoked.

Mr. BOUCK here sent up the following amendment to be added to his former amendment:

"After the payment of the public debt, \$672,000 shall be annually appropriated from the canal revenues to the general fund, to meet the expenses of the Government."

Mr. TILDEN followed in a review of the debate for a week past—characterizing the efforts of the friends of the Erie canal as having been limited to not very elevated or large criticisms on the details of the estimates which were the basis of the original article—and urging objections to the plan of Mr. BOUCK.

Mr. W. TAYLOR followed, saying that he stood here pledged to the principles of the policy of 1842, and he could vote for no proposition that did not embody the principle of that act.—Our first duty was to pay the debt—and then prosecute your public works to any extent. He was a friend of internal improvement, and was proud of what had been done—but if there was a period in our history to which he could point with greater pride than another, it was to 1833, when the state was comparatively free from debt. He alluded to the change wrought in our financial condition in the five years succeeding, and to the strong repugnance throughout the state to the revival of a policy which had led to such results. While he accorded with the original report of the committee, he should give his support to the substitute offered by Mr. LOOMIS. He desired to see the Erie enlargement, the Genesee valley and Black River canals completed, and this would leave surplus enough to meet all this expenditure, and give general satisfaction to the people of the state.

Mr. BOUCK said, if gentlemen would examine the report he had the honor to submit a fortnight since, they would find that in regard to

taxation it was altogether more stringent than any plan that had been submitted. He was as anxious to relieve the state from taxation as any man here. He represented in part a county that had as remote an interest in internal improvement as any county in the state. Mr. B. went on to say that the Comptroller estimated the ordinary expenses of government at \$350,000. The appropriation annually of \$172,500 from the canal revenues, with the auction and salt duties, as estimated by the Comptroller at \$150,000, and with the miscellaneous receipts into the treasury, (some \$50,000) and the half mill tax would amount to \$540,000 for the ordinary and extraordinary expenses of government. After the public works were completed, the tax would cease, and leave the entire surplus, after making provision for paying debts, to the disposal of the legislature. Mr. HOFFMAN's plan also contemplated a continuance of the tax.

Mr. LOOMIS :—Whose report estimates the ordinary expenses of government at \$350,000?

Mr. BOUCK replied, the Comptroller's report of July or August. Mr. B. went on to congratulate the Convention that this great question had been brought down into the compass of a nutshell, and that with a spirit of conciliation and compromise, we had arrived at a point when a harmonious result might be attained. The friends of the canals—those residing in the western counties, and deeply interested in the speedy completion of the unfinished canals—came here with a proposition to secure the payment of the entire canal and general fund debts, out of the revenues of the canals. They offered farther to assent to the annual appropriation of \$172,500, annually, to the ordinary expenses of government, and after the debt shall be paid, the sum of \$672,000 per annum forever to the support of government. They submitted to all this, and only asked in return, that the mere surplus over these amounts should be applied to the completion of the public works. Was this too much to be acceded to? He trusted not, but that we should in our action set an example to the whole Union, worthy of all commendation. Adopt the plan suggested by him, and he was satisfied it would be entirely satisfactory to the creditors of the state. He had not a doubt but what it would advance our stock, at least one per cent. forthwith.

Mr. MURPHY had an amendment to propose in the spirit of compromise. He wanted to save his constituents from the burdens of taxation. Then he had no objection that the surplus should be applied to the canals. He concluded by offering the following :—

But no appropriation shall be made of any surplus towards the said improvements until the tax authorized by the act entitled "an act to provide for paying the debt and preserving the credit of the state," passed March 19, 1842, shall cease.

Mr. CHATFIELD said if gentlemen were sincere in believing the annual expenses of government would be only \$350,000, they would consent to the appropriation of a sufficient sum to meet these expenses out of the canal tolls.—He believed for the next ten years these annual expenses would be over \$700,000. If gentlemen would provide for these expenses, they might take all the rest and use them as they pleased.

Mr. WATERBURY followed, deprecating the idea of taxation for this long period—saying that gentlemen might talk of glory as much as they pleased, but a man's glory did not go but a little beyond his purse.

Some personal explanations here took place between Messrs. PATTERSON and CHATFIELD.

Mr. PERKINS took the ground that this salt tax was a proper charge against the canals, and that Mr. HOFFMAN's plan would accomplish all that was desirable on the Erie canal, and complete the unfinished works much sooner than any of the other plans. He would, however, go for any plan that would carry out the act of 1842, and secure the surplus to the canals, deducting the \$672,500 for the support of government.

Mr. LOOMIS explained that he offered his plan to meet the objection to Mr. HOFFMAN's, that it contemplated a direct tax for the support of government, beyond the \$172,500; and the proposition of Mr. BOUCK, in that respect, was a renewal of Mr. HOFFMAN's proposition. He denied that this proposition was founded in hostility to the public works. It left the matter entirely to the legislature. If these works found favor with the public, they would be prosecuted. If not, why should we fasten on them the necessity of prosecuting them against their will?

Mr. BRUCE said this question had been discussed at great length. Very little time was left to the consideration of the other important matters before the Convention, if the present debate should be much prolonged. He therefore asked unanimous consent to offer a resolution terminating debate on the report, with all the pending amendments, on Monday at twelve o'clock.

No objection being made, Mr. B. offered such resolution.

Mr. CHAMBERLAIN moved to adjourn.—Agreed to, 51 to 30.

Adjourned to half past eight o'clock on Monday morning.

MONDAY, SEPTEMBER 21.

No clergyman present.

Mr. HUNT presented a petition from New York in favor of clergymen and females being permitted to exercise the elective franchise. Referred to the committee of the whole.

Mr. TOWNSEND presented the remonstrance

of Prime, Ward & King, and other firms, against a provision to make the stock holders individually liable for more than the amount of their stock. Laid on the table.

Mr. SWACKHAMER offered the following, which was referred to the committee of the

whole having in charge the report on rights and privileges:—

Resolved, That every profession, trade, occupation or business not hurtful to the community, should be open and free to all the citizens of the state, without license or any impediment whatever.

Mr. BRUCE offered the following:—

Resolved, That the Convention will proceed to a final vote on all the amendments proposed or to be proposed on the first article of the report of the committee on Finance at or before 4 o'clock this day.

Mr. LOOMIS said he hoped to get a vote before that time, and therefore desired a change of the phraseology inasmuch as the resolution would prevent an earlier vote.

Mr. MARVIN suggested a verbal amendment which would answer the purpose.

Mr. BRUCE consented to add "or before," so as to provide that the vote should be taken "at or before 4 o'clock."

In that shape it was passed.

FINANCES, CANALS, &c.

The Convention resumed the consideration of the report of committee number three.

Mr. ANGEL said he desired to address the house once more on this occasion. Much had been said by gentlemen of the Convention about the good faith of the state; it had been called a jewel. Sir, (said Mr. A.) I admit it is a jewel and that we should regard it as the apple of the eye. To whom is the faith of the state pledged? Is it pledged to the holders of the state stock for its redemption. Is the state pledged to nothing else? Is she not pledged to the completion of the public works she has avowed she would make? Sir, is there no faith in your statute book? Is the state at liberty to repudiate the faith she pledged for the completion of the unfinished works? What will be the effect of such repudiation? Have not the laws for the construction of those works and the appropriations made for their construction, virtually bound the state to complete them? They have invited hundreds, nay thousands, to sell out their property in other places, and vest it in the purchase of lands and in making improvements along the line of these works. Hundreds, nay thousands, encouraged by the plighted faith of the state, have disposed of their property and located themselves along the lines of these unfinished works, nothing doubting that the state would inviolably observe its faith—complete what she had undertaken, and carry into fulfilment the assurances she had given in that respect. Encouraged, I say sir, by such assurances, hundreds and thousands of good and worthy citizens, mechanics, farmers, tradesmen, laborers, &c., sold out their homes and their all, and located themselves on the line of the unfinished canals. They entered with alacrity into the preparations necessary to establish them in a good and lucrative business; they purchased farms, lots and locations, built houses, barns, shops, stores, &c., thousand and tens of thousands were expended under the flattering hope that the time was at hand when the works would be finished and their sacrifices and labors would be rewarded. Many had completed their arrangements, and many others had partly done so. When the suspension of 1842 came, it came with a crash that sunk the property and desolated the homes of those poor

people. To refuse to complete those works would be the worst kind of repudiation, it would be as criminal and unworthy as to procure property under false pretences. Shall we confine our entire sympathy to the rich stock and land holders and abandon poor men in the miserable and cruel condition into which your policy and plighted faith have plunged them? I cannot perceive the difference between repudiating the debts of the state and its plighted faith to its injured people. They have lost and suffered much already, and will be nearly all ruined, should the state persevere in its refusal to complete the canals. Is it not as wicked to refuse to relieve those people, as it is to refuse to pay the stockholders? The one is a debt payable in money, and the other in kind. What earthly difference can there be between repudiating a note payable in money and a note payable in cattle and horses? Will my conscientious friends who quake and tremble at the idea of repudiation, inform me of the moral difference between the two cases? Gentlemen have earnestly insisted that they were willing to continue the half mill tax to pay the debt, but would not continue it for the purpose of completing the canals. This kind of logic I cannot understand. This kind of morality has no place in my affections or esteem. They may be sincere; if so, they must be blinded by a sordid, selfish avaricious feeling. Our canal, our section of country and our people have been grossly misrepresented in the legislature. Why is the country so traduced? In 1807, when Allegany and Cattaraugus were detached from Genesee, the whole territory was a wilderness; it did not contain much over three thousand inhabitants in 1810. In 1820, it had increased to some ten or twelve thousand; and in 1845, it had increased to between seventy and eighty thousand; and who are these seventy and eighty thousand people in Allegany and Cattaraugus? But few of them who are adults were born on that territory. Sir, whence did they migrate? Not from New England or other states; no sir, but few of them were born out of this state. They went there from the Eastern counties of this state. I believe there is not a gentleman in this convention representing a county east of the centre of the state, whose constituents have not either sons or daughters, brothers or sisters, or other relatives in that region. Sir, I know people there from Long Island, the city of New York, the counties of Westchester, Dutchess, Columbia, Rensselaer, Washington, Saratoga, Albany, Greene, Ulster, Orange, Rockland, Schoharie, Delaware, Otsego, Oneida, Madison, Chenango, Broome, &c. These are the persons who have been treated and seem to be regarded as aliens. Yes sir, as alien enemies. These are the people who are to be enslaved and turned into hewers of wood and drawers of water for the people of the eastern cities and counties.—Did they think when they left their eastern friends and homes, that they were to expatriate themselves, and forfeit all benefits and privileges by settling in Allegany or Cattaraugus? Think you sir, when they come here and ask the representatives of their fathers and friends in the old counties, for what is fairly and legitimately due to them, they will be satisfied with rude rebuffs?

Sir, when they have asked for bread they have earned, you have given them a stone. When they have asked for fish, you have given them a scorpion. The gentleman from Herkimer (Mr. Loomis) sent up his amendment the other day as an olive branch. He told us it was offered as a compromise, and he doubted not it would be acceded to. The thing appeared plausible on its face, and on the start I thought favorably of it. I told the gentleman I thought I would support it, but I wanted time to consider and reflect upon it. Having taken such time, I am satisfied it would be more injurious to the canals than the proposition from the standing committee, were we to adopt it. It has too many and too sharp thorns for an olive branch. It proposes to place the whole surplus revenues of the canal at the disposition of the legislature. The accumulating millions of this surplus are, by the proposition, to be placed under the discretion of a body of men that gentlemen have told us over and over again, ought not to be trusted with more money than will economically support government. I have never had the honor of a seat in the legislature, and know nothing of the manner of doing business there. I take upon trust what gentlemen have informed me about it.—They have repeatedly on this floor inveighed against entrusting large sums of money to the disposition of the legislature. They say it has a most corrupting influence; that the legislature will be besieged by lobbies, that members will log-roll, bargain and squander the money upon worthless objects. Has not that gentleman (Mr. Loomis) and others on his side of the question, kept up a continual cry against the corruptions and profligancy of the legislature, and did not the gentleman from Herkimer originate the famous resolutions called the "people's resolutions," and is he not now striving to procure the principles embodied in those resolutions to be incorporated into the constitution? And now sir, all at once, the gentleman's tone is changed. Now, the honesty and discretion of the legislature may be confided in to any extent. Sir, this blowing hot and blowing cold in the same breath, is a disease I have understood sometimes afflicted intriguers in politics, but that it never attacked a plain, open-handed, open-hearted statesman. The remedy that the gentleman has offered us is worse than the disease which the report of his colleague has brought upon us. If the legislature is as corrupt and wicked as has been represented by many gentlemen in this Convention who have occupied seats in that body, I feel thankful that I have escaped the disgrace of ever having been a member of it. I will allude (continued Mr. A.) once more to the unfair manner in which the accounts have been kept with the lateral canals. They have not been credited as much as they ought to be. I fearlessly assert the fact that if you take the Erie canal and divide it into sections of equal length of the lateral canals, and subject such sections to the same rigid rules of accountability that you do the lateral canals, only giving them credit for the revenue arising from tonnage contributed by their own territory and floated on their own waters, the several sections of the Erie canal would not pay the interest upon the cost of their construction, and the

expense of their superintendence and repairs. I desire to say to say to my friends in the Convention who are opposed to internal improvements, that I regard this question as one of expediency, not involving political principle. The difference between them and myself upon the question does not affect our general political feeling and sentiments. I am cordially with them in all the great and fundamental principles that have been cherished by the democracy of the country. I regret that many of our new-born radicals have not been sooner awakened and sooner come to the rescue of pure and genuine democracy. I desire to say to them that hostility to internal improvements is not characteristic of sound and enlightened democratic principles. Democracy does not consist of selfishness, and a mere computation of cent for cent. It despises the misers' calculations, and holds no fellowship with the pitiful narrowness of two-penny parsimony. It has for its end a higher and holier object. It conforms itself to the divine injunction—"Do ye unto others as ye would that others should do unto you." Refuse to give the canals a constitutional recognition, and blot out the hopes of those whose dearest interests depend upon their completion, and you disarm, nay, you annihilate, all your friends in the western part of the state. You will beget heart-burnings, and generate an undying hatred. You will inflict a wound that can never be healed, and when you send out your new constitution for ratification, it will be met by the most determined resistance. No fallacious arguments, no intriguing tergiversation, and no political legerdemain can smother the truth or avert the attention of the people from the authors of their calamity. They will not be deceived, and they will refuse assent to your doings. In the name of all that is sacred—of all that is dear to the security of equal rights, I implore you to stay the desolating hand that seems to be raised to crush and wither the hopes and prosperity of an interesting and valuable portion of your state.

Mr. BRUCE said he should give his vote for the proposition of the honorable gentleman from Schoharie, (Mr. Bouck) not because he thought it embraced all that the friends of internal improvement had a right to expect or demand at the hands of this Convention, but for the same reason the gentleman had offered it: *as a compromise*. For (said Mr. B.) it is very well understood that opposite opinions are entertained by gentlemen on this subject, and those opinions are so diametrically opposed, that for either to yield and embrace the opposite is more than can reasonably be expected. This proposition takes the middle ground and has strong claims to the support of both extremes. It makes ample provision for the payment of every dollar of the state debt, and then provides for the support of the government, and appropriates a considerable sum every year for the completion of the enlargement of the Erie and finishing the lateral canals already commenced. The internal improvements in this great and growing state, have been the wonder and admiration of not only our own, but the people of other states and other countries, and from the very moment that the billows of the Erie dashed

over the waves of the Hudson down to the present, we have had one continued and uninterrupted tide of prosperity. The revenues of the canals have far exceeded the most sanguine expectations of the whole people, and if the revenues continue to increase for the next ensuing twenty years in the proportion that they have augmented for the past, who can estimate the value of these great enterprises. At the early period of 1835, the Canal Commissioners foresaw the necessity of an enlargement of the Erie in order to meet the wants of this and other states the business of which was so rapidly increasing. They accordingly made a report to the Legislature urging the necessity of the enlargement. Gov. Marcy then at the head of the state Government concurred in opinion with the commissioner, and recommended the enlargement to the Legislature who made large appropriations for that purpose. All parties were agreed on this subject, and all looked forward with pleasure and pride to the period when these expectations should be realised in seeing the Erie canal enlarged to a 70 feet surface, and 7 feet deep, and the lateral canals completed. To this the faith of the state was most solemnly promised and pledged. And sir, we find among the actors in this great canal enterprise one who was at that time a Canal Commissioner, and assured the Legislature and the people that a "necessity did then exist" for the enlargement of the Erie who has since been and is now, a conspicuous manager in the financial affairs of the state, and that gentleman is now at the head of the financial committee of this Convention, (Mr. HOFFMAN.) But sir, where is he now? Does he advocate the same policy now he helped to originate then? No, sir. We find him not only repudiating the opinions in '46, that he cherished in '35, but comes into this Convention with a report in which provision is made for the Legislature to *sell out* the lateral canals. Yes: sir that honorable gentleman who was one of the fathers of the policy of '35, now proposes to hand over to the cold charities of a corporation a child who was christened at his own baptismal font, and forever withdraw from it his paternal care and protection. But this is not all: I will read sir, from that gentleman's speech, which he delivered in this hall a few days since, an extract which (taken in connexion with the provision in his report to which I have referred) in my judgment shadows forth a doctrine which is a dangerous one, and one which I trust will find but little favor here or among the people. In his printed speech he says "He is *opposed to the system adopted of 'laying taxes upon the Railroads for carrying freight.* This was a tax on trade and commerce. If we should attempt to rivet the system by a constitutional provision he believed we should utterly fail, owing to surrounding circumstances. There were too many rival routes for trade. He could *never consent* that the surveyor should even tax a line of trade and travel built by private enterprise." Here, sir, we have the honorable gentleman "defining his own position." Sell out the canals, except the Erie, construct railroads to run along its banks, as is already done, allow those railroads to carry what freight they can, and that

without paying one cent of tax or tolls to the state treasury. Sir, this is indeed a bold proposition, and when I came to this convention I had heard of radical whigs and conservative whigs, hunkers and barnburners; but, sir, I did not expect to see or hear of such kind of politicians as canal burners. Now, I ask for gentlemen to show me if this is not a most mischievous proposition to frame a provision in the Constitution by which railroad corporations shall be enabled to compete with the canals, and that too without any sort of restrictions. Sir, the canals belong to the people, the whole people, and nothing but the people, and the moneys derived from the canals are flowing into the state treasury, and so far as they can go to pay your tax, my tax, and the tax of every citizen in just proportions. But if you turn the transportation of the produce and merchandize of the country from the canals to the railroad you only enrich the stockholders of the railroads by robbing the treasury of the state and the pockets of the people. But, sir, I must pass on, and cannot follow this subject so far as I desire, because, under the rule of the house, I am conscious that your "ivory mallet" will soon give me notice that my time has expired. To return, then, to the subject under consideration. If a necessity existed in 1835 (which is not denied,) it does, in my judgment, exist in a still greater degree at the present moment. By reference to the report of the commissioners of the canal fund, made to the legislature at the last session, we find (in Senate Doc. No. 59 at page 194) that the amount of tolls received from the canals of the state, in 1835 was \$1,548,986. In 1845, they were \$2,646,181, showing an increase in the last over the first year mentioned of \$1,097,195. The whole number of tons transported on the canals in 1835 was 753,191. In 1845, 1,204,943, being an increase of 451,752 tons.

The honorable gentleman from Erie. (Mr. Stow,) in the course of his very able and elegant speech the other day, alluded, very briefly, to the increase of business on the Erie canal from the city of Buffalo. I regret that he did not speak more in detail of the increase at that port. By reference to Convention Doc. No. 60, we find that the increase of the tonnage of merchandize, received in that city through the Erie canal, during the past year, is 12,148,071 pounds, and the increase of tolls received at that point is \$116,050 22. Now, sir, with these facts, and a great multitude of others equally important, which have been presented to us during the progress of this debate, I ask if the necessity for the enlargement of this great canal has "ceased to exist"? Since 1835, the business done on that canal has increased more than six hundred per cent, and yet we are told, day after day, on this floor, that the "Erie canal is abundantly large to do all the business required."—I ask gentlemen who were in favor of the enlargement in 1835, because a "necessity then existed," to reconcile the declarations then made with the opposition now to this policy of enlargement. Sir, they do not attempt to do so, but even now, claim to be the friends of the enlargement and the completion, and yet act in every way and support propositions calculated and designed to defeat such an enterprise. I

know not what to think of the sincerity of those gentlemen who commence their speeches with the declaration "I am as anxious as any one to see the canals of this state carried forward to completion," and before they sit down use every argument their ingenuity can devise to show that it is all entirely unnecessary. My honorable friend from Onondaga, (Mr. TAYLOR,) in his speech a day or two since, avowed his attachment to the policy of enlargement and then argued against it, and came to the same conclusion of other gentlemen who had preceded him, that the Erie canal was sufficient to do all the business required upon it. Sir, if this position be true, we can with safety stop now and forever the whole canal system, and keep it where it is. Indeed, we need never to have done what we have. The old fashioned turnpike roads, with the six, eight and ten horse teams, were entirely sufficient to do all the business. At all events, all the business of transportation was done. We should never have constructed our railroads to carry passengers. The post coaches upon the turnpike, from this to Buffalo, were sufficient to afford facilities for the travel. At all events they did do all that kind of business. But sir, there is one position that has been taken as a ground of opposition to this great enterprise. I allude to what is called the stop and tax policy of '42. Gentlemen here seem to talk as though this law was paramount to all other obligations. Sir, what was the origin of this famous "stop and tax" policy. Did the people of this state ever petition your legislature for the passage of this or a similar law? If so, when? From what county, town, or section of the state? Not a single petition was ever presented and no community ever asked for such a law. The first, last and only petition was a desire on the part of the brokers and stock jobbers from Wall-street in the city of New-York. They sir, were the first to ask and first to receive the benefits of this system of direct taxation upon the people. This abominable system of taxation never was asked for by the people nor demanded by the condition of the finances of the state, and yet the faith of the state is talked about in connexion with this law, as if it had never been so solemnly plighted to any other measure. I contend that the faith of the state was most solemnly plighted in '35, and it has been most clearly shewn that after the passage of the canal law at that period, circulars were sent to foreign countries and the poor and oppressed yeomanry of those countries were induced to leave the land of their nativity and make this the land of their adoption, with the assurance that they should here have constant employment with adequate reward for a term of years in constructing canals. But what is their condition now? They are anxious for employment but cannot obtain it, and are compelled to go to and fro through the country and gain a scanty subsistence as best they can. Again sir, there are multitudes of our own citizens who emigrated to remote parts of the state which had before been almost a wilderness, and there commenced clearing your forests and cultivating the soil confidently believing that the state of New-York would fulfil her engagements and construct the lateral canals to their localities, that would

enable them to have a safe and sure channel of communication on which to transport their lumber and their produce to our large cities. Sir, have these our citizens no claims on the state for a fulfillment of her promises? But there are other and if possible still greater reasons why the state should redeem her pledges on this great question. The people of the western states have relied upon the promised action of this state in reference to the enlargement of the Erie canal as was most ably and conclusively shown by the honorable gentlemen from Allegany (Mr. ANGEL and Mr. CHAMBERLAIN,) and I will not enlarge as my time has nearly expired. Reference has been made to this as a *party* question. Sir, does the great canal enterprise of this the Empire state belong to a *political party*? Has it come to this, that a *party* is to have (Here the PRESIDENT informed Mr. B. that his time under the rule had expired).

Mr. AYRAULT said:—I am aware of the impatience of the Convention, and I do not rise to inflict upon the members a speech. I have no desire nor am I prepared to do so. Besides, my occupation and pursuits in life have not made me familiar with public speaking, and our protracted sittings have admonished me to refrain from prolonging the debate. But, sir, I owe it to myself to define or explain the reasons that will govern me in the vote I am about to give on the important subject now before us; and this I consider the more necessary from the remarks on Saturday of the gentleman from New York, (Mr. TILDEN) who I perceive is not now in his seat. Now, sir, the subject matter before us is one of finance, and as such one of vital importance to the integrity, pledged faith, and the best interests of this state. The state of New York holds in common an interest or an estate in her canals, worth, as is believed, more than twice the amount of all her debt or liabilities, producing the last year, in their present unfinished state, a net revenue of about \$2,200,000. This, Mr. President, will pay the interest at 5 per cent on \$44,000,000. I do not mention this as an inducement for contracting a debt, but as evidence of our ability and means to meet our engagements. I am opposed, in private or in public capacity, to contracting debts unless urgent interest or imperative necessity require it. Our state debt in the aggregate is but one half that amount. Still sir, our debt is large, too large, and should have been avoided; and we all look upon it now as a greater burthen, from the fact that the expenditure of the money has been in a way and manner requiring about \$10,000,000 to complete the undertaking. And sir, I consider it out of place here to inquire into the origin of these difficulties, great as they are, for in my judgment all classes participated in their inception; or in other words, no one class of men are exempt from their due share of the responsibility. I mean by this the people as well as the legislature. The people called and demanded, and the legislature yielded and obeyed. The times were marked every where with ruinous extravagance and folly—private as well as public. The last ten or twelve years have worked out great results, and produced wonderful changes in the views of men; and, sir, it admits of a question whether—

our own legislature, extravagant as they have been, were not behind the spirit of the times, instead of being in advance of their constituency. Now sir, this being so, is it not wise to look at things as they now are—that is, our debt and our engagements—and apply the remedy, instead of criminalizing one set of men and recriminating another? We have quite too much of that elsewhere. My own knowledge of these canals is of a general character only, and that obtained in various ways; and here let me say that while I disapprove of much of the undertaking, as being at the time unwise, still, taking the circumstances as they now exist, I have an ardent desire, and believe it for the interest of the state, to prosecute them to their completion. Sir, in this I have no personal interest, neither have the constituency which I in part represent, other than as residents of the state at large. That I may not be misunderstood in regard to the state debt, permit me here to say that I am as rigid, and hold the obligation to provide payment, and to pay, as binding and as sacred as any other man. Yes, sir, in that I will not except the gentleman from Herkimer himself (Mr. HOFFMAN). To accomplish both objects, from the revenues of the canals, is the matter under consideration, and to this is our attention now directed. I fully believe a large majority of this Convention desire to accomplish both objects in the most speedy, economical way possible. And to effect this what have we? We have first the article as reported by the chairman of the standing committee, and what does that do? It appropriates first from the revenues \$2,172,500 each year, for 18 or 19 years, or until the debt is paid; after which it appropriates \$2,500,000 towards improving the Erie canal only, and to accomplish this it will require 11 years from the most favorable estimates I am able to make prospectively, and found the estimate upon past experience. For this I cannot vote. It is taking 10 years to begin to accomplish the object. Besides the delay in adding more and more to the decay and damage to work partly done; and perhaps it is not too much to say that the decay in 10 years upon the millions of work now half finished or more, would more than balance the advance made in expending the \$2,500,000 appropriated by the committee. These considerations induced me to mature a plan, which seemed to meet with so much approval, that in the exercise of my privilege, I submitted it to the Convention. It provides a sinking fund of \$1,500,000 for 10 years, and \$2,000,000 thereafter, which pays the present debt (\$22,300,000, as estimated,) in 23 years, or a debt of \$25,000,000 in 25 years. Either of these secure the payment of the debt within a reasonable time under all the circumstances; and after applying for the use of the government about \$200,000 annually, from the remaining revenues, we have according to estimates from 6 to \$9,000,000 to be expended in 10 years in completing the canals. I should not have mentioned this here, had not the gentleman from New York in his argument charged inconsistency in refusing to sustain the compromise offered by the gentleman from Herkimer (Mr. LOOMIS,) alleging that the proposition of the gentleman from Herkimer contained the same provision as the one of-

fered by me. Now, sir, the two propositions are entirely different, agreeing only in the manner of applying the sinking fund. The proposition of the gentleman from Herkimer makes no provision whatever for the canals, but annexes a provision, that virtually prohibits their completion—for works of this kind and of this magnitude cannot progress by annual appropriations, or annual movements only. The second proposition of the gentleman from Schoharie (Mr. BOUCK) is now before us, to which I give my support, and although yielding more than the friends of the canal intended. I hope the Convention will sustain it, by their votes, as a compromise. It provides for the payment of the state debt within a reasonable time, and secures the progress of the unfinished works, and, as I trust, their completion at some remote period; thus fulfilling our engagements, and awarding the justice long delayed to portions of the state. While our internal improvements are the cause of our debt, and, in some respects, their prosecution has proved a fraud upon the public treasury, and in others ill advised, still taken as a whole they are the elements of our prosperity and the source of revenue, and the Erie canal enlarged is a monument the people of any state may justly feel a laudable pride in handing down to posterity as a legacy.

Mr. HAWLEY addressed the Convention at some length.

Mr. BOUCK said that the framers of the act of '42 no doubt intended that one-third of the interest was pledged for the reduction of the debt. He did not wish, even in appearance, to violate any pledge given by that law, and he, therefore, was willing to amend his amendment by inserting \$1,225,000, which would be equal to one-third of the interest, and in strict compliance with the letter of that law.

Mr. RUSSELL would not sit still and hear the gentleman from Madison abuse the gray hairs of the chairman of the committee whence came this report. He proceeded to contend that the gentleman from Herkimer was as he had ever been, a friend to the Erie canal, but he would not treat it as the goose that laid the golden egg. The gentleman from Herkimer was just and liberal to the Erie canal. The question was on Mr. Loomis' proposition, and he was not willing that the amount for a sinking fund should be reduced. The pledges of the state were given to its creditors that its debt should be paid in 22 years, and the faith of the state should be preserved.

Mr. HUNT said he rose not with a view to influence the vote of any other member, but to state the considerations that would govern his own. He said he was opposed to state debts, and to the whole British system of finance—I mean, he said, the system of Wm. Pitt and Alexander Hamilton. It may be a very good system for aristocrats, but is the worst of all possible systems for democrats. I am in favor of taking the state of New York out of pledge as soon as possible, and of fixing a constitutional guarantee against its ever being mortgaged at the pawnbrokers again. And as the amendment proposed by the gentleman from Schoharie to the first section will somewhat prolong the term of our debt and bondage. I shall vote against

it. I do not wish to wait more than 19 years for the state of New York to be once free and independent. If I must lead a life of debt and dependence, at least let my bones be laid in an unmortgaged grave. On the other hand, I am in favor of the enlargement of the Erie canal. The repeal of the British corn laws and of the tariff of '42 will give a mighty impetus to our trade, and render such enlargement necessary, not merely to the state, but to the Union, and the world. The city, which I in part represent, is not only a portion of the state of New York, but a portion of the Union—a province of the commercial world. In the name of the Union—in the name of the commercial world—I claim the prosecution (but not a *reckless* prosecution) of that great work. I am willing to pledge a portion of the canal revenues to that object. I shall not be frightened from my course by the cry of direct taxation. That is the only fair mode of taxing—the only mode under which capital can be made to bear its just share of the public burthens—the best possible check upon the profligacy of the legislature and the rapacity of the lobby. So long as government shall be permitted to steal its hands into the pockets of busy trade and unconscious labor, either by indirect taxation or by borrowing, it will be apt to waste its revenues with the same recklessness that the pickpocket squanders his plunder. One word to our western friends in return for the many words they have addressed to the delegation of the city of New York. Beware how you suffer the canal policy to be made a pretext for again carrying our noble state to the sign of the three balls. Our posterity must not be mortgaged under any pretext whatever. It is little better than infanticide. It is a very great crime to kill our offspring; it is a very mean crime to pawn them: So long as government possesses the *taxing power*—while the entire wealth of the state is at its disposal, to take for public use all that the public exigencies require—it can have no excuse for again resorting to the borrowing system—a system under which we have paid and have to pay to the money lenders, or paper lenders rather, for the bare article of interest—an article you can neither eat, nor drink, nor wear—a far greater amount of our earnings than we have paid for the actual construction of all our public works. It is to the ruinous, immoral and demoralizing state debt system, and not to the canals, that the city of New York is opposed.

Mr. BOUCK said his plan would pay the debt in little less than 23 years.

Mr. HUNT was happy to hear it. He should go for that system that would pay the debt in the shortest time.

Mr. R. CAMPBELL was sorry that any re-
crimination should have been permitted to enter into this discussion. To him it mattered not what the previous course of gentlemen might have been; they had come here to consult each other and to deliberate, and they should look only at the best interests of the people and the condition of the state. He then recapitulated the parties and the changes of parties for the last ten or twelve years—the impulse influenced at the one time and the result it produced at another, bankrupting the treasury of the state and causing the people to demand the policy of

1842. He said he should support the proposition of the gentleman from Herkimer (Mr. Loomis). He was under obligation to support the policy of 1842.

Mr. CHAMBERLAIN asked the gentleman to explain what was meant by the policy of 1842?

Mr. R. CAMPBELL said it was to pay the debt in 23 years.

Mr. CHAMBERLAIN enquired on what part of the act of 1842 the gentleman founded such an interpretation?

Mr. R. CAMPBELL found it in the interpretation given it by the act of 1844. He then proceeded with his argument, and said he should favor the completing the lateral canals before the enlargement of the Erie canal was resumed, for they could not all be successfully carried on at the same time.

Mr. W. TAYLOR followed in the defence of the chairman of the committee No. 3, against the accusation of Mr. BRUCE that that gentleman would burn up the canals—(a voice: yes, and we'll have an anti-canal-burning party)—and of imputations on himself and others that they came here the professed friends of internal improvements, but acted against them. He contended that the policy of Mr. HOFFMAN was wise and prudent. He went on to speak with much warmth in vindication of the policy of 1842.

Mr. TOWNSEND followed, saying that he differed from many of his friends in regard to direct taxation. A small direct tax he was ready to believe would be advisable in order to carry on the government. He concluded by reading a proposition which he would offer hereafter, which was as follows:—

§ 1. The several counties through which the Genesee Valley and Black River canals are projected shall have after having obtained the assent of a majority of their electors ascertained by a vote given upon a question submitted by recommendation of three-fourths of the members of their several boards of supervisors, the privilege of raising annually a sum not exceeding — per cent upon the assessed value of the real estate within the country, to be appropriated exclusively towards the improvement or completion of any portion of the line of either of the canals named herein.

§ 2. For the reimbursement of any sums so advanced, and the revenues of such portions of the canals as have been placed in operation by the contributions of said counties, shall be forever pledged, together with the net revenues arising upon the canals now in operation from the transit of tonnage which may have passed upon any portion of the public works placed in operation by the foregoing section.

§ 3. The net revenues referred to in the preceding section shall be computed by the Board of Canal Commissioners, by deducting a fair charge for constructing and operating any of the canals or portions of canals now in use.

Mr. RHOADES briefly addressed the Convention.

Mr. KIRKLAND continued the debate.

Mr. WHITE said:—I desire before this question is taken, and in the brief time that is allowed me by the rules of the Convention, to assign the reasons which will govern my vote upon this section of the report of the committee on finance. I am the more desirous of doing so, because I have reason to apprehend that vote will be in opposition to several of my esteemed friends and colleagues with whom it is my pride and pleasure to be associated upon this floor.—

It is well known to you sir, (Gen. WAARD was acting as President,) that I was an early, zealous and decided advocate of the canal policy which has immortalized the name of CLINTON, and that I was a warm personal and political friend of that distinguished and illustrious statesman, who has left the impress of his great mind on our public works, and to whose splendid genius and extraordinary sagacity these public works will ever be an enduring and imperishable monument. It is due to myself to state that I have always held that the true policy of the people of this state was to direct their enlightened energies to the enlargement and completion of the Erie and Champlain canals, as great state works, upon a scale commensurate with our growing wants and our extended commerce; and to leave the construction of lateral canals to local efforts and individual enterprise. All the errors that have arisen, and the financial difficulties we have encountered, as well as the largest part of the debt we have contracted, have, in my humble judgment, been occasioned by a departure from that wise system of legislation. But notwithstanding I have entertained these views, which time and experience have only served to confirm, yet I am free to confess that as the legislature has thought proper to pursue a different course of policy, I do not deem this an open question; and therefore consider it to be our duty to complete the unfinished canals of the state, namely, the Genesee Valley and Black River canals, and to complete the enlargement of the Erie canal, according to the plans of the Canal Commissioners—from time to time, and as circumstances will permit. In that dark and gloomy era of our financial history in 1842, when the state credit was impaired and the state resources exhausted, I entirely concurred in the suspension of the public improvements, and the efforts made to sustain the public credit, and in what has been usually denominated the policy of 1842. The obligations then entered into, whether expressed or implied, I desire to carry out according to their fair import. I am willing to make ample provision for the discharge of the principal and interest of the canal debt, by a sinking fund, which will, besides paying the annual interest, redeem the principal of that debt in twenty-two or twenty-three years. In the same spirit, I propose to make an appropriation to cover the interest due to the public creditors and chargeable on the general fund. I regret that I have not been able to give my support to the article reported by my honorable and learned friend from Herkimer (Mr. HOFFMAN,) the chairman of the committee on finance, because it does not, in my opinion, make a sufficient provision for the prosecution of the enlargement of the Erie canal, which I believe is demanded by a due regard to the wishes of the people and the prosperity of the state. But I desire to support the proposition of my distinguished friend from Schoharie, (Mr. BOUCK,) if I can prevail upon him, before I resume my seat, to increase the annual appropriation proposed in his arrangement from \$1,225,000 to \$1,300,000, in order to discharge the principal and interest of the canal debt *proper*, and with this change, I have the best reason to believe his proposition would be sanctioned by the

judgment of the Convention. I have no hesitation in saying it will receive my feeble support. The deep and abiding interest which my constituents take in the speedy enlargement of the Erie canal—the vast commerce which it bears upon its surface—the opulence and wealth of which the metropolis of the state and of the Union has been the recipient—leaves me no alternative but to declare, that I cannot vote for any constitutional provision which does not make suitable and ample appropriations for the enlargement of the Erie canal and the completion of the unfinished canals, with the least practicable delay consistent with a sacred regard to our pecuniary obligations and to our plighted faith. The income of this great state work, for the past year, has been nearly \$2,800,000. Notwithstanding a reduction by the Canal Board of more than thirteen per cent. upon the tolls of the preceding year, there is an income over the income of that year, of more than \$130,000—proving beyond all controversy, that as you cheapen the expense, you increase the amount of transportation, and that common justice and public policy unite in urging us to make every effort to enlarge the canal, and reduce the tolls, and thus, in a much greater ratio, increase the quantity of produce and merchandise brought to and shipped from, the city of New York to the Queen city of the west. That Emporium of Lake Erie, with its navigable shores of more than eight thousand miles on our majestic inland seas—paid into your treasury for tolls, nearly \$500,000 the past year, and with a continuous navigation of more than fifteen thousand miles on the Father of Rivers, and its tributary streams in the Great Valley of the Mississippi—bids fair to rival on the west, that proud city on the east, which I have the honor in part to represent in this Convention. I have every reason to believe that at this moment, the commerce of our canals exceeds in value our foreign imports and exports *united*, and that commerce is advancing and extending with a rapidity that has no parallel in commercial history in either the eastern or western hemispheres.

Mr. BRUNDAGE said he had not intended to say a word on this subject. He felt that it was far above his power. But finding himself placed in a situation where he might be compelled to vote against the dictates of his own judgment, and in violation of the well known and clearly expressed will of his constituents, it was due to himself and to his constituents briefly to define his position.—The debt and financial policy of the state was no new matter to him; it had been an object of anxious solicitude with him for years. He had observed with pain the annual progress of the debt prior to 1842, and he felt gratified when that progress was arrested by the wise and prudent legislation of that year. From that time to the present, he had continually felt and had often expressed his solicitude that the debt should be cancelled at the earliest possible period that the finances of the state would permit. Under this impression he came here prepared and desirous to support a proposition to be made a constitutional provision, that after defraying the ordinary expenses of the govern-

ment and the necessary repairs and superintendence of the canals, and keeping them in the condition in which they now are, the whole amount of the state revenues shall be applied to the extinguishment of the state debt. And if that should not be sufficient for its extinguishment, within 18 or 20 years, that the legislature should provide for that by taxation. Therefore when the financial report was made he was gratified. But in that report there was a feature which somewhat diminished his gratification. It was that feature which provided 2½ millions of dollars for the Erie canal, of which a word or two hereafter. He would first look at the position in which the matter stands. Gentlemen had taken much time in the investigation of the origin history, and progress of the state debt. Now he was really at a loss to see the relevancy of this matter to the question before them; which in his judgment was narrowed down to these simple enquiries—first what is the state indebtedness—secondly, what resources has the state to remove that indebtedness—and thirdly, how shall these resources be most appropriately and economically applied? The amount of the state debt had been stated at between 22 and 23 millions of dollars, on which we were annually paying the round sum of one and a quarter million dollars interest. In 20 years, we shall pay 25 millions of dollars as interest on that debt—a sum which would be sufficient to complete the Genesee Valley and Black River canals, enlarge the Erie canal and build the Erie railroad. This is not the vision of an idle dream—figures will demonstrate it beyond the power of contradiction. Can gentlemen sleep over such a subject? He would never slumber a night over such a debt, if he could avoid it. He would apply the sponge to the last dollar at the earliest possible period. It was not then necessary to go into the details to show the origin, history, and progress of that debt; the simple question is how shall we pay it? That was the purpose to which they should direct their attention. He was aware that gentleman who belonged to certain localities, might complain that they suffer in consequence of the delay in the completion of these improvements, but he would ask those gentlemen if there were not other localities which had equally suffered? He, in common with all the friends of the Erie railroad, knew that it was to suffer under the influence of hope deferred. not only till their hearts had sickened, but till their spirits had failed, and they had abandoned their object in despair. He asked them if they could not wait until this debt was cancelled, and the resources of the state were at liberty to accomplish those objects without embarrassment? He had always felt the force of a remark made by an old farmer who once came to pay him a debt; he expressed his regret that the farmer should have put himself out of his way to call for that purpose, and the reply was that he knew of no better time to pay than when he had the means. Now while we know we have the means, prudence dictates that we should pay. So the revenue of the canal should be appropriated to the liquidation of the debt, and the improvements desired could be realized after that debt had been liquidated, if the antici-

pations of gentlemen that the canals are to on increasing in revenue, should be realized.—Still there would be surplus funds to carry on the works: but what a predicament would they be in if the plans of gentlemen which had been urged upon them were found to be based on mistaken calculations. If there were danger, it should be looked to and guarded against. They must bear in mind that the Erie railroad would be soon constructed, and that would draw some commerce from our canals. [Mr. BRAYTON said it would not. Mr. BRUNDAGE: It certainly will. Mr. BRAYTON: It will not. Mr. BRUNDAGE: You and I may differ on this subject, but that don't prove either of us right.] Then again our Boston friends will construct a road to the St. Lawrence, and the question was whether they would not obtain their produce cheaper by that medium than by the Erie canal? If so, that also would draw from us some commerce. It was not impossible that the opening of the ports of England may divert a portion of produce down the St. Lawrence, via Quebec, and thus more commerce may be taken from us. The gentleman from Chautauque (Mr. MARVIN) also offered to his mind an argument for a probable diminution of transportation through this canal. That gentleman asserted that heavy articles of groceries, sugars and molasses, had been carried to his section of the south against the stream, and with 90 miles of land carriage, so as to enable them to undersell the New-York merchant. If that were so now, what would be the result when that 90 miles of land carriage was annihilated or transit over it facilitated? He could readily excuse those gentlemen who urged the necessity of delaying to pay the debt on the ground of local interest, for Pope has said that "self-interest is the moving principle of man"—and the Scotch poet has said that

"When self the warring balance shakes,
"Tis rarely right adjusted"

If he was correctly informed, at the commencement of the canal policy, the state was in possession of respectable funds, which were the common property of all. There was also a revenue from the salt duties and the auction tax, which the gentlemen from Herkimer and Chautauque seemed to think were local. He differed from both those gentlemen, and he was not bound to follow either admiral. general or subaltern officer when their positions were erroneously taken. These duties fall on all, and the salt springs were the property of the state, and could not therefore be the property of any isolated part of the state. These resources, belonging to the whole state, had been absorbed in the construction of the Erie canal, which had doubled the value of property along the line of its location, while other sections of the state were not only not benefitted, but, in many instances, actually injured by their inability to compete with this favored region. So long as these duties were adequate, the people should not be required to submit to taxation. He had the less sympathy with some gentlemen on account of their local interests, because he thought the works of whose completion they were the advocates were unwisely got up, and only concurred in by the friends of the Erie canal from opposition to the Erie railroad—from a sordid jealous

sy, lest it might detract a little from the monopoly of trade and travel on particular location. But expense had been incurred, and must be hopelessly lost, unless those works were completed; he was willing therefore to complete them, if they only paid the interest on the money requisite to their completion; and therefore he was willing to vote for the plan of the gentleman from Herkimer, [here the hammer announced the expiration of his time, but he finished his sentence thus,] not in a spirit of concession, but of dire necessity.

Mr. NICOLL moved the previous question, on the first section, and the amendments proposed thereto—saying the final vote must be taken in three hours on the whole article.

Mr. BASCOM called for the yeas and nays on seconding the call, and there were yeas 51, noes 55.

Mr. VAN SCHOONHOVEN spoke at length in favor of the plan of the gentleman from Schoharie.

Mr. CHAMBERLAIN proceeded to notice the professions of gentlemen on this floor, and contrasted them with their practice; and he appealed to the Convention so to frame the article as to secure as much unanimity as possible; or they would fail to satisfy the people.

Mr. HARRIS rose to second the patriotic appeal made recently by the gentleman from Schoharie, (Mr. BOUCK) to unite, and not decide this question by a party vote. Gentlemen seemed all to argue that the public works must be completed, and yet the policy advocated by some was the postponement of their completion to an indefinitely remote period. He was one of those who believed that sound policy required the speedy completion of those works. He could not believe that there was the slightest foundation for the hypothesis that the revenues of the canals were to reach their culminating point, and then decline, as had been imagined by the gentleman from Herkimer. He pointed to the mighty west whose resources were likely to be a source of wealth for all time to come; and spoke of the Erie canal as the fabled river Pactolus whose sands at the touch of Midas were turned into gold and enriched the monarch Cræsus. The proposition of the gentleman from Schoharie, contemplated the payment of the public debt within a reasonable time, as was desired by all; it contemplated providing beyond all possible contingency against taxation—what then could be the possible objection to that plan? It was important that they should harmonize, and he hoped they would harmonize upon that proposition.

Mr. LOOMIS and Mr. KIRKLAND entered into mutual explanations, and the debate was continued by Mr. STOW.

Mr. TILDEN replied to Mr. STOW. He concurred mainly with that gentleman as to the expediency of supporting government out of an unlimited fund derived from other sources than direct taxation. But he could tell that gentleman and others, that if there was a disposition to place the entire surplus in the treasury, there to be liable to be used for current expenses, the result was owing entirely to those who had spent from four to six days in attacking the report of the standing committee. He hoped an effort

would be made to effect a fair partition by which the general fund would be indemnified for all its advances to the canals, and that the amount beyond that would not be subjected to a scramble in the legislature. But if nothing should be left for the canals, as some predicted, then the result would be realized which he tried to convince them would be the result of their own plans. He was willing to make a fair provision for the support of government without taxation, and for the public works; but he was not willing to violate the solemn agreement under which this state had borrowed five or six millions.

Mr. STETSON asked why we could not compromise? He said that under the proposition of Mr. LOOMIS there would be a surplus of \$550,000 of the revenues of the present year—under that of Mr. BOUCK, of \$625,000—making only a difference of \$75,000. Why then could we not compromise? It was, he said, because on one side there was a disposition to redeem the pledge first which had been made yesterday, and on the other to adhere to the promises we had made to others, whose money we had borrowed—because, in a word, those opposed to the plan of the standing committee and of Mr. LOOMIS were for completing the public works first and paying afterwards, leaving the public faith to take care of itself. He denied that he and those who acted with him were opposed to a reasonable extension of the public works. They desired first to do justice to the public creditor and then to ourselves. They desire to live up to the spirit of the act of 1842, whilst those on the other side, in the spirit of the new impulse policy, were for spending and going on. This was the reason why we could not compromise.

Mr. MARVIN understood the gentleman from New York to advocate specific appropriations of the surplus, instead of leaving it to be scrambled for in the legislature—and to charge that all the other propositions, that of Mr. STOW among the rest, contemplated the latter. This was not true of Mr. BOUCK's proposition, nor was it true of Mr. STOW's, which had there been an opportunity would have been followed up by a proposition making specific appropriations of the surplus to the enlargement and the two unfinished canals.

Mr. TILDEN was not aware of that.

Mr. MARVIN said such a proposition was in fact part of Mr. STOW's amendment. He went on to say that if he spoke with warmth yesterday in reply to Mr. HOFFMAN, it was because that gentleman had seen fit to characterize the proposition he had brought forward as repudiation, and moral perjury,—and this too a proposition which proposed, by adequate provision to pay off every debt of the state in 22½ years—and the only material difference between which and the proposition of Mr. LOOMIS was that the latter proposed to give no money for some years to the public works; when under the former, they would get something to enlarge the canal and enable it to earn revenue. As to the remarks of the gentleman from Clinton, that all who did not go with him, were violators of the public faith, and that was the reason why no compromise would be made with them, Mr. M. said he did not know whether this sort of declamation was intended for effect here, or out of

doors—but if he supposed that any of these 123 men could be gulled by it, or that the people had not the discernment to penetrate and repel it, he was entirely mistaken. Mr. M. would not reply to it further than to say that Mr. Stow's proposition pail off the debt as rapidly as Mr. HOFFMAN's. He asked the gentleman from Clinton, if he and the friends of these counter propositions would go this \$75,000 more, whether he would pledge the surplus, after complying with the other requisitions, to the prosecution of the Erie enlargement and the unfinished works?

Mr. STETSON regarded that as matter of legislation entirely. He did not come here to make appropriations. If so, he should have felt called upon to crowd in his northern canal—the Champlain.

Mr. MARVIN:—Would the gentleman be willing to say that the canal that earned all the money should have the preference until it was completed?

Mr. STETSON said it was as natural that it should have it as the ox that trod out the corn. The legislature would take care of that.

Mr. MARVIN replied that we were putting the law of '42 into the constitution. Why not leave the payment of the debt to legislation too? Mr. M. went on to glance at this question of enlargement in its broader points of view, as adding immensely to the wealth and greatness of the state; but had not proceeded far when his time expired.

Mr. BRUCE followed in reply to Mr. W. TAYLOR, who, he said, had exhibited not a little warmth under the charge that he was hostile to our system of internal improvements. But he asked that gentleman to point to the provision in the proposition he advocated that made the slightest provision for the prosecution of our canal policy. The proposition which the gentleman sustained would effectually arrest that policy. That of Mr. HOFFMAN did not propose to apply a dollar to the enlargement. On the contrary, that gentleman proposes that the canal might be improved and answer all purposes until the tolls began to culminate. Not only did that gentleman repudiate the enlargement, but he denounced the project of the Erie canal as incestuous. He called on Mr. TAYLOR to come out and define his position. If really friendly to the canal policy, let him come up to the support of Mr. Bouck's proposition which secured something for internal improvement. The gentleman from Herkimer (Mr. HOFFMAN) said it was perfect nonsense to talk about the faith of the state being pledged in 1835 to the enlargement. And yet, he contended, that it was pledged by the law of 1842. Mr. B. would be glad to know why the faith of the state was not as strongly pledged by the one act as the other! By the proposition of Mr. Bouck we could fulfil them both. This was the great question, and he was rejoiced to see that the gentleman from Clinton, who was the first man to spring the party rattle here—had found himself in the position of the prophets of Baal when they undertook to invoke their God. The gentleman had invoked the spirit of party and had found the party missing. Mr. B. urged that the great state of New York was able to go on

and complete the works which she ordained in 1835 should be completed—and that instead of paying off every dollar of debt, before proceeding with these works, would be doing injustice to ourselves, to the state, and he might add to posterity—for they would have the benefit of this rich legacy that we should leave them, and ought to pay their share of the expense.

Mr. RHOADES sent up the following additional section:—

§—. The legislature shall never sell or dispose of the salt springs belonging to this state. The lands contiguous thereto and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law and under the direction of the commissioners of the land office, for the purpose of investing the moneys arising therefrom in other lands alike convenient, but by such sale and purchase the aggregate quantity of these lands shall not be diminished.

Mr. TILDEN replied briefly to Mr. MARVIN, when

Mr. RICHMOND obtained the floor, and the Convention took a recess.

AFTERNOON SESSION.

Mr. RICHMOND though not entirely satisfied with Mr. Bouck's amendment, preferred it infinitely to that of Mr. Loomis, which left the surplus revenues at the disposal of the legislature, to be plundered by the sharks that always infest the legislature—and this too, after saddling the canals with all the debts of broken railroads, and every other debt for which the state was liable—the Clinton county prison among the rest. Under the proposition of Mr. Loomis, the public works would not be completed in fifty years—and he urged that if it was important to tie up the legislature to the payment of the debt, it was equally important to control them in making appropriations of this surplus.

Mr. NICHOLAS closed the debate, in support of Mr. Bouck's proposition.

Mr. DANA expressed a desire to move an amendment to the third section.

Mr. STOW said he should renew his amendment at the proper time.

The hour of 4 having arrived,

Mr. SHEPARD called for the vote on the first section of Mr. HOFFMAN's proposition, and the question recurred on Mr. Loomis' substitute as follows:—

§ 1. After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart out of the revenue of the state canals, in each year commencing on the first day of June 1846, the sum of one million and three hundred thousand dollars until the first day of June, 1855, and from that time the sum of one million and seven hundred thousand dollars in each year, as a sinking fund to pay the interest and redeem the principal of that part of the state debt called the canal debt, as it existed at the time aforesaid, and including three hundred thousand dollars, then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

The question first recurring on Mr. Bouck's amendment to reduce the first named sum to \$1,200,000,

Mr. BOUCK said a desire had been expressed by several gentlemen that he would withdraw this amendment, in order to produce more harmony on this important question. He now rose to do so—and withdrew his amendment

Mr. LOOMIS' amendment was then adopted, ayes 87, noes 26, as follows:—

AYES—Messrs. Allen, Angel, Baker, Bergen, Bouck, Bowdish, Brayton, Brown, Bruce, Brundage, Bull, Burr, Cambreleng, D. D. Campbell, R. Campbell, Jr., Chatfield, Clark, Clyde, Conely, Cook, Cornell, Cuddeback, Dana, Danforth, Dubois, Gebhard, Graham, Greene, Harrison, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Kemble, Kennedy, Kernan, Kingsley, Kirkland, Loomis, Mann, McNeil, McNitt, Maxwell, Morris, Muoro, Murphy, Nellis, Nicoll, O'Connor, Patterson, Perkins, Porter, Powers, President, Rhoades, Richmond, Riker, Ruggles, Russell, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Smith, E. Spencer, Stanton, Stephens, Stetson, Taft, J. J. Taylor, W. Taylor, Tilden, Townsend, Tutthill, Vache, Van Schoonhoven, Ward, Waterbury, White, Wood, W. B. Wright, Youngs—87.

NAYS—Messrs. Ayraut, F. F. Backus, H. Backus, Candee, Chamberlain, Crooker, Dodd, Dorlon, Flanders, Forsyth, Gardner, Hawley, Marvin, Nicholas, Parish, Penniman, Salisbury, Shaver, W. H. Spencer, Stow, Tallmadge, Warren, Worden, A. Wright—26.

The section as amended, (see above) was then adopted, ayes 87, noes 28.

Mr. PATTERSON suggested an amendment as necessary—that is to insert the word "first" between "time" and "aforesaid," which was agreed to.

So that part of the section reads "as it existed at the time first aforesaid."

The question then recurred on **Mr. LOOMIS'** proposition to strike out sections two and three of **Mr. HOFFMAN's** article, and the first six lines of **Mr. H's** fourth section, and insert the following as a second section:—

§ 2 After complying with the provisions of the first section of this article, there shall be appropriated and set apart out of the surplus revenues of the state canals, in each year, commencing on the first day of June, 1846, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt; and after that period, then the sum of one million and five hundred thousand dollars in each year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the General Fund debt—including the debt for loans of the state credit to railroad companies which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon whenever and as far as any part thereof may become a charge on the Treasury or General Fund—until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the said sinking fund shall at any time be deferred, by reason of the priority recognized in the first section of this article, the sum so deferred, with quarterly interest thereon, at the then current rate, shall be paid to the last mentioned sinking fund, as soon as the sum so deferred shall be received into the Treasury.

The same was adopted by the following vote:

AYES—Messrs. Allen, Angel, Archer, Bergen, Bouck, Bowdish, Brown, Bruce, Brundage, Bull, Burr, Cambreleng, D. D. Campbell, R. Campbell, Jr., Chatfield, Clark, Clyde, Conely, Cook, Cornell, Cuddeback, Dana, Danforth, Dubois, Gardner, Gebhard, Graham, Greene, Harris, Harrison, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Hyde, Kemble, Kennedy, Kernan, Kingsley, Loomis, Mann, McNeil, McNitt, Maxwell, Morris, Muoro, Murphy, Nellis, Nicoll, O'Connor, Patterson, Perkins, Porter, Powers, President, Rhoades, Richmond, Riker, Ruggles, Russell, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Smith, E. Spencer, Stanton, Stephens, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Tilden, Townsend, Tutthill, Vache, Van Schoonhoven, Ward, Waterbury, White, Wood, W. B. Wright, Youngs—89.

NOES—Messrs. F. F. Backus, H. Backus, Bascom, Brayton, Candee, Crooker, Dodd, Flanders, Hawley,

Kirkland, Marvin, Nicholas, Parish, Penniman, Salisbury, Shaver, W. H. Spencer, Stow, Strong, Tallmadge, Warren, Worden—22.

Mr. CHATFIELD moved to substitute for the last line the following—"it can be done consistently with the just rights of the creditors holding the said canal debt."

Mr. WORDEN asked if this could be offered at this time?

The **PRESIDENT** replied in the affirmative.

Mr. WORDEN said it seemed to imply that we had authorized something to be done that would conflict with the just rights of creditors.

Mr. CHATFIELD thought that could not be the effect.

Mr. WORDEN asked if the gentlemen desired to leave a question open here, whether this appropriation of the canal revenues was a violation of the pledges under which the money was borrowed?

Mr. CHATFIELD'S object was to protect these pledges.

The amendment was adopted, 51 to 38.

The section as amended, was then adopted, ayes 93, noes 27.

The next question was upon the following 3d section of **Mr. LOOMIS'** amendment:—

§ 3. The surplus revenues of the canals, after complying with the provisions of the two last preceding sections shall be appropriated, at the discretion of the legislature, to defray the ordinary expenses of government, and for other purposes; but no law shall be passed appropriating or pledging for the construction or improvement of any canal or railroad, any part of such revenues, beyond those of the year current, at the time of passing such law.

Mr. BOUCK offered the following substitute for the proposition of **Mr. LOOMIS**.—

The sum of \$172,000 shall be annually applied to pay any deficit which may occur in the revenue of the general fund to meet the expenses of the government; the remainder of the canal revenue shall be appropriated to the enlargement of the Erie canal, and the completion of the Genesee Valley and Black River canals until the same are completed. After the payment of the public debt, \$672,000 shall be annually appropriated from the canal revenues to the general fund, to meet the expenses of the government.

Before taking the question on this, **Mr. PATTERSON** moved to amend the section of **Mr. LOOMIS**, by striking out all after the word "government," in the 4th line, and insert, "and for the completion of the enlargement of the Erie canal, and of the Genesee Valley and Black River canals."

Mr. STRONG enquired if this was debatable?

The **PRESIDENT** replied in the negative.

Mr. STRONG appealed from this decision, and called for the reading of the resolution of this moving. [It having been read] **Mr. S.** said he supposed the appeal was debatable.

The **PRESIDENT**:—No sir.

Mr. STRONG:—Yes sir—now sir.

The **PRESIDENT** interposed. The appeal was not debatable.

Mr. STRONG said this was the first time he ever heard a presiding officer decide that an appeal from his decision was not debatable. He asked if the Chair adhered to that decision?

The **PRESIDENT** did, under the resolution adopted this morning.

Mr. STRONG said there was not a word in

it about debate—only that we should proceed to vote.

The PRESIDENT construed the resolution to mean that the Convention should proceed to vote without debate.

Mr. STRONG : That is a forced construction.

The PRESIDENT announced the question to be on Mr. STRONG's appeal.

Mr. STRONG desired to take another appeal from the decision that an appeal was not debate able.

Mr. STETSON : You can't pile appeal upon appeal.

Mr. STRONG ; You can lay us down by force—

Mr. SWACKHAMER called to order.

Mr. STRONG : (to Mr. S.) What are you bellowing order for?

The PRESIDENT put the question, and the decision of the Chair was sustained.

Mr. PATTERSON enquired whether his amendment would be in order, if Mr. BOUCK's should be lost?

The PRESIDENT replied affirmatively.

Mr. PATTERSON then waived his amendment for the present.

Mr. NICOLL moved to amend the original section by adding the following in relation to the disposition of the surplus proceeds :—

"At least two thirds in each fiscal year shall be appropriated to the improvement of the Erie canal in such manner as shall be directed by law, until such surplusses in the aggregate shall amount to at least ——— dollars, and the residue of such surplus moneys shall be appropriated to defray the ordinary expenses of government, and for other purposes," &c.

Mr. NICOLL moved to fill the blank with \$3,500,000.

Mr. CHATFIELD with \$2,000,000.

Mr. O'CONOR with \$5,000,000.

Mr. RUSSELL with \$2,000,000.

Mr. WHITE with \$6,000,000.

Mr. VAN SCHOONHOVEN with \$3,000,000.

Mr. WORDEN asked if we were to have new propositions sprung upon us, changing the whole structure of this article, and to be compelled to vote on them without even an explanation?

Mr. LOOMIS supposed the rule cut off all amendments except those pending at the time.

The PRESIDENT replied that the resolution under which we were acting, expressly permitted such propositions.

The question was taken respectively on the largest sums.

Mr. WHITE'S amendment was rejected : ayes 27, noes 83.

Mr. NICOLL here said he would make a slight alteration—changing the word "surplusses" to "appropriations."

Mr. BASCOM remarked that that was a very material alteration. He now moved to fill the blank with twelve millions. Lost.

Mr. CHAMBERLAIN here called for the reading of the resolution of this morning—in-sisting that these new propositions were all out of order.

The PRESIDENT (the resolution having been read again) adhered to his decision.

Mr. CHAMBERLAIN then had only to say that he hoped the Convention would vote down every amendment that had not been discussed. [Loud cries of "order."]

Mr. O'CONOR's motion to fill the blank was negatived : ayes 32, noes 73.

Mr. NICOLL's motion was negatived : ayes 32, noes 73.

Mr. VAN SCHOONHOVEN withdrew his motion, and Mr. WATERBURY renewed it. The same was negatived ; ayes 44, noes 70.

Mr. CHAMBERLAIN moved to lay the amendment on the table.

Mr. W. TAYLOR insisted that this would carry the section along with it, if not the entire article.

The PRESIDENT decided otherwise.

Mr. NICOLL'S amendment was laid on the table, ayes 70, noes 47.

Mr. PATTERSON now renewed his amendment. [See above.]

Mr. CHATFIELD called for a division of the question, so as to take it upon each canal separately.

The PRESIDENT said it could not be divided.

Mr. KIRKLAND moved to lay the amendment on the table. Lost, ayes 39, noes 72.

Mr. CHATFIELD again moved a division of the question.

The PRESIDENT again decided against Mr. CHATFIELD.

Mr. PATTERSON said at the urgent request of the gentleman from Schoharie and others, and to relieve the Chair of all embarrassment, he would again waive his amendment.

Mr. BROWN : I renew it, leaving out all that relates to the Black River and Genesee Valley canals, and leaving out the word "ordinary," before "expenses."

Mr. RICHMOND hoped that would be voted down.

Mr. R. CAMPBELL moved to adjourn. Lost, 47 to 62.

Mr. BROWN here varied his amendment so that it should read as follows:

"Shall be appointed at the discretion of the legislature to defray the expenses of the government and for the improvement of the Erie canal, &c."

Mr. ST. JOHN moved to adjourn. Lost, 40 to 65.

Mr. CHAMBERLAIN moved to lay the amendment on the table.

Mr. CHATFIELD called for the ayes and noes, and

Mr. CHAMBERLAIN withdrew his motion.

Mr. FORSYTH renewed it—and

The amendment of Mr. BROWN was laid on the table—ayes 68, noes 45.

Mr. BOUCK now demanded the previous question on his amendment, [see above,] and there was a second, &c.

Mr. CHATFIELD called for the reading of it—saying that it seemed to contemplate the enlargement of the Genesee Valley and Black River canals.

The amendment having been read,

Mr. RUSSELL stated some objection to its phraseology, and

Mr. BOUCK replied that he thought it sufficiently explicit.

Mr. NICOLL asked if there was any thing in it in regard to pledging the revenues beyond the current year?

Mr. WORDEN replied that that was the very thing that should not be in it.

The question was then taken on Mr. BOUCK's amendment, and it was negatived—ayes 54, noes 60, as follows:—

AYES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bouck, Brayton, Bruce, Bull, D. D. Campbell, Candee, Chamberlain, Crooker, Dana, Dodd, Dorlon, Forsyth, Gardner, Gebhard, Harris, Harrison, Hawley, Hotchkiss, E. Huntington, Hyde, Kirkland, Mann, McNitt, Marvin, Maxwell, Murphy, Nicholas, Parish, Patterson, Penniman, Perkins, Rhoades, Richmond, Salisbury, Shaver, Smith, E. Spencer, W. H. Spencer, Stanton, Stow, Strong, Tallmadge, Van Schoonhoven, Warren, White, Worden, A. Wright—54.

NOES—Messrs. Allen, Bergen, Bowdish, Brown, Brun age, Burr, Cambreleng, R. Campbell, jr., Chittfield, Clark, Clyde, Conely, Cook, Cornell, Cuddeback, Danforth, Dubois, Flanders, Graham, Greene, Hoffman, Hunt, Hunter, A. Huntington, Hutchinson, Kennedy, Kingsley, Loomis, McNiel, Morris, Munro, Nellis, Nicoli, O'Connor, Porter, Powers, President, Riker, Ruggles, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Stephens, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Tilden, Townsend, Tutbill, Vache, Ward, Waterbury, Wood, W. B. Wright, Youngs—60.

Mr. RUSSELL when his name was called, declined to vote, as he could not explain.

Mr. ANGEL gave notice of a motion to reconsider.

Mr. LOOMIS moved the previous question on his section.

Mr. CROOKER moved to adjourn. Lost, 49 to 61.

The previous question was then seconded, and the 3d section offered by Mr. LOOMIS (see above) was rejected as follows:—

AYES—Messrs. Allen, Bergen, Bowdish, Brown, Brundage, Cambreleng, R. Campbell, jr., Chittfield, Clyde, Conely, Cuddeback, Danforth, Dubois, Flanders, Greene, Hoffman, Hunt, Hunter, A. Huntington, Hutchinson, Kemble, Kennedy, Kingsley, Loomis, McNiel, Munro, Murphy, Nellis, Nicoli, Powers, President, Riker, Ruggles, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Stephens, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Tilden, Townsend, Tutbill, Vache, Ward, Waterbury, Wood, Youngs—63.

NOES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bouck, Brayton, Bruce, Bull, Burr, D. D. Campbell, Candee, Chamberlain, Cook, Crooker, Dana, Dodd, Dorlon, Forsyth, Gardner, Gebhard, Graham, Harris, Harrison, Hawley, Hotchkiss, E. Huntington, Hyde, Kirkland, Mann, McNitt, Marvin, Maxwell, Morris, Nicholas, O'Connor, Parish, Patterson, Penniman, Perkins, Porter, Rhoades, Richmond, Russell, Salisbury, Shaver, Smith, E. Spencer, W. H. Spencer, Stanton, Stow, Strong, Tallmadge, Van Schoonhoven, Warren, White, Worden, A. Wright, W. B. Wright—61.

Mr. CHATFIELD moved to reconsider.

Mr. KIRKLAND moved to adjourn. Carried, 75 to 35.

Adj. to 8½ o'clock to-morrow morning.

TUESDAY, SEPTEMBER 22.

Prayer by the Rev. Mr. WILKINS.

THE LEGISLATURE.

Mr. STETSON made the following report from committee number two, on the powers and duties of the legislature.

ARTICLE.—

§ 1. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from time to time, and compel the attendance of absent members in such manner and under such penalties as each house may provide.

§ 2. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the senate shall choose a temporary president when the lieutenant-governor shall not attend as president or shall act as governor.

§ 3. Each house shall keep a journal of its own proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, and each house shall sit upon its own adjournment.

§ 4. Each house shall retain the power to punish its members for disorderly behavior, and, with the concurrence of two-thirds, to expel a member, but a member shall not be expelled a second time for the same offence.

§ 5. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

§ 6. Any bill may originate in either house of the legislature; and all bills passed by one house may be amended by the other.

§ 7. The enacting clause of all bills shall be, "The people of the state of New-York, represented in senate and assembly, do enact as follows:—" and no law shall be enacted except by bills.

§ 8. All bills and joint resolutions shall be read at least three times in each house, before the final passage thereof; and no bill or joint resolution shall pass unless two-thirds of all the members of each body be per-

sonally present during the last reading and on the final passage; and the question upon the final passage shall be taken immediately upon the last reading. The yeas and nays of the members voting on such final passage shall be entered on the journal.

§ 9. No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.

§ 10. Every bill for local or private purposes passed by the legislature after the first sixty days of its annual session shall be void, except when the matter of the act has arisen during the same session.

§ 11. No bill that shall have passed one house shall be sent for concurrence to the other on either of the three last days of the session, without the assent of two-thirds of each house, to be expressed by joint resolution upon each bill separately.

§ 12. No bill shall be presented to the governor for his signature within the last twenty-four hours of a session of the legislature.

§ 13. Provision shall be made by law for bringing suits against the state in the courts of record, and for regulating their jurisdiction and proceedings in such suits.

§ 14. No exemption from taxation shall be allowed in favor of any corporation or corporations for gain or profit, which is not also extended to natural persons; and all such exemptions shall be according to general rule applicable alike to natural persons and to bodies politic for gain or profit.

By order of the committee.

LEMON L. STETSON, Chairman.

Mr. ST. JOHN made a minority report from the same committee, as follows:

§—No law shall be passed fixing the legal rate of interest beyond the sum of six dollars for one hundred dollars for one year, or in that proportion for a longer or shorter term.

They were ordered to be printed.

LIMITATION OF DEBATES.

Resolved, That hereafter debates in committee of the whole and in Convention be limited to fifteen minutes to each speech.

Mr. PERKINS moved to amend by striking out fifteen and inserting thirty.

Mr. VANSCHOONHOVEN: Oh make it five.

Mr. KENNEDY: What will you do then?

Mr. CAMBRELENG should vote for the resolution, but he could hardly discuss the subject of banks and currency in fifteen minutes.—["We'll give you longer time."]

Mr. NICOLL opposed the resolution.

Mr. W. TAYLOR desired to modify his resolution so as to except chairmen of committees. ["Oh no, no."]

Mr. NICOLL moved to lay the resolution on the table; but withdrew it at the solicitation of

Mr. MURPHY who said there were some very important subjects to be discussed on one or more of which he should want more than fifteen minutes. The utmost latitude had heretofore been allowed, and he hoped now they should not thus be restricted.

Mr. MORRIS hoped the resolution would not be adopted. It was quite certain that the Convention could not do all its business; it should therefore not do what it did imperfectly. He admitted that some of us talked too much—some merely repeated the ideas of others—but he would rather submit to these evils than to others that would be produced by such a rule.

Mr. RUSSELL called for the yeas and nays on the motion, (which was renewed) to lay on the table, and there were yeas 25, nays 77.

Mr. RUSSELL moved the previous question on the resolution and there was a second, &c.

Mr. PERKINS' motion to strike out 15 and insert 30, was negatived, 41 to 61. A motion to strike out 15 and insert 20 was also negatived, 35 to 66.

Messrs. NICOLL and STOW called for the yeas and nays on the resolution, and there were yeas 73 nays 39.

So the amendment, restricting each member to 15 minutes, was adopted.

EVENING SESSIONS.

Mr. NICOLL offered a resolution to devote the evening sessions to the report on rights and privileges, and next to education and common schools.

Mr. F. F. BACKUS (Mr. NICOLL withdrawing for that purpose) offered a resolution to extend the afternoon session to half past 7 instead of holding evening sessions.

Mr. RUSSELL opposed it on the ground that many gentleman could not go so long without their tea.

Mr. NICOLL said the extension of the afternoon sessions would not give them so many hours as they should gain by holding an evening session.

Mr. RICHMOND thought they should do more business by continuing the afternoon session than if they went home and returned.

Mr. CAMBRELENG had had some experience in evening sessions and he never knew any good to come from them.

Mr. BURR hoped the resolution would be adopted.

Messrs. PERKINS and NICOLL having made some remarks,

Mr. SWACKHAMER moved to amend so as to provide that the evening sessions should be fixed for this week. Lost.

Mr. BACKUS' resolution was then adopted.

ELECTIVE FRANCHISE.

Mr. BRUCE called for the consideration of his resolution, laid on the table on Friday, to make the report on the Elective Franchise succeed the report of committee No. 3.

Mr. TOWNSEND called for the yeas and nays on the question of consideration, and there were yeas 47, nays 69.

Mr. MORRIS obtained permission to present a memorial of Robert Owen to the Convention.

The reading was called for.

Mr. WORDEN thought their time was too precious to be consumed by the reading of such memorials. Cries of ("read.")

The SECRETARY commenced and was reading preliminary matter in which the memorialist set forth his interest in the proceedings of the Convention, and that he had hastened across the Atlantic to give his views to the Convention.

Mr. LOOMIS moved that the reading be dispensed with. Carried.

Mr. SWACKHAMER moved to print. Lost. It was laid on the table.

CANALS, FINANCES, &c.

Mr. RUSSELL offered a resolution of instruction to the committee on finance, as follows:

Resolved, That the committee on finance be instructed to report forthwith the following as section 3 of the first article reported by the committee:—

§ 3. After complying with the provisions of the two last preceding sections, the surplus revenues of the canals, until 1st June 1836, shall be appropriated as follows: The sum of \$20,000 annually to defray the ordinary expenses of government, and the remainder to the improvement or completion of the canals, and after the time mentioned in this section, to such purposes as the legislature may direct.

Mr. MURPHY moved the previous question.

Mr. WHITE desired to move an amendment.

Mr. MURPHY withdrew his motion.

Mr. WHITE offered his amendment as follows, and renewed the motion for the previous question:—

After paying the said expenses of superintendence and repairs of the said canals and the sums appropriated by the 1st and 2d sections of this article, there shall be paid out of the surplus revenues of the canals to the treasury of the state, on or before the 31st Sept. in each year, for the use and benefit of the general fund, such sum, not exceeding \$20,000 as may be required to defray the necessary expenses of the state; and the remainder of the revenues of the said canals shall in each fiscal year be appropriated in such manner as the legislature shall direct, to the completion of the Erie canal enlargement, and the Genesee Valley and Black River canals, until the said canals and improvements shall be completed.

Mr. TILDEN raised a question of order. The gentleman from New York (Mr. WHITE) could not move an amendment and the previous question at the same time, before the question on the amendment was stated.

The PRESIDENT said the gentleman from Kings withdrew his motion to allow the gentleman from New York to make his, and therefore the motion was in order.

The previous question was seconded—46 to 44.

Mr. HOFFMAN called for the yeas and nays on the question "shall the main question be now put," and there were yeas 51, nays 63.

Mr. TILDEN rose and was proceeding to

discuss the question, when he was called to order by several members.

Mr. MURPHY read from Jefferson's *Manual* to show that the last vote threw the subject over for the day.

The PRESIDENT remarked that gentlemen overlooked a special rule of this Convention by which the whole subject again became debatable.

Mr. TILDEN again proceeded, and was commenting on the operation of the previous question.

Mr. VAN SCHOONHOVEN called him to order for discussing a subject which had been disposed of.

A long conversation ensued, amidst much confusion, during which many points of order were raised, some of them arising out of the changed operation of the previous question by the rule of the Convention, which appeared not to have been fully understood. At length,

Mr. TILDEN was permitted to proceed, and he discussed the amendment of his colleague.

Mr. SWACKHAMER thought these propositions should be laid on the table that the Convention might proceed to its business. He made that motion, but withdrew it at the request of Mr. WORDEN.

Mr. WORDEN briefly replied to Mr. TILDEN. He was not surprised at the ground of opposition by the gentleman, which was that it appropriates the surplus revenues of the canals to the completion of the Erie enlargement and the unfinished canals. That the commercial metropolis should stand here by her representatives, in such an attitude, did not surprise him. He expected precisely such a result. And so far as that city was concerned, if no other interests were involved, he was willing that a provision should be fixed in the Constitution, that was designed and intended to arrest these works for all time to come; for such appeared from the argument of the gentleman from New York to be the wishes of the commercial metropolis he in part represents. In 1842 a tax was levied on the people of this state for the canals, on the express ground that they were insolvent and this tax was necessary. And yet, we in '46, had already adopted a provision levying an annual tax on the canals of \$350,000, to pay the debts of insolvent railroads and other debts incurred for the support of the state government. By the amendment now offered, it is proposed to charge a farther tax on the canal revenues of \$200,000 to support the state government, making in all \$550,000, being equal to a gross charge of \$11,000,000 on the canals of the state. Mr. W. would go for no such proposition. He had agreed that the entire debt of the state should be charged upon the canals. He had agreed to a provision which drew from the canal tolls \$327,000 annually for the support of government. This was more than the amount of the direct tax now levied upon the state. But beyond this he would not go. He could not now vote for any proposition that did not secure the appropriation of the entire surplus to the completion of the unfinished works. Having made provision for the payment of the entire debt of the state out of the revenues of the canals, and pledged those revenues for that

purpose, (and Mr. W. said he had uniformly advocated such a provision) he would not consent that the canals should be charged further for the support of the government. After paying all the state debt out of the tolls of the canals, the best interests of the state required the application of the surplus to their completion. He had been willing so to arrange the sinking funds as to leave sufficient surplusses to make an appropriation for the support of the government out of the tolls; but that ground of compromise had been rejected, and the whole surplus tolls if applied to the completion of the canals under the present arrangement, would not finish them as soon as the public interest demanded. He desired now to see the surplus revenues applied where they should be, to the completion of the canals.

Mr. SWACKHAMER said he did not withdraw the motion he laid on the table, with the expectation that the gentleman from Ontario, (Mr. WORDEN) would take advantage of it to misrepresent the gentleman from New York, (Mr. TILDEN) whose course on this question had been perfectly consistent; and to reiterate charges against that patriotic city as false as they were unjust and infamous. The city of New York had stood as the proudest monument to the enterprise and progress of a free people. Although the devastating elements had consumed millions upon millions, and unequal taxation absorbed hundreds of thousands more of the property of her citizens, yet all this had scarcely checked its growing prosperity, while it had strengthened public confidence in the integrity and persevering industry of her people. There were other objections to the controlling influence of that city which did not appear here. She was not only the centre of commerce in the New World, but was also first in promulgating correct and liberal principles of political economy. From there, principles as pure as those of the revolution had originated, and though opposed by the same class of men who resisted that movement in favor of human liberty, and for similar reasons, they had continued to spread until they had become the policy of the state and of the country. He was proud of having been one of the representatives of that commercial emporium in the legislature of the state on more than one occasion, and of the agency he had in the passage of the act of '42, and in redeeming the sinking credit, and sustaining the honor of the state. It was then that the dividing line was drawn between the repudiators and the debt payers, the honest and the dishonest. It was then that the standard of state honor and integrity was hoisted by the able and faithful delegates from Herkimer (Messrs. HOFFMAN and LOOMIS) and so nobly defended by those from the city of New York. It was then that the much abused citizens of New York, and her right arm, Kings, put their hands in their pockets to the amount of \$270,000 annually, nearly half of the whole sum raised by the state, and that too without a murmur. It was then—while the gentleman from Ontario (Mr. WORDEN) and his financial friends were trotting about Wall street begging for a little cash, with their credit, if they had any left, from 15 to 20 per cent below par—that the friends of justice came to the rescue, and sav-

ed the state from bankruptcy. It was but a few months after these things occurred, that the stocks of the states advanced to between 8 and 12 per cent. above par, and were sought for by capitalists of every country. The policy of "42" had been denounced by politicians but sanctioned by the people, and the present attempt to attach odium to it would not succeed.—He looked upon it as one of the proudest periods in the history of the country—while state after state was rushing down the slough of repudiation, and the U. S. government was almost without credit, New York emerged from the surrounding ruins, and pledged her faith to the world that her honor should not be tarnished by the blighting influence of repudiation. That plighted faith had been sacredly kept, and woe to the man who would at this day violate it.—While his constituents had borne the burdens of taxation willingly, it was only with the view of preserving the honor of the state, and not for the purpose of speculation and renewed extravagance. They had no idea that this tax was to be perpetual, and they would not sanction any proposition designed to continue it unnecessarily. He was ready to support as liberal a policy towards the Erie canal as the condition of the finances would warrant, and had so voted with his colleagues and the delegation from New York yesterday; but where was the gentleman from Ontario (Mr. WORDEN)? This was a great state work, and if to vote against the improvement was to favor the measure, then the gentleman could claim to be its friend. But it was evident that members had other objects in view—they wished to drag in the late al canals, some of which would not pay the interest on the cost of construction. To this he was unqualifiedly opposed. Despots had been known to tax their subjects without their consent, but republican governments ought to avoid this practice. The system of constructing so-called internal improvements, by which the price of property was enhanced in one locality of the state, while it deteriorated from the value of that of other sections, was oppressive enough, but when you add to this a direct tax on the neighborhood injured, you have a compound of despotism and gross injustice, and sanction a principle which would rob a man, and after he was fleeced of his money knock him down for not having more to give. He felt it to be his duty to oppose measures of this kind, and though gentlemen demanded the adoption of this policy one day "as a right," and asked it the next "with tears in their eyes," yet he could not consent to any proposition not strictly just, whatever might be the plea urged in its behalf. Mr. L. concluded by moving to lay the resolution on the table.

Mr. BASCOM called for the yeas and noes, and there were yeas 38 nays 72.

Mr. RUSSELL explained the purport of the resolution to be to protect the purity of the legislature, and prevent a scramble for aid to various objects, and the importunities of lobby agents.

Mr. MANN proposed to amend the amendment by striking out all after the word "repairs," and inserting:

"Of the surplus revenues of the canals, after complying with the provisions of the two last preceding

sections, \$200,000 shall be annually appropriated to the general fund, to meet the ordinary expenses of government, the remainder of the canal revenues shall be appropriated to the improvement and enlargement of the Erie canal, and the completion of the Genesee Valley and Black River canals, until the amount so expended shall respectively reach the sum of \$1,000,000 for the Erie canal, \$1,200,000 for the Genesee Valley canal \$500,000 for the Black River canal. After the payment of the public debt, a sufficient sum shall be annually appropriated from the canal revenues to pay the ordinary expenses of government, not exceeding \$700,000."

Mr. CAMBRELENG thought whatever provision was adopted, should be adopted with some unanimity. The question appeared to be whether they should perpetuate the direct tax. To this he was opposed. First provide for the ordinary expenses of government, and then he would vote to appropriate every dollar of surplus to the improvement or completion of the canals.

Mr. STOW replied. The gentleman said the state was interested in railroads; was the Erie canal interested in these roads, and should we give up a portion of its revenues for the purpose of carrying on these roads, which are to become its rivals? He admitted that it was wrong to state accounts in this matter as though we were in a counting house; but gentlemen on the other side had commenced this practice.—We should regard this as a great state interest in which every location was interested. He could not regard it as reasonable that the canals should be made to pay the expenses of government.

Mr. CAMBRELENG read from the message of Gov. Clinton, in which he said that the revenues from the canals would one day become prolific sources of revenue for the support of government.

Mr. STOW said that that was given at a period when there had not been millions of worthless debt heaped upon us. Gov. Clinton would not use the same language at the present time. The western part of the state, the 8th district, had refunded two dollars for every one which it had received from the canals. He could not consent to the doctrine, therefore, that the canal should be made the means of taxation for the support of government.

Mr. HOFFMAN replied, saying that he knew the issue between direct taxation and the interests of locality would come. He was ready to meet that issue, and to declare here and elsewhere, that the sovereign had no right to tax the right of way for the purpose of carrying on the government. Be the consequence what it might to him, he would ever maintain this position. Fix these canals upon the surplus revenues and perpetuate the direct tax, and one set of counties will vote against you. Do away with that tax, and take the tolls to support government, and the gentleman from Erie tells us what will be the result in his region. The only safe way would have been to have adopted the report of the standing committee. To agree to any of the propositions now before the committee was impossible. He for one could never assent to any such course. For the sovereign to continue to tax the right of way to get means for its own purpose, was not only wrong, but in the end would be fatal.

Mr. PERKINS continued the debate, and was followed by Mr. VAN SCHOONHOVEN.

Mr. DANA, after a few remarks, moved the previous question, on the amendment of Mr. MANN.

Mr. W. TAYLOR, the call being waived, read a proposition which he should offer, if the pending amendment should fail. He hoped the conflicting views of members would harmonize on this, which he offered as a compromise.—Mr. T. concluded by sending up the following:—

After complying with the provisions of the first two preceding sections, an equal one-third part of the surplus revenues of the canals shall be annually appropriated for the benefit of the general fund, and the residue thereof shall be appropriated to the improvement and enlargement of the Erie canal, until the sum thus appropriated shall amount to \$2,500,000, after that the surplus revenues of the canals shall be appropriated annually at the discretion of the legislature, to defray the expenses of the government and the completion of such public works of internal improvement as have been commenced by legislative authority, until they are completed, and when such works shall be an act of the legislature, be declared completed, the sum of \$672,000, or so much thereof as shall be necessary, shall be annually appropriated to defray the expenses of the government.

Mr. DANA moved the previous question, and there was a second, and the main question on the amendment of Mr. MANN was put and lost, ayes 14, noes 97.

AYES—Messrs. Angel, Archer, Brayton, Conely, Crooker, Gardner, Mann, Morris, O'Connor, Parish, Perkins, Smith, Townsend, A. Wright—14.

Mr. W. TAYLOR then offered his proposition as an amendment to the amendment of Mr. WHITE, as given above.

Mr. WARD regretted that there should be so much feeling on the subject. He hoped there would be some compromise, or that the whole should be left to the legislature; and all it was necessary to do was to restrain the legislature in loaning the credit of the state. He thought nothing need be apprehended of an abuse of power by the legislature. With great unanimity they had fixed the amount to be paid to form a sinking fund, and but about \$500,000 would be left to the disposition of the legislature, and respecting it, he thought no provision should be made in the constitution.

Mr. MARVIN agreed with the gentleman from Westchester that it was better to let matters remain as they were than to do certain things, but he did not agree with him that the proposition of the gentleman from Onondaga should be adopted. He examined that proposition and said it was but a repetition of the proposition of the gentleman from Herkimer. If it was a compromise, the word had undergone a very great change within the past few days. He said it was the most objectionable proposition that had been offered. To ask those who desired the speedy enlargement of the Erie canal to compromise on that, was a little too much. It was a direction in the constitution that the government should be supported out of the revenues of the canal. It was, in fact, Mr. Loomis' proposition, over and over again. He hoped we should yet be able to compromise on this subject, although he confessed he almost despaired of attaining that result. He was willing to vote for

the proposition of Mr. WHITE, and hoped it would be adopted.

The debate was continued by Messrs. STETSON, LOOMIS, STOW, W. TAYLOR, MARVIN and TILDEN.

Mr. WHITE moved the previous question, and there was a second, and the main question was ordered.

The ayes and noes were called on the amendment of Mr. W. TAYLOR, and there were yeas 29, noes 86:

AYES—Messrs. Allen, Bergen, Brown, Brundage, Cambreleng, Conely, Cuddeback, Dubois, Greene, A. Huntington, Kemble, Kennedy, King, Key, Loomis, Munro, Murphy, Nicoll, Riker, Russell, Shaw, Sheldon, Stephens, Taft, J. J. Taylor, W. Taylor, Townsend, Wood, Yawger—29.

NOES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bouck, Brayton, Bruce, Burr, D. D. Campbell, E. Campbell, Jr., Candee, Chamberlain, Clyde, Clark, Cook, Cornell, Crooker, Dana, Duforth, Dodd, Dorlon, Flanders, Gardner, Gebhard, Graham, Harris, Harrison, Hart, Hawley, Hoffman, Hotchkiss, Hunt, E. Huntington, Hutchinson, Hyde, Kernan, Kirkland, Mann, McNeil, McNitt, Marvin, Maxwell, Morris, Nellis, Nicholas, O'Connor, Parish, Patterson, Penniman, Porter, Powers, President, Rhoades, Richmond, Ruggles, St. John, Salisbury, Sanford, Sears, Shepard, Simms, S. Smith, E. Spencer, W. H. Spencer, Stanton, S. Stetson, Stow, Strong, Taggart, Tallmadge, Tilden, Tuthill, Vache, Vanschoonhoven, Ward, Warren, Waterbury, White, Witbeck, Worden, A. Wright, Youngs—86.

So the amendment was rejected.

Mr. KIRKLAND called for the yeas and nays on Mr. WHITE's amendment, and there were yeas 62, nays 55:—

AYES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bouck, Brayton, Bruce, Burr, D. D. Campbell, Candee, Chamberlain, Conely, Crooker, Dana, Dodd, Dorlon, Gardner, Gebhard, Harris, Harrison, Hawley, Hotchkiss, E. Huntington, Hyde, Kemble, Kingsley, Kirkland, McNitt, Marvin, Maxwell, Morris, Murphy, Nicholas, O'Connor, Parish, Patterson, Penniman, Perkins, Porter, Rhoades, Richmond, Russell, Salisbury, Shaw, Smith, E. Spencer, W. H. Spencer, Stanton, Strong, Taft, Taggart, Tallmadge, Townsend, Vanschoonhoven, Warren, White, A. Wright, Yawger—62.

NAYS—Messrs. Bergen, Brown, Brundage, Burr, Cambreleng, E. Campbell, Clark, Clyde, Cook, Cornell, Cuddeback, Duforth, Dubois, Flanders, Graham, Greene, Hart, Hoffman, Hunter, A. Huntington, Hutchinson, Jones, Kennedy, Kernan, Loomis, Mann, McNeil, Munro, Nellis, Nicoll, Powers, President, Riker, Ruggles, St. John, Sanford, Sears, Sheldon, Shepard, Simmons, Stephens, Stetson, Stow, Swackhamer, J. J. Taylor, W. Taylor, Tilden, Tuthill, Vache, Ward, Waterbury, Witbeck, Wood, Worden, Youngs—55.

So Mr. WHITE's amendment was adopted.

Mr. RUSSELL asked for the yeas and nays on his resolution as amended, and there were yeas 64, nays 52:—

AYES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bouck, Brayton, Bruce, Burr, D. D. Campbell, Candee, Chamberlain, Conely, Crooker, Dana, Duforth, Dodd, Dorlon, Gardner, Gebhard, Harris, Harrison, Hawley, Hotchkiss, E. Huntington, Hyde, Kemble, Kingsley, Kirkland, McNitt, Marvin, Maxwell, Morris, Murphy, Nicholas, O'Connor, Parish, Patterson, Penniman, Perkins, Porter, Rhoades, Richmond, Russell, Salisbury, Shaw, Smith, E. Spencer, W. H. Spencer, Stanton, Strong, Taft, Taggart, Tallmadge, Townsend, Vanschoonhoven, Warren, White, A. Wright, Yawger—64.

NOES—Messrs. Bergen, Bowditch, Brown, Brundage, Burr, Cambreleng, E. Campbell, Jr., Clark, Clyde, Cook, Cornell, Cuddeback, Dubois, Flanders, Graham, Greene, Hart, Hoffman, Hunt, Hunter, A. Huntington, Hutchinson, Jones, Kennedy, Kernan, Loomis, McNeil, Munro, Nellis, Nicholl, Powers, President, Riker, Ruggles, St. John, Sanford, Sears, Sheldon, Shepard, Simmons, Stephens, Stetson, Swackhamer, J. J. Taylor, W. Tay-

lor, Tilden, Tuthill, Vache, Waterbury, Witbeck, Wood, Youngs—62.

So the resolution, as amended, was adopted.

Mr. STRONG moved an adjournment; but withdrew it at the request of

Mr. HOFFMAN who reported the section in obedience to the instructions just given by the Convention.

The Convention then took a recess.

AFTERNOON SESSION.

The PRESIDENT reversed a decision made yesterday, to the effect that a motion to lay an amendment on the table did not carry with it the original section.

The third section of the financial article, as reported by Mr. HOFFMAN this morning, under instructions, was taken up.

Mr. W. TAYLOR moved to amend the section, by including the Oneida river improvement. Mr. T., by consent, explained that \$75,000 had been appropriated for the improvement of the outlet of the Oneida lake, and that but \$69,000 had been expended. It would probably require about \$15,000 to complete it. Without such an amendment no appropriation could be made for that improvement.

Mr. MURPHY asked the gentleman from Onondaga whether, if the section was amended, as proposed, he would vote for it?

Mr. W. TAYLOR:—Frankly, I will say, I shall not.

Mr. LOOMIS said the same reasons for inserting the Oneida river improvement, applied to the other canals. He proposed therefore to amend, so as to say, "and the improvement of the navigation of the other canals of the state," so that the laterals might have the same class of boats as the Erie canal.

Mr. BASCOM:—Better offer that as a separate section.

Mr. WHITE hoped the gentleman would have leave to explain his amendment.

Mr. DANA asked the mover if this amendment would certainly authorize the legislature to improve the Oneida river?

Mr. LOOMIS:—Certainly; it is one of the canals of the state, and would be embraced in that general term.

Mr. LOOMIS' amendment was lost.

Mr. STETSON desired to make provision for one of the paying canals—and moved to add, "and the improvement of the Champlain canal."

Mr. MARVIN asked the gentleman whether this canal was not already provided for, under the power to make ordinary repairs?

Mr. STETSON supposed not. He did not ask for its enlargement, but the bridges wanted repairing and rebuilding, and there were crooks in it. This was a paying canal, and in the general scramble—[cries of "order," "order."]

Mr. STETSON'S amendment was lost.

Mr. SWACKHAMER moved to add, "and for the construction of the Williamsburgh and Wallabout canal."

Mr. STRONG. Has that canal been authorized by the legislature?

Mr. WHITE moved the previous question.

There was a second, &c

Mr. W. TAYLOR offered to accept Mr.

LOOMIS' proposition as an addition to his own—[but it was too late to amend.]

Mr. SWACKHAMER'S motion was lost—Mr. W. TAYLOR'S also, ayes 43, noes 62, as follows:—

AYES—Messrs. Angel, Archer, Bouck, Brown, Bruce, Cambrelenz, Candee, Chamberlain, Chatfield, Clark, Cook, Crooker, Cuddeback, Dana, Danforth, Dubois, Gebhard, Graham, Greene, Hart, Kingsley, Kirkland, Loomis, McNeill, Morris, Munro, Nellis, Perkins, Rhoades, Ruggles, St. John, Sears, Smith, Swackhamer, J. J. Taylor, W. Taylor, Townsend, Vanschoonhoven, Warren, Witbeck, A. Wright, Yawger, Youngs—43.

NOES—Messrs. Allen, Ayrault, F. F. Backus, G. Backus, Baker, Bascom, Bergen, Bowditch, Brayton, Brundage, Bull, Burr, D. D. Campbell, Clyde, Conely, Corneil, Dodd, Dorlon, Flanders, Gardner, Harrison, Hoffman, Hotchkiss, Hunter, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kernan, Mann, McVitt, Marvin, Murphy, Nicholas, Nicoll, O'Connor, Parish, Patterson, Penniman, Powers, President, Richmond, Riker, Russell, Salisbury, Sanford, Shaw, Sheldon, Shepard, E. Spencer, W. H. Spencer, Stephens, Stetson, Stow, Strong, Taft, Taggart, Tallmadge, Tuthill, Vache, Waterbury, White, Wood—62.

The section reported by Mr. HOFFMAN, under instructions, was adopted, ayes 63, noes 50, as follows:—

AYES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, F. Backus, Baker, Bascom, Bergen, Bouck, Brayton, Bruce, Bull, D. D. Campbell, Candee, Chamberlain, Conely, Crooker, Dana, Danforth, Dodd, Dorlon, Gardner, Gebhard, Harris, Harrison, Hawley, Hotchkiss, E. Huntington, Hyde, Kemble, Kirkland, Mann, McVitt, Marvin, Maxwell, Morris, Murphy, Nicholas, O'Connor, Parish, Patterson, Penniman, Perkins, Rhoades, Richmond, Russell, Salisbury, Shaw, Smith, E. Spencer, W. H. Spencer, Strong, Taft, Taggart, Tallmadge, Townsend, Vanschoonhoven, Warren, White, Worden, A. Wright, Yawger—64.

NOES—Messrs. Bowditch, Brown, Brundage, Burr, Cambrelenz, Chatfield, Clark, Clyde, Cornell, Cuddeback, Dubois, Flanders, Graham, Greene, Hart, Hoffman, Hunt, Hunter, A. Huntington, Hutchinson, Jones, Kernan, Kingsley, Loomis, McNeill, Munro, Nellis, Nicoll, Powers, President, Riker, Ruggles, St. John, Sanford, Sears, Sheldon, Shepard, Stephens, Stetson, Stow, Swackhamer, J. J. Taylor, W. Taylor, Tilden, Tuthill, Vache, Waterbury, Witbeck, Wood, Youngs—50.

The fifth section (now the fourth) of the original report was then read as follows:

§ 4. The claims of the state against any incorporated company to pay the interest and redeem the principal of the stock of the state loaned or advanced to such company, and the moneys arising from such claims, shall be set apart and applied as a part of the sinking fund provided in the second section of this article.

Mr. J. J. TAYLOR moved to add to the section as follows:

"But the time limited for the fulfilment of any condition of any release or compromise heretofore made or provided for, may be extended by law."

Mr. HOFFMAN assented to this, saying that he would have inserted it, had he supposed there was any possible necessity for it.

Mr. PATTERSON remarked that the word "defined" having been struck out, the legislature would have this power.

Mr. HOFFMAN thought so—but the gentleman from Tioga thinks not.

Mr. J. J. TAYLOR had looked into this matter with some care, and he thought there was doubt about it.

Mr. T.'s amendment was adopted, as was the section, as amended.

The sixth (now fifth) section was then read as follows:

§ 5. If the sinking funds, or either of them provided

in this article, shall prove insufficient to enable the state, on the credit of such fund, to procure the means to satisfy the claims of the creditors of the state as they become payable, the legislature shall, by equitable taxes, so increase the revenues of the said fund as to make them, respectively, sufficient perfectly to preserve the public faith. Every contribution or advance to the canals, or their debt, from any source other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the treasury, for the use of the state, out of the canal revenues, as soon as it can be done, consistently with the just rights of the creditors holding the said canal debt.

Mr. MARVIN moved to strike out "quarterly" before "interest"—asking what was intended by "rates then current?"

Mr. HOFFMAN: Such rates as the state can obtain loans for, paying interest quarterly.

Mr. MARVIN thought as the money was to be raised by "equitable taxes," and as individuals paid seven, that it might bear that construction.

Mr. HOFFMAN thought not. The words "rates then current" were designed to meet that difficulty.

Mr. PATTERSON remarked that if it had read the "legal rate" of interest, then it would bear the construction of his colleague.

Mr. MARVIN waived his amendment.

Mr. LOOMIS moved to strike out the words by "equitable taxes," in the fifth line. He desired to give the legislature more latitude. Lost, ayes 49, noes 57.

The section was agreed to, without debate.

The seventh (now sixth) section was then read, as follows:

§ 7. The legislature shall not sell, lease, or otherwise dispose of any of the canals of the state; but they shall remain the property of the state and under its management, forever.

Mr. BURR moved to amend by striking out "any of the" in the second line, and inserting "Eric and Champlain," and also to strike out "of the state" after "canals."

Mr. WATERBURY demanded the ayes and noes, and the amendment was negatived: ayes 18, noes 79.

Mr. J. J. TAYLOR moved to amend by adding "but the whole or part of the Chenango and Chemung canals may be disposed of to companies, in order to procure or induce their extension." Lost.

The section was then agreed to without amendment.

Mr. RHOADES moved the additional section proposed by him yesterday in relation to the salt springs. Mr. R. remarked that under the present constitution the state was not allowed to sell the lands contiguous to the springs. There were now 549 acres of these lands, which might be sold for \$1500 or \$2000 per acre, and the object of the section was to allow the state to dispose of the present lands and invest the proceeds in others more convenient to the state, those now held being too high, the aggregate quantity not to be diminished.

The section was agreed to.

The article having been gone through, Mr. HOFFMAN moved its printing as amended.—Agreed to.

The article as amended is as follows:—

§ 1. After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart out of the revenues of the state

canals, in each year, commencing on the first day of June, 1846, the sum of one million and three hundred thousand dollars until the first day of June, 1856, and from that time the sum of one million and seven hundred thousand dollars in each year as a sinking fund to pay the interest and redeem the principal of that part of the state debt called the canal debt, as it existed at the time first aforesaid, and including three hundred thousand dollars then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

§ 2. After complying with the provisions of the first section of this article there shall be appropriated and set apart out of the surplus revenues of the state annually, in each year, commencing on the first day of June, 1846, the sum of three hundred thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section to pay the interest and extinguish the entire principal of the canal debt; and after that period then the sum of one million and five hundred thousand dollars in each year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the general fund debt—including the debt for loans of the state credit to railroad companies which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon whenever and as far as any part thereof may become a charge on the treasury or general fund—until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the said sinking fund shall at any time be deferred, by reason of the priority recognized in the first section of this article, the sum so deferred, with quarterly interest thereon, at the then current rate, shall be paid to the last mentioned sinking fund, as soon as it can be done consistently with the just rights of the creditors holding said canal debt.

§ 3. After paying the said expenses of superintendence and repairs of the canals, and the sums appropriated by the first and second sections of this article, there shall be paid out of the surplus revenues of the canals, to the treasury of the state, on or before the thirtieth day of September, in each year, for the use and benefit of the general fund, such sum, not exceeding \$200,000, as may be required to defray the necessary expenses of the state; and the remainder of the revenues of the said canals shall, in each fiscal year, be applied, in such manner as the legislature shall direct, to the completion of the Erie canal enlargement, and the Genesee Valley and Black River canals, until the said canals shall be completed.

§ 4. The claims of the state against any incorporated company to pay the interest and redeem the principal of the stock of the state loaned or advanced to such company, shall be fairly enforced, and not released or compromised; and the moneys arising from such claims shall be set apart and applied as part of the sinking fund provided in the second section of this article. But the time limited for the fulfillment of any condition of any release or compromise heretofore made or provided for, may be extended by law.

§ 5. If the sinking funds, or either of them, provided in this article, shall prove insufficient to enable the state, on the credit of such fund, to procure the means to satisfy the claims of the creditors of the state as they become payable, the legislature shall, by equitable taxes, so increase the revenues of the said funds as to make them, respectively, sufficient perfectly to preserve the public faith. Every contribution or advance to the canals, or their debt, from any source, other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the treasury, for the use of the state, out of the canal revenues, as soon as it can be done, consistently with the just rights of the creditors holding the said canal debt.

§ 6. The legislature shall not sell, lease, or otherwise dispose of any of the canals of the state; but they shall remain the property of the state and under its management, forever.

§ 7. The legislature shall never sell or dispose of the salt springs belonging to this state. The lands contiguous thereto and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law and under the direction of the commissioners of the land office, for the purpose of invest-

ing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished.

STATE DEBT—SPECIFIC APPROPRIATIONS.

On motion of Mr. HOFFMAN, the 2d article reported by the finance committee, was taken up.

The first section was read as follows:

§ 1. No money shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payment be made within two years after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Mr. HOFFMAN, after what had occurred, did not feel that it was necessary to make extended remarks in explanation of this article. It was now certain, that in the future as in the past, whatever debts were created would be fixed eventually on the navigation of the Erie canal. Every friend of cheap transportation would see that if we intended to guard these canals against tolls and taxes, it must be done by a fair restraint on the legislative power to create debt. He held that every administration, state and municipal, should collect and pay as it went. If that rule could not be enforced, every administration would leave burthens for the future, and severe taxation or repudiation, the meanest of all things, must come out of it. He desired to establish the doctrine of specific appropriations—so as to oblige the legislature to look over the state expenses every two years, and to fix upon the face of the statute what money shall be paid out each year. This was necessary in a free, responsible, representative government. As the law now stood, the Executive government might go on for years, without the legislature—the power and the duty to pay all demands against the treasury being vested in the public officers, and if there was no money in the treasury they could go into the market and borrow, and borrow again to repay. The limitation of two years he thought advisable, because the senate was to be a new body every two years. This would oblige every new legislature to see what money went for this and that object, and the people by reading the statutes, would get some idea of the money expended annually in carrying on the government.

Mr. KIRKLAND made an enquiry—to which Mr. HOFFMAN replied, that if a party having a claim against the state, neglected for two years after the money was appropriated, to come and get it, a new appropriation must be made.

Mr. WORDEN concurred fully in the object which he supposed Mr. HOFFMAN had in view. We had fastened on the canals a very large charge. We had entailed upon them the payment of the entire debt of the state—and it was but just that we should see to it that in the future these canals shall not be encumbered by capricious or unwise legislation. With a view to prevent these revenues from being appropriated otherwise than as we had provided, and to carry out the views often expressed by the gentleman from Herkimer, he moved to add to the section as follows:

“Nor shall the revenues of the canals of this state, except as herein provided, be appropriated or applied to any other purpose than the reparation and improvement of the said canals, and such expenses and charges as are incident thereto.”

Mr. PERKINS enquired whether this would not prevent the application of the canal revenues to the payment of land damages growing out of the enlargement?

Mr. WORDEN said, certainly not. He could not be guilty of that.

Mr. PERKINS did not suppose the gentleman would intentionally; but such might be the construction of his proposition.

Mr. WORDEN replied that if there was any thing in the suggestion, we should go back and amend some provisions we had already inserted.

Mr. PERKINS had no doubt that the amendment would permit appropriations for land on which the canal was built. But there was a class of cases which he should think the proposition would exclude—cases of consequential damage, for instance.

The CHAIR suggested that the amendment was not exactly compatible with the section.

Mr. HOFFMAN said that so far as related to the specific appropriations and charges in the article just passed, there could be no necessity of repeating them here, and embarrassing the subject with the whole quarrel which hung on that unfortunate article. But this was the main scope of this amendment. He should vote against it. If this article was not mutilated and destroyed, it would abundantly protect the canal revenues so far as they were designed to be appropriated to particular purposes, and it would provide a salutary rule for making appropriations. This amendment should have been incorporated in the other article if any where. And he trusted we should not be again involved in the controversy as to what the legislature might do with any surplus that might remain after the appropriations already made should be satisfied—for if we were, we should not get through this article or any thing else during the sitting of this body. Mr. H. again explained the operation of this section, as calculated eminently to secure safety and responsibility in the matter of appropriations.

Mr. WORDEN had offered his amendment somewhat with a view of drawing from the gentleman from Herkimer his construction of the provisions of the article which had been adopted, in securing the revenues of the canals from legislative interference until the canals should be completed. He concurred with him that this was placed beyond their reach by the sections already adopted, and he therefore consented that his amendment should lie upon the table.

Mr. KIRKLAND asked if under this section, all appropriations for common schools, for academies, &c. &c., must be made annually or biennially?

Mr. HOFFMAN replied that they must be made every two years, though they might be constitutionally pledged. Under the U. S. constitution, though money was agreed to be paid, it would not be paid without a specific appropriation.

Mr. WORDEN asked how appropriations could be made to carry out a contract on the canals, that has more than two years to run?

Mr. HOFFMAN replied precisely as they did under the federal government. If there was no appropriation, nothing could be paid—but it was not to be supposed that the legislature would omit or delay an appropriation and thus arrest the progress of a work. He regarded this as one of the most important provisions that could be inserted in the constitution. The object of the section was to prevent the legislature from pledging the revenues for more than two years in advance, and compel them to review them every year, to ascertain what appropriation would be necessary. He had not been able, from his knowledge of the subject, and from consultation with officers of the government here with him, to find out any better method of compelling the legislature to perform with wisdom and careful attention this great work, which was the most necessary in order to secure a safe, responsible and free government.

Mr. WORDEN concurred fully with the gentleman in the propriety of obliging every legislature to know distinctly what amount they appropriated for any and every purpose whatever. It would oblige them to provide the means as well as to make appropriations. But he desired to go a little further. He had intended to present a section which should compel the legislature to provide ways and means, by taxation or otherwise, for the payment of every appropriation which they should make. He had not brought it with him this afternoon, but he hoped the gentleman from Herkimer would take it into consideration. He believed that it would tend greatly to promote economy in the administration of the government.

Mr. RHOADES said there had been for the last four or five years, a great strife on the part of those who wished to be considered exclusive friends of the common schools, to withdraw the funds applied to academies, &c. from the United States deposit fund. The strife would come up every two years, under this section. He hoped that some provision would be made to secure the academies from fluctuating legislation.

Mr. NICOLL remarked there was a separate article on that subject.

Mr. MARVIN thought he could offer an amendment which would meet the views of the gentlemen from Onondaga and Herkimer. He moved to amend the fourth and fifth lines so that it should read as follows. "no unless such payment be made within two years next after the same shall be payable pursuant to such appropriation."

Mr. HOFFMAN said this would leave the matter precisely where it now was. It would enable the legislature this year to pass an act that would run four or five years ahead. That he desired to avoid. As to the objection of Mr. RHOADES, that would be obviated by a provision that would keep the literature fund distinct from the school fund. For one, he regarded colleges and academies as schools for the counties and the state, and as indispensable as the schools were to the districts. Hence he would keep these funds distinct. Another advantage would result from this provision. It would oblige the public officers, in regard to all these trust funds, to come forward and say what they produced,

ask what appropriations they wanted, so that the legislature every year might appropriate, and the public know what was appropriated.

Mr. KIRKLAND inquired what would be the practical effect of this section upon the law which appropriated money to certain colleges for five years and until otherwise ordered? Would this require the passage of a new law every two years?

Mr. HOFFMAN said it would be precisely like the action of Congress under a treaty stipulating to pay money. If a law should be passed appropriating money to Hamilton College for five years, the public officers would pay the money for two years. After that they must inform the legislature that so much money was needed for that purpose, and the legislature must make the appropriation.

Mr. KIRKLAND:—Suppose, in that case, the legislature, after two years were to refuse to continue the appropriation?

Mr. HOFFMAN replied that if the legislature should act against law, their duty and their oaths, he knew of no way to make it obligatory. You could not get a mandamus against the legislature. It must be left entirely with them to appropriate. If the law calling for it was a bad one, it would be a question between them and their constituents. He had no apprehension that they would refuse to appropriate when good faith required it.

Mr. RICHMOND hoped the section would pass precisely as it stood. The appropriations to academies, from the deposit fund, he hoped would be left to the control of the legislature entirely, as it was now. It never should have gone to them, and should be taken away. And so of these appropriations to colleges.

Mr. MARVIN withdrew his amendment.

Mr. VAN SCHOONHOVEN renewed it, and went on to oppose the entire section—in the course of his remarks attributing to Mr. RICHMOND hostility not only to all literary institutions, but to the charitable and benevolent enterprises of the day.

Mr. SWACKHAMER replied in defence of the section.

Mr. BROWN also sustained the section.

Mr. RICHMOND defended himself from the charge of illiberality towards charitable and literary associations.

Mr. BERGEN moved the previous question, and it was seconded.

The amendment was negatived and the section adopted.

The 2d section was read as follows :

§ 2. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association or incorporation.

Some conversation here ensued between Messrs. VAN SCHOONHOVEN and RICHMOND in relation to the matter before at issue between them.

Mr. SWACKHAMER moved to add after the word "credit" the words "money or property."

Mr. HOFFMAN opposed the amendment, saying that if the state had money to lend, it should be allowed to lend it—if property, to sell it.

Mr. SWACKHAMER did not suppose the

state would have money to lend very soon. But he withdrew his amendment.

Mr. O'CONOR moved to add to the end of the section the following:—

"Nor shall any gift of public moneys or property be made except as a reward for military services, or by the release of escheats or forfeitures."

Mr. RUSSELL thought the section sufficiently guarded. And if it should turn out, after the payment of the public debt, that the state should be in possession of large revenues, it might be that the state might think it right to make donations to some sections which had built their own works at their own expense.

Mr. O'CONOR would not press the amendment, if there was a single objection to it.

The section was adopted unanimously.

The third section was read as follows:—

§ 3 The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct or contingent, singly or in the aggregate, shall not, at any time, exceed one million of dollars, and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

The section was adopted *nem con.*

The fourth section was read as follows:—

§ 4 In addition to the above limited powers to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Mr. HOFFMAN explained the section, and it was adopted without opposition.

The fifth section was then read as follows:—

§ 5 Except the debts specified in the third and fourth sections of this article, no debt or liability shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by a law for some single work or object, to be distinctly specified herein, and such law shall impose and provide for the collection of a direct annual tax, to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for or against it, at such election. On the final passage of such bill in either house of the legislature, the question shall be taken by yeas and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?" The legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted or liability incurred in pursuance thereof, repeal the law; and may at any time by law forbid the contracting of any further debt or liability under such law, but the tax imposed by such act in proportion to the debt and liability which may have been contracted in pursuance of such law shall remain in force and be irrevocable, and be annually collected until the proceeds thereof shall have made the provision heretofore specified to pay and discharge the interest and principal of such debt and liability.

The money arising from any loan or stock creating debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever.

No such law shall be submitted to be acted on within three months after its passage or at any general election, when any other law or any bill or any amendment of the constitution, shall be submitted to be voted for or against.

Mr. HOFFMAN said, as this section had been regarded as a serious change in the form of our

government, he would explain it briefly. He spoke of the disposition of all free governments to contract debt, as their besetting sin, against which it was indispensable to guard, if we would avoid taxation direct or indirect. Unless some check was placed upon this dangerous power to contract debt, representative government could not long endure. Without some check, you would have debt, and this debt would be fastened upon the surplusses of your canals—and those who, with him, favored a free transportation and travel, would guard against debt, which more than any thing else, would form iron bars to trade. He proceeded to point out the operation of the section. The submission principle was so guarded that the representative must endorse the act submitted as right and proper.—The taxing principle would operate also as a check against engaging in doubtful projects.—The obligation to submit laws to the people at a general, rather than a special election, would also secure the masses against a surreptitious decision. Again, the law was to be three months before the people prior to an election—and this too would prevent the people being taken by surprise. Again, if the law was modified or repealed, the tax must remain to sponge out the debt.

Mr. SHEPARD moved to strike out all of the section after the word "state" in the third line. Mr. S. advocated his amendment, saying that he desired to prohibit entirely the creation of a debt, except for the purposes specified in the preceding section. He did not think that government should run in debt, except in those particular cases.

Mr. BASCOM had intended to move an amendment authorizing the legislature to create debt, providing they had the moral courage to provide for its payment by direct taxation. He had his fears that if this section should stand as it was, it might lead hereafter to the creation of another large debt. He preferred to leave this matter with the legislature, believing the check of direct taxation would be sufficient to guard the interests of the people. He thought the amendment of the gentleman from New York far preferable to the original section. He believed the time had gone by, when in view of the great resources and wealth of this state, it would be necessary to create new debts. Much less did he believe it would ever be necessary to set in motion this cumbrous machinery to create debt. When it should become absolutely necessary to raise money, let it be done by direct taxation. He did not approve of this section, for so far as it related to this matter, it did change our representative government into a democracy.

Mr. LOOMIS did not believe in the probable necessity of creating a debt; but such a contingency was possible. He would therefore leave the future to meet such contingencies, as they arose. He had always believed, that the legislature and people, for the time being, might with perfect propriety be trusted with the disposition of the immediate subject before them, of their own property and means in hand; but that they never had the right to legislate for the future, to bind those who were to come after them so as to prevent them from perfect freedom of action. But what had been our course to day?

We had been legislating for the future—tying down their hands for the next 25 years on matters which pertained exclusively to themselves. It had been perfectly analogous to pledging the faith of the state to carry on the public works, and drawing on the future for payment. We had to-day imposed a tax for 25 years for the prosecution of the public works, and this too without estimates, surveys or any requisite knowledge. This binding up the future, by our acts, he had all along deprecated and now deprecated. For this reason he opposed this amendment. Was it for us to say in advance that the people should not impose on themselves debt and taxation, if they think the emergency required it? Mr. L. doubted the power of the people to restrict themselves or the future in this way. If this section should be amended in this way, and the legislature should submit to the people a proposition to create a debt and tax themselves to pay it, and if that act should be ratified with all the solemnity that they would adopt this constitution, he doubted whether any power could prevent it.

Mr. E. HUNTINGTON moved to amend the section by striking out all that relates to the submission of the law to the people.

Mr. RUSSELL opposed the amendment. The principle recognized here was in practice in all our towns, and the people in their primary capacity, voted taxes on themselves to the amount of millions, in the aggregate, every year. This power to tax could not be lodged in safer hands than in the hands of those who had to pay.

Mr. BAKER said if the amendment of the gentleman from Oneida should prevail, he should move to insert a provision, to the effect that no law creating a loan should take effect unless it shall receive the assent of a majority of all the members elected in two successive legislatures.

Mr. PATTERSON felt little interest in these amendments. After we had adopted a provision authorizing the legislature to create debts in case of war or invasion, he did not believe there would ever be any necessity to incur any other debt to the amount of a single dollar. He should therefore vote for the amendment of Mr. SHEPARD. He believed after the present debt of the state was paid, the canals would yield a revenue abundant for all purposes. No one could visit the western states and see their almost boundless resources, and still doubt but that the revenues of the canals would in a few years amount to five or six millions of dollars. Why, only ten years ago the little county of Livingston sent to the New York market a greater amount of products than all the region west of Buffalo. But now, there were twenty counties in Ohio alone that sent more than that county. He was sure that the tolls on our canals, though they might be reduced one-half, would reach the amount he had named. Believing then that they would be abundantly sufficient for all the purposes of the state, he should vote for the amendment of the gentleman from New York.

Mr. KIRKLAND said the gentleman had a greater degree of prescience than most of us.—For himself, he concurred with Mr. Loomis, that we could not foresee every thing that might happen, and that we could not do an idler thing than to assume and act on the presumption that no state of things could exist making it proper or necessary to contract a debt. He thought the section abundantly guarded, even if it should provide only that whenever a new debt should be proposed, the means of payment should be provided by direct taxation. But if this was not sufficient, the other guard, to which he had no objection, would abundantly secure us against improvident debt.

Mr. WORDEN opposed the section, as implying an admission that the experiment of a republican, representative, responsible form of government, after a trial of more than 70 years, had proved a failure, and was not to be trusted in the exercise of an essential function—that the people were not capable of judging of the action of the action of their representatives, and of correcting their errors. He regarded the proposition if carried out, as calculated to lull the people into a false security, and to disarm them of that vigilance in regard to the action of their representatives, that was essential to the preservation of public liberty. He protested that under the system which had been so long been in practice in this state, and under the legislation which had been so much censured and denounced, the state of New-York had made unparalleled progress in all the elements of wealth and greatness—that their never was a time when the people was not capable of appreciating and of approving or condemning the action of their representatives, and for one, he was not willing to place a stigma upon the intelligence of the people, and upon representative government, by voting for any such provision as this.

Mr. SHEPARD modified his amendment by also striking out the words, "or liability."

Mr. HOFFMAN replied to Mr. WORDEN in defence of the section.

Mr. J. J. TAYLOR laid on the table a motion to reconsider the 6th section of the first financial report.

Mr. BROWN, a similar motion to reconsider the 3d section of that report.

Mr. SWACKHAMER laid on the table two additional sections to the pending article.

BOARDS OF SUPERVISORS.

Mr. R. CAMPBELL, jr., from committee number 15, submitted the following report:

ARTICLE —.

§ —. The legislature shall provide by law for the reorganization of the boards of supervisors of the several counties of the state, so as to create a more equal representation in said boards, and may confer upon the same such further powers of local legislation and administration as shall from time to time be prescribed by law.

The Convention then adjourned to 8½ o'clock to-morrow morning.

WEDNESDAY, SEPTEMBER 23.

Prayer by the Rev. Mr. WILKINS.

Mr. YAWGER presented a memorial from citizens of Cayuga county for an equal distribution of the literature fund. Referred to committee of the whole.

Mr. MANN called the attention of the Convention to the fact that the clerks of the first and third chancery districts had made no returns in answer to a resolution sometime since passed by the Convention. They were the two most important, and the districts in which the largest amount of funds were held. He moved that the Secretary be directed to communicate with them and request answers in obedience to the resolution.

Mr. TAGGART suggested that the registers and assistant registers should be included in the resolution.

Mr. MANN assented.

Mr. HOFFMAN suggested that the communication should be sent to the appointing power—the Chancellor—so that if any subordinate neglected to discharge his duty, contumacy might be punished.

Mr. MANN so modified his resolution, and as amended it was adopted.

RESTRICTIONS ON THE DEBT-CREATING POWER.

The Convention resumed the consideration of the second report of the finance committee, on the power to create state debts and liabilities and in restraint thereof.

The pending amendment was that offered last night by Mr. E. HUNTINGTON, to the 5th section.

Mr. E. HUNTINGTON moved further to amend by striking out the word "approval" in the 17th line, and insert "passage," and by striking out "by the people" from the 18th line, so that the section would read, "the legislature may at any time after the passage of such law," &c., instead of "the legislature may at any time after the approval of such law by the people," &c.

Mr. HOFFMAN defended the section. He was willing to trust to the intelligence of the people. He expressed his confidence in the population of cities. He had not seen anything in their political action heretofore which had led him to fear that they would yield to the corrupt influences of politicians, for the perpetration of mischief, and he believed they would behave themselves as well in future. The people had never created a debt which they were afterwards willing to repudiate; and while he had never had any overweening confidence in the masses, which they did not bestow upon himself, from necessity or otherwise, he still would trust them in such a matter with a greater feeling of security than he could have in the legislature. In fifteen years, if that body had the power to contract debt, we should find ourselves in the full career of debt and taxation.

Mr. WORDEN would not say that this article was intended to be deceptive, or that it emanated from a spirit of demagoguism, but he did declare it specious and fallacious. It did not prevent the legislature from contracting any debt it thought proper to create. The gentle-

man from Herkimer was now the subordinate of a government which annually taxed this state \$2,000,000, and which was now engaged in a war, the expenses of which would bring to this state an expense of ten millions of dollars. And yet the gentleman sought not to put a limit upon the general government in its power to create debts. Why this attempt to save the people in the penny, while they were open to robbery by the pound? It was a specious pretence to deceive the people with the idea that they were to be saved from debt and taxation in this way.—In every portion there was deceit. Let gentlemen look back to the legislature of 1836, and they would find that had it not been for that legislature, which was then the true conservative branch of the government, the state might now have been groaning under additional millions of debt. While the members of the legislature acted upon their individual responsibility, they would be cautious in their acts; but relieve them from that responsibility by giving to the people the approval of all laws to create debt, and this conservative feature of our representative government is gone, and log-rolling would be open and bold in the halls of legislation, invited by this very provision. Upon every feature of this section was written distrust of the intelligence of the people, and it was subversive of every principle of a representative government.

Mr. HOFFMAN said the whole argument of the gentleman was founded upon the circumstance of his (Mr. H.) holding an office under the federal government. But he alleged that his acts would show him to have been at no time a great advocate for the extent of the power of that government. So far from a distrust of the people, his article was founded upon the belief that the people knew as well as their representatives what was best for themselves. Log-rolling would be prevented by the provision that but one law should be submitted to the people at the same time. He distinctly affirmed what the gentleman denied, that the legislature would be prevented by this section from creating new debts.

Mr. SIMMONS had been taxed with hearing a great deal of the same arguments which had been advanced here this morning at a time when he had a seat in the legislature. He was opposed to the ideas advanced, which were in substance that the legislature should be made a mere committee, that should report in due order under particular directions. He compared the state of New-York to a triangle, the several parts of which had different interests, making up a perfect whole; and all these interests should be properly taken care of. The Erie canal had been built with money borrowed in Europe, by which the great West had been rendered prosperous. He would do justice to that portion of the state, which he knew had no jealousy of other parts of the state. His own region was one where the iron mining principle prevailed, always the last to come to perfection; and there should be no constitutional provision which

should prevent the legislature from holding out an impartial hand in aid of all interests in the different parts of the state. He could not consent to carry this question to the polls, by which *isms* would only be perpetuated by appeals to local feelings. Mr. HOFFMAN had alluded to the circumstance that all arts and sciences had derived their titles from the original name of "city," and Mr. S. went into an archæological statement in correction of Mr. H.

Mr. NICOLL defended the section. Instead of creating *isms* and log rolling, he thought it would effectually guard against both. It was only in legislative bodies that there could be log rolling; it was impossible amongst the masses. He thought the section was requisite to secure necessary reforms.

Mr. CAMBRELENG showed by reference to the constitution of New Jersey, of 1844, that the gentleman from Essex was in error in saying that no such provision had ever been adopted in the civilized world. The same constitution provided that no two appropriations should be put into the same section, so that each one would stand on its own merits. This provision, too had found its way into the constitutions of Iowa, Louisiana, Texas, Michigan and Mississippi, which, however, had unfortunately failed. It was from this state, originating in the proceedings of 1835, and later years, which demanded the "people's resolution" and the act of 1842.

Mr. RHOADES briefly opposed the section, and read an amendment which he desired to offer at the proper time, as follows:—

§ 5 Except the debts specified in the third and fourth sections of this article, no debt shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by law for some work or object to be distinctly specified therein; and no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for or against it at such election.

Mr. W. TAYLOR was in favor of the principle incorporated into this section. The submission to the people would prevent log-rolling and guard the state from debt, for it could not be supposed that the people would tax themselves imprudently; the greater danger was that they would not go far enough.

Mr. MORRIS was opposed to the amendment of the gentleman from Oneida. On referring to the history of the state he said it was found that all works which were general and had met with the approval of the people, were productive of good in themselves and of a surplus to the treasury of the state. Not so in respect to works that were local, and got up by political parties and combinations. If this section was adopted, it never would stop one solitary work that the interests of the state might require; notwithstanding the thousands of local acts which had an effect on political leaders.

Mr. RHODES continued the debate. He said he was wrong to be obliged to part company with his friend and colleague (Mr. TAYLOR) who was, like himself, the son of federal parents, and had grown up with him as young federalists. He had acted with him in favor of Clinton and internal improvements in favor of the speedy enlargement of the Erie canal, (laughter), in favor of that national bank, (laughter),

and in favor of every public measure which he (Mr. R.) had advocated, until the time of the political scuffle in 1823, and at the time of the introduction of the "People's Resolutions," they were not found acting together, and since which they have been obliged to differ upon almost all questions of state policy. He had offered his substitute because he supposed it was a middle ground upon which they could both act in concert.

Mr. W. TAYLOR, in self-vindication, said that he had parted company with his colleague under the administration of Adams, with which he (Mr. T.) was dissatisfied. Since that time he had followed the doctrines of the democratic party, while his colleague had pursued his old course.

Mr. RHOADES wished to refresh the memory of his colleague upon this question, but

Mr. W. TAYLOR contended that he needed not to be reminded of past history.

Mr. RUSSELL suggested that the question between the two gentlemen should be referred for settlement to the court of conciliation.

Mr. SHEPARD spoke of the purposes for which governments were instituted, and concluded that they ought to be restrained from embarking in stupendous works of improvement, and limited to their legitimate duties to protect the just rights of citizens. Public works by states had never been productive, as he said was shown by the engagements of many states which he enumerated.

Mr. BRUCE moved the previous question.

The call was seconded, 40 to 19—no quor m. At a second vote there were 41 to 24. The main question was on the motion of Mr. E. HUNTINGTON, it was lost—ayes 34, noes 70:—

AYES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Brayon, Bruce, Bull, Chamberlain, Crooker, Dodd, Dorlon, Graham, Hawley, E. Huntington, Jordan, Marvin, Nicholas, O'Connor, Parish, Patterson, Penniman, Porter, Richmond, Salisbury, Simmons, W. H. Spencer, Stow, Strong, Taggart, Van Schoonhoven, Warren, Worden, A. Wright—34.

NOES—Messrs. Allen, Bancroft, Bergen, Bowditch, Brown, Brundage, Burr, Cambreleng, D. D. Campbell, R. Campbell, Jr., Chaffield, Clark, Clyde, Cornell, Cuddback, Dana, Danforth, Dubois, Flinders, Gebhard, Greene, Harrison, Hart, Hoffman, Hotchkiss, Hunt, Hunter, A. Huntington, Hutchinson, Jones, Kemble, Kernan, King, Key, Klavan, Loomis, Mann, McNeil, McNitt, Morris, Munro, Murphy, Neil, Perkins, Powers, President, Riker, Ruggles, Russell, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Smith, Stanton, Stephens, Tilton, Swasey, Tamm, Taft, J. J. Taylor, W. Taylor, Tilden, Townsend, Tutuill, Ward, Waterbury, White, Wilbeck, Wood, Yawger, Youngs—70.

Mr. SHEPARD's amendment offered last night was next in order. It strikes out all of the section after the word "state" in the third line—and prohibits, in effect, the contraction of any new debt, except in the cases previously specified.

The amendment was lost, ayes 31, noes 73.

The section was then adopted, ayes 72, noes 36.

The 6th section was next read as follows:—

§ 6. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

Mr. BAKER intimated his intention hereaf-

ter to move to recommit the 5th section with instructions.

Mr. HOFFMAN explained the purport of the 6th section to be to secure a statement of the tax and the object to which it is to be applied in the law itself, that the people may know what and for what their burthens are imposed.

The section was agreed to.

Mr. CHATFIELD offered the following as an additional section:—

§ —. No direct tax shall be levied on the people of this state as long as the revenues of the state shall be sufficient to meet the demands of the several sinking funds to pay the debts of the state in the preceding article provided, and the expenses of the state government.

Mr. C. said he had drawn up this because he did not think it was the policy of this state for the next 20 or 30 years to impose direct taxes, especially when the revenues of the state would be sufficient for every purpose. He quoted from the Comptroller's report to show what the contemplated revenues and expenditures would be.

Mr. STOW said the question of the relation of the canals to the government, and what proportion of the tax they ought to pay, had been so often discussed that he would not venture to go at very great length into it at this time; but there was one point to which he would call attention for a few moments. It had been urged that they of the canal districts ought to sustain the government, because the canals were made by the government. But was it the only purpose of the government to make canals? Was the security of life, and liberty, and property nothing? What were the institutions of education, and asylums for the unfortunate? The county of Delaware, it had been said, was injured by the canals, and therefore that the canal districts should contribute her share to the support of the government. How much had the state expended to maintain law and order in Delaware? And was that of no consequence? All must agree that it was of as much consequence as the canals were to other counties. He appealed then to their sense of justice not to single out any particular district to say because the God of Heaven has given you a country through which the canal runs, therefore you shall pay all the taxes requisite for the support of the government. Would the gentlemen on the line of the Erie railroad, to which the state had given three millions of dollars, assent to such a principle? His district was willing to pay their proper share, but they would not submit to be taxed for all.

Mr. PERKINS said St. Lawrence county stood away from these canals, but they were not narrow-minded enough to object to the imposition of a trifling tax for the purpose of completing these great public works.

Mr. WHITE offered the following amendment to the amendment of Mr. CHATFIELD:

"Provided, however, that no more than \$200,000 annually shall be taken from the canal revenue, until the Erie canal enlargement, and the Genesee Valley and Black river canals are completed."

Mr. W. TAYLOR read an amendment which he desired to offer, as follows:

§9. If at any time after the period of five years from the adoption of this constitution, the revenues of the state unappropriated by the last preceding article,

shall not be sufficient to defray the necessary expenses of the government without continuing or laying a direct tax, the legislature may at its discretion, apply the deficiency in whole or in part, from the surplus revenues of the canals, after complying with the provisions of the first two sections of the last preceding article for paying the interest and extinguishing the principal of the canal and general fund debt.

He said the Convention had given a constitutional pledge for the enlargement of the Erie canal, and the completion of some unfinished works, and therefore the tax was necessary; in fact, gentlemen had changed their tone and seemed to think a tax was desirable—that it would cause the people to look more closely after their representatives. Be this as it may, he desired to leave it to the people, by their representatives, to say whether the tax should be continued.

Mr. CHATFIELD opposed all these amendments, being desirous to present the simple question of taxation or no taxation. In the course of his remarks he said the veto message of Gov. Wright in 1844 was based upon the very principle of his proposition. And yet we saw here the strange spectacle of his "peculiar" friends, the representatives from his county, taking ground against those views. He thought Gov. Wright more than any other man, had reason, in the language of Shakspeare, to put up the prayer, "God save me from my friends!"

Mr. HARRIS:—How does the gentleman from Otsego propose to get the funds for the support of government, beyond the \$200,000 appropriated yesterday? [A voice.—And where does the gentleman get his Shakspeare quotation?]

Mr. CHATFIELD only wanted to get a direct vote on this proposition. If it should prevail, the Convention would see the necessity of rescinding the vote of yesterday. He would leave it to the gentleman from Albany and his whig friends to find the ways and means.

Mr. RUSSELL was very glad to get the floor after the direct, personal attack made upon two of the representatives from St. Lawrence. He would here say that neither himself nor his colleague (Mr. PERKINS) had had any conversation with Governor Wright, nor did he know what his views were. But he could tell the gentleman from Otsego, that he had read that veto message as often and as carefully as himself, and he would tell him that it had meant no such thing as he had charged. Silas Wright was not the man to play the demagogue, as the gentleman would have us believe. The proposition of that gentleman was the merest demagoguism boiled down. He would never give his consent to it. Did the matter rest on his vote, he would compel the people for all time to come to pay by direct tax, at least one-third of the amount necessary to support government. He despised these demagogical appeals of the gentleman from Otsego, and others who had followed in his train, against direct taxation. He could tell him that Silas Wright never would act such a character to attain any object. If he were that gentleman, he would say to the gentleman from Otsego, "God save me from such friends." No statesman ever had or ever would advocate any such policy as that embraced in the proposition of the gentleman from Otsego.

Mr. LOOMIS said it appeared from the re-

marks of the gentleman from St. Lawrence, that himself (Mr. L.) and all others who had engaged in this debate, with the single exception of the gentleman from Erie, (Mr. Stow,) were entitled to a peculiar and somewhat odious appellate. He did not think it necessary to reply to that attack. But from the knowledge which all had of the expenses of government, it was evident that it would be necessary, under the article now adopted, that a direct tax should be levied to supply the deficiencies in the revenues. These expenses must be met, the officers of government must be paid, and he hoped there was liberality enough among the gentlemen who voted for the section adopted yesterday, to modify it to meet the necessities of the case.

Mr. TALLMADGE said he had been an anxious listener to the debates, for several days past, on the subject of the finances of the state. The votes which had been given on the various propositions, might seem inconsistent to those who did not study the object, the causes and the effect. The course the debate had now assumed, and the fact that gentlemen who argued and submitted propositions, did not avow their ulterior objects, called for some explanation. He had no unwillingness to avow that his votes had been given with intent to secure the great interests of the state—in providing for the payment of interest and the debts of the state, and with hindrances and preventions against the creating future debts. This had been successfully accomplished in the previous sections already adopted. It now remained only to provide for the necessary expenses of the government, and prevent the prodigality and waste, too often occurring in special appropriations and the annual supply bills, into which much of impropriety and error often obtained admission, by combinations for individual and selfish objects. This class of appropriations, procured by lobbying, and without public purpose, required a marked prevention. The Comptroller states that the wants of the government for the ordinary expenses of the state, are \$300,000—thats

The miscellaneous receipts are,.....	\$30,000
Auction and salt duties,.....	150,000
We have now appropriated from the canal tolls,.....	200,000
	<hr/> \$380,000

Thus a reasonable surplus sum is provided for the ordinary expenses of the government—and for contingencies and special appropriations. It is in this latter item that the ordinary abuses arise, from those who are squabbling for the plunder. It is essential for more purity in legislation, that no large sums of money should be left to its discretion and yearly distribution to favorites and in raising salaries. We have in prior sections, with great care, provided for the payment of the interest and the debts of the state. We have established hindrances against the creating future debts, by requiring the acts of the legislature to be specific, and also to be submitted to the people, and we have also, in the third section adopted yesterday, disposed of the canal tolls beyond the \$320,000 given for the expenses of the state, and by the requirement already adopted, that no special appropriation shall

be passed for more than two years. We thus have established a noble system of finance, and made secure the income of the state have guarded against the incurring of debt. If we hold still upon the advantages thus gained and consummated by the vote of yesterday, all will be safe. Various propositions are now pressed upon us to shape and reconsider and vary this state of things. Some members are terrified at the short allowance given for the special appropriations necessary to be made by the Legislature, and attempts are made to alarm us, that we drive the state to direct taxation. All these things have no influence on me. Let me tell gentlemen while the debts of the state are unpaid—I have lent, and shall continue, my feeble efforts to pledge its resources for their payment. I rejoice that over and above the \$200,000, for the necessary expenses of the state, we have been enabled to pledge all the surplus canal tolls for the enlargement of the Erie canal, and the completion of the others. This course of proceeding, was the only way in which the wasteful and prodigal course of administration and of legislation, and its ready special appropriations, could be arrested. It will establish economy as the rule of the government. In the tide of the prosperity of our people and the buzz and whirl of precipitate action, they have not time to look after abuses, or listen to their disclosures. The call of the collector for direct taxation, will alone arrest attention and enquiry, and prevent the multiplied and inconsiderate special appropriations hitherto in practice. My vote will not vary from a decided support of the important principles, thus far achieved in this article of finance. If special appropriations must continue to be made, they will be more considerately done, now the bill is required to state the object, the amount, the means of payment, and with a limitation to two years. Such restrictions a few years past, would have saved to the state countless thousands. If taxation must come for this class of objects, it is better it should be direct.

Mr. STOW replied to a complaint of Mr. LOOMIS that no provision was made for the Oswego canal and the Oneida river improvement. One answer was that full provision had been made for all that was necessary. Another was that a law was passed last winter perfectly satisfactory for that locality. A third and sufficient answer was, that this was nothing but a shun pike to avoid payment of tolls on the Erie canal. But whence this new born zeal of the gentleman from Herkimer in favor of the lateral canals? He had uniformly been found in opposition until the present moment. Now, to attain certain objects, he was very anxious to do all he could to favor a British work. He would do all he could to increase the tolls of the Welland canal, and to do this keep up heavy tolls on the Erie canal, that trade may be driven through that work. Mr. S. had no prejudice against any section of the state—he was in favor of all as a great whole.

Mr. LOOMIS avowed himself in favor of free trade, and went into some explanations in reply to Mr. Stow.

Mr. STOW rose to respond.

Mr. MURPHY objected. These gentlemen

were occupying the time of the Convention, and according to parliamentary law they were not in order until other members had spoken.

Mr. MARVIN then took the floor and reviewed the previous action of the Convention, showing what had been proposed and what had been appropriated from the canal revenues. The result was a compromise, reducing the amount of the sinking fund to \$1,650,000. What followed? The original report of the finance committee appropriated only \$172,500 to the ordinary support of government. That was every dollar thus appropriated. We yesterday appropriated \$200,000 for the same purpose. The debt had been confessedly fully provided for. When after this, he saw gentlemen still claiming that every dollar of the surplus should be left to be frittered away by the legislature, he held up these gentlemen to the country as being hostile to internal improvements, and the completion of our unfinished works. They could not escape from this position. And now it was gravely proposed to fix a rule in the constitution, that under no circumstances should the state ever levy a tax. Such a proposition was little short of treason to the government.

Mr. MURPHY said that if he might be allowed to classify the different interests in this house, where there should be no interest but the interest of the whole state, and where all are actuated by the same spirit of patriotism, and to designate them according as they have manifested themselves here, he would say that there were at least three such interests. One was in favor of applying the surplus revenues after paying the amount set apart for the public debt, to the completion of the canals at all hazards; another was opposed to the continuance of the state tax in any event; and the third, at the head of which was the chairman of the finance committee (Mr. HOFFMAN), was in favor of reimbursing the state for the amount advanced by it, either directly or indirectly, for the construction of the canals. For himself, he professed to belong to all these interests: and he thought it would appear that there was really no existence of the distinctions to which he alluded, among the members of the Convention. He made these remarks in view of the proposition which, in the spirit of compromise, he had made the other day, as an amendment to the amendment of the gentleman from Schoharie (Mr. BOUCK) to the substitute of the gentleman from Herkimer (Mr. LOOIS) for the article of the finance committee. The gentleman from Schoharie proposed to set apart \$1,200,000 annually towards the payment of the interest and principal of the canal debt, instead of \$1,300,000 as provided in the amendment of the gentleman from Herkimer, and after setting apart \$350,000 annually until the canal debt shall be paid, for the interest of the general debt, and \$1,500,000 annually when the canal debt shall be paid for the extinguishment of the general fund debt, to pay \$172,000 of the remaining surplus towards the expenses of the government of the state, and the residue to complete the Erie and other canals. His own amendment was to this last proposition, and was to the effect that no appropriation should be made for the completion of the public works until the half-mill tax should

cease. He was in favor of completing those works; because it was not only the interest of the county of Kings, and especially of Brooklyn and Williamsburgh, but because he believed it to be in consonance with their wishes. Kings county had always favored the construction of the canals. When New York and the river counties gave almost an unanimous vote against the construction of the Erie canal, his own county cast her vote in its favor. Her representatives have steadily adhered to the same policy since. He intended by his vote to keep up that character. But his county was also adverse to state taxes as at present levied. His constituents did not object to a just tax for the purposes of the state; but they had been made to feel that the present tax is unequal and unjust upon them. By the low valuations of property in other parts of the state by the assessors, and the full valuations in Kings county, that county is made to pay one hundred per cent. more than most of the state. Relief against this inequality has been asked for from the legislature, but in vain. We feel, therefore, desirous to be relieved from this tax, for this reason if for no other. But no community, wishes to be taxed, and in this feeling we participate. On the other hand, it is claimed by the finance committee that there is due from the canals to the general fund, or, to speak more correctly, to the state, an amount the annual interest of which is \$672,500, and that this should be reimbursed before the canals should be completed. In this view he was willing to coincide, and to provide for its repayment. Now, his amendment was intended to meet all these views; and that consistently with the policy as it is called of 1842. If he understood the gentleman from Schoharie, the appropriation of \$1,200,000 will provide a fund sufficient to discharge the canal debt according to the guaranty of the act of that year, within the time contemplated; that is, such a fund as will be equal to one created by the annual appropriation of an amount equal to one-third of the interest of the canal debt remaining unpaid. By transferring the \$100,000 difference between the \$1,200,000 and \$1,300,000 to the general fund for the expenses of the state, we would have, in addition to the \$172,000 set apart for that purpose, \$272,000, a sum which, with the other revenues of the state, derivable from the auction and salt duties, will yield enough for the ordinary expenses of the government. If that is so, then the effect of his amendment would be to furnish a sufficient fund without taxation or interference with the completion of the canals, which was proposed by the amendment of the gentleman from Schoharie; while at the same time the state would be reimbursed the annuity of \$672,500, for the two amounts of \$350,000 set apart for the interest of the general fund debt, and \$272,000 would amount sufficiently near that sum. The house would recollect that he was prevented from moving his amendment, which had merely been read for information, by the call of the previous question upon the first section of the substitute of the gentleman from Herkimer; and from voting for the sum of \$1,200,000 instead of \$1,300,000 by the withdrawal of that part of his amendment by the gentleman from Schoharie.—

He was thus compelled to vote for the last part of that amendment, although it did not altogether meet his views, or else vote against any provision for completing the public works, and did so vote. But he rose to say now that he was prepared to go back and adopt the amendment which he originally proposed, but he could not vote for the proposition of the gentleman from Otsego (Mr. CHATFIELD) which provided, as his amendment did, that no tax should be levied for the expenses of government as long as the canal revenues were sufficient, but which did not reduce the amount appropriated to the canal fund from \$1,300,000 to \$1,200,000, as was necessary to leave sufficient for the purpose of completing the canal.

Mr. PATTERSON said this question of direct taxation was one of considerable importance to the people of the state, and when we act upon it here we should enquire for what purposes such a tax was necessary. For his own part, he believed that sufficient appropriations had been made in the article for the ordinary expenses of government. Other gentlemen did not believe it, but he preferred to take the statement of the officers of government. And he referred to the report of the Comptroller, made in July, which showed that together with the revenues derived from the auction and salt duties, and from miscellaneous sources, there would be a surplus of \$50,000 per year, over and above ordinary expenses. When the legislature would vote for extraordinary appropriations they ought to do so with the reflection that they were voting for a direct tax upon the people. He would not prevent them from so doing. The gentleman from Otsego (Mr. CHATFIELD) had said that the members from the western counties were desirous that the Erie canal should be thrown open to trade, free from tolls. He would like to have that gentleman point to a single individual from that portion of the state who had asked any such thing. The gentleman from Herkimer (Mr. HOFFMAN) stood alone in contending that the right of way should not be taxed. The people of the west had no desire that the tolls should be reduced one farthing, except in so far as such a reduction would tend to secure for the canal the entire trade of the western states.

Mr. RHOADES, Mr. STETSON, Mr. BASCOM and Mr. WATERBURY, briefly continued the debate.

Mr. BERGEN moved the previous question, and there was a second, 44 to 29. The question on the amendment of Mr. WHITE, was then put and lost, ayes 53, noes 56.

AYES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Buckus, Baker, Bascom, Brayton, Bruce, Bull, D. D. Campbell, Candee, Chamberlain, Crooker, Dana, Dodd, Dorton, Gardner, Gebhard, Harris, Hawley, Hotchkiss, E. Huntington, Hyde, Jordan, Kirk and Mann, Marvin, McNitt, Morris, Murphy, Nicholas, O'Connor, Parish, Patterson, Penniman, Perkins, Rhoades, Richmond, Salisbury, Smith, K. Spencer, W. H. Spencer, Stanton, Strong, Targart, Tallmadge, Van Schoonhoven, Warren, White, Worden, A. Wright—53.

NOES—Messrs. Allen, Bergen, Brown, Brundage, Burr, Cambreleng, Chatfield, Clark, Clyde, Cornell, Cuddeback, Danforth, Dubois, Flangers, Graham, Greene, Harrison, Hart, Hoffman, Hunt, Hunter, A. Huntington, Hutchinson, Jones, Kernan, Kingsley, Loomis, McNeil, Nellis, Nicoll, Powers, President, Baker, Ruggies, Russell, St. John, Sanford, Sears,

Shaw, Sheldon, Shepard, Stephens, Stetson, Swackhamer, J. J. Taylor, W. Taylor, Tilden, Townsend, Tutbill, Ward, Waterbury, Willard, Witbeck, Wood, Yawger, Youngs—56.

Mr. CHATFIELD'S proposition was negatived—ayes 42, noes 72.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. ST. JOHN proposed the following additional section to the report of the finance committee:—

§—. The provision contained in section three of the next preceding article for the disposition of the canal revenues, shall continue in force until the 1st day of January, 1850, and after that time the whole of the ordinary expenses of the State government, except such portions thereof as shall be provided for by other means than by a direct tax, shall be paid from the said canal revenues; and no direct tax shall thereafter be levied upon the people of this State to pay the whole or any portion of such expense, unless there shall be a deficiency in the said canal revenues to pay the same after complying with the provisions of sections one and two of the said article.

Mr. RUSSELL moved to substitute the section laid on the table by Mr. W. TAYLOR, as follows:

§—. If at any time after the period of five years from the adoption of this constitution, the revenues of the state unappropriated by the last preceding article, shall not be sufficient to defray the necessary expenses of the government, without continuing or laying a direct tax, the legislature may, at its discretion, supply the deficiency, in whole or in part, from the surplus revenues of the canals, after complying with the provisions of the first two sections of the last preceding article, for paying the interest and extinguishing the principal of the canal and general fund debt; but the sum thus appropriated from the surplus revenues of the canals shall not exceed annually \$350,000, including the sum of \$100,000, provided by the 3d section of the last preceding article, for the expenses of the government, until the general fund debt shall be extinguished, or until the Erie canal enlargement and Genesee Valley and Black River canals shall be completed; and after that debt shall be paid, or the said canals shall be completed, then the sum of \$672,500, or so much thereof as shall be necessary, may be annually appropriated to defray the expenses of government."

Mr. MARVIN insisted that this could not be received, as it was a partial repeal of a provision heretofore adopted, without a reconsideration of that section.

Mr. STETSON replied, that if inconsistent with the former provision, it was ground perhaps for its rejection, but it could not be ruled out by the Chair.

The PRESIDENT so ruled.

Mr. STETSON, in an energetic speech, vindicated himself from the charge of demagoguism, in having made an effort as he had done to avert taxation from his constituents, for the mere purpose of carrying on the lateral canals and the enlargement—and washing his hands of the responsibility which he said belonged to the majority on this question, of having voted a tax for twenty-five years for this purpose.

Mr. MURPHY could not vote for this section because, as he had this morning stated, if the section thus proposed to be altered indirectly, was to be changed, he had another proposition which he preferred to have substituted. In regard to the remarks of the gentleman from Clinton, who had sought to bring him to his responsibility on this question of taxation, which had so much alarmed the gentleman, Mr. M. said he

would turn the gentleman over to his friend from Herkimer (Mr. HOFFMAN) whose article continued taxation until the debt was paid. The proposition we had adopted went farther. And because Mr. M. had voted for that section, the gentleman from Clinton sought to bring him to a sense of his responsibility, as if he did not know what he was doing.

Mr. STETSON disclaimed any such personal reflection. The remark was that the vote carried with it that responsibility—that he was himself free from that responsibility.

Mr. MURPHY replied that he explained fully this morning his position on this question, as exhibited by his amendment—that he wanted these canals completed, and that he wished to avoid taxation, and to have a fair account taken between these canals and the state. His amendment would have accomplished this. Now had he been arraigned for inconsistency by any body else, he would not perhaps have deemed it worthy of consideration—but coming from one who voted for the Black River canal originally, and now came here opposed to it, he did regard it as calling for some remark.

Mr. STETSON replied, and Mr. MURPHY rejoined.

Mr. W. TAYLOR explained his reasons, in reply to Mr. MURPHY, for moving to add the Oneida river improvement to Mr. WHITE's section.

Mr. WORDEN regretted, after having settled very unanimously yesterday, and on principles of concession and compromise, a question affecting great and important interests, that the question should be disturbed again. The question in fact was whether \$150,000 more should be charged on the Erie canal tolls, which whether they came out of the consumer at the east or the producer at the west, was equally a local tax. Mr. W. went into the subject of the alleged indebtedness of the Erie canals to the state. He pointed to the fact when the lateral canals were built, that not a dollar of their cost, principal or interest, could be charged upon the Erie canal. The money was borrowed on the credit of the state, not of the Erie canal, and the interest and all the deficiencies were paid out of the general fund. In 1841, the constitutional inhibition being removed, and the tolls at the disposal of the legislature, a law passed by which not only the deficiencies of the lateral canals, but the interest of the debt for their construction were charged upon revenues of the Erie canal, and that canal was now saddled with a charge of ten millions which was before 1841, a direct charge on the general fund. An annuity of \$200,000 was charged on the Erie canal for the support of government, and that charge was recognized in the act of 1842, and 1844. Again the general fund was now charged with a debt for moneys loaned to certain rail roads, and for other purposes, amounting to more than \$5,000,000, and with the charge of \$10,000,000 for the lateral canals, that too was made a charge on the Erie canal. And to this was to be added another charge of some \$7,000,000 on account of the auction and salt duties—making in all an aggregate of \$2,000,000. He asked if this was not enough? Whether this great work was to be crippled or arrested

by these attempts to load it down with debt and charges which belonged to the state at large to pay?

Mr. GRAHAM followed in support of Mr. W. TAYLOR's amendment—and chiefly on the ground that without it, taxes must be levied for 20 or 25 years, to meet the expenses of government—and whether these were ordinary or extraordinary was of no consequence, so long as they must or would be incurred, and must be paid. He adverted to the time when the Erie canal was projected, and to the promises then made that it would be a source of immense revenue, and avert taxation for any purpose. He desired to see these promises redeemed, and whilst he would not object even to a tax to make its capacity equal to the requirement of business, he could not see the necessity for these large expenditures, when it was contended by those who had given the subject great attention, that \$1,900,000 would put it in a condition to accommodate the trade. He had no objection to that expenditure upon the Erie canal; he did object to any expenditure upon the lateral canals, which probably would always be a tax upon the state in some shape. He preferred the course contemplated in the original report of the finance committee, which left it optional with the legislature to dispose of these works to those interested in their completion. They were local works which worked injury to other sections, and should not be made a general charge.

Mr. CHATFIELD, in reply to Mr. WORDEN, fortified his statement of the amount owing to the state from the canals, by reference to the Comptroller's report. He added that there were other expenses that should be charged to the canals, not included in the Comptroller's statement of the amount—such as the expenses of legislation in regard to canals—the expenses of the public officers who had charge of the canal funds, &c., &c. If these expenses were added, the sum due to the general fund from the canal fund would amount to \$15,000,000. All that we ask (continued Mr. C.) is that you shall pay your debts, and then we will have an annual revenue of \$800,000 for the support of government—and they will never exceed that sum. All we ask (he repeated) is that you will pay your debts; but it is a part of the policy of certain gentlemen here never to pay a debt.

Mr. WORDEN asked if the gentleman denied that all this matter was compromised in 1841, when eleven millions was charged on the canals, and the general fund relieved of the load of the lateral canals?

Mr. CHATFIELD:—If liquidated, it has never been paid.

Mr. WORDEN:—It is provided for in this sinking fund.

Mr. CHATFIELD:—(in continuation)—We only want the annuity justly due on the debt the canal owes the general fund, and I say you have never paid it, nor is there any pretence that you ever have paid it. He went on to say that he might go for this proposition if it was the best that could be got, for he would take all he could get from a creditor that would not pay his debts.

Mr. PATTERSON remarked that in order to make out this debt against the canals, the gen-

tleman found himself obliged to trump up a charge of three millions that belonged either to the Erie railroad or the whole state to pay; and another item of the debts due from certain defaulting railroads, all which we had provided should be saddled on the canals in this very article. But Mr. P. rose rather to notice the gentleman's charge that there were those here who were opposed to paying at all—a part of whose policy was to repudiate. Mr. P. said he had been charged by that gentleman with voting for all these loans to rotten railroads. He had voted for loans to railroad companies, but, as he had before stated, under representations in which he placed the utmost confidence that they were entirely secure. But Mr. P. said there were some things he had not done. He had not advocated, on that floor, a war with Great Britain, as a means of sponging out the debt which some of the state owed to British subjects.

Mr. CHATFIELD (in his seat) denied that he ever had.

Mr. PATTERSON said the record showed otherwise. The public papers of the day showed otherwise. Mr. P. was not himself a member at that time, but he recollected standing by that fire-place (pointing to one of them), and hearing the declaration made. He recollected also the general surprise expressed on hearing it.—The charge of repudiation from such a quarter, upon others who had labored to sustain a proposition which would pay every dollar which the canals or the state owed, and meet all the ordinary expenses of the government—came certainly with anything but grace or force—especially when levelled at those whose constituencies would have to bear the great bulk of the burthen.

Mr. CHATFIELD said he had heard that charge insinuated once before, as coming from the gentleman from Chautauque—and he supposed that gentleman got it from a letter writer for one of the New-York papers, who had a seat here,—for he had seen the same charge in the paper for which he wrote. He had only to say that it was stated then and put forward here, in a very false position. It would be recollected that in '41, the case of Alex. McLeod came before the house, under a resolution directing the Attorney General to enter a *nolle prosequi*, and that the prisoner should be set at liberty and furnished a safe passport out of the state. The advocates of that resolution urged, that to go on and try him would involve the country in a war with Great Britain. That, indeed, was the main argument in favor of the resolution. Mr. C. said he took the other side of the question. That he believed to be the right side, and believed so still—that the offence for which the man stood charged was murder—that it was not due to the honor and sovereignty of the state, but that it was our right to try him as a murderer; and he admitted that he did take the ground that if England forced us into an unjust war, when asserting our own sovereignty, and the supremacy of our criminal law within our borders, that she did so at the risk of having the debts of the states to her citizens expunged, as the expenses of the war would be justly chargeable against that country. The press may have got it differently, at the time

—Certainly the assertion of the letter writer referred to, was not the first line penned by that man, abusing and black-balling members of that body.

Mr. SMITH moved to amend the proposition of Mr. W. TAYLOR by striking out "five" and inserting "eight," in the first line.

Mr. PATTERSON said he did not seek this controversy with the gentleman from Otsego, on this subject of repudiation; but the gentleman had charged it over and over again, on those who took a different view of this question from himself—sometimes applying the term repudiation, and sometimes charging them with refusing to pay debts. Mr. P. said he may have been mistaken a little in what he understood the gentleman to have said in 1841; but he would read from an article in the N. Y. Courier and Enquirer of the 15th February, 1841, purporting to be a report of the gentleman's remarks. Mr. P. read a paragraph to this effect—that Mr. CHATFIELD trusted there would be a war with England—that it would be one of the greatest blessings that could come upon us, as a sponge could then be applied to the liabilities incurred by American states to the people of that country, and the states relieved from that burthen. That this was the substance of the gentleman's remarks, Mr. P. had no doubt.

Mr. CHATFIELD called upon the gentleman from Herkimer (Mr. HOFFMAN) and the gentleman from Kings (Mr. SWACKHAMER) who were here in 1841, to bear testimony to what he had said—saying that he knew at the time that he was misrepresented. He saw it in the newspapers but took no pains to correct it. He asserted that his remarks were entirely different from the version just read. He had the good fortune he knew, to be severely dealt with in the Canada papers at the time. Whether this letter-writer was there then he did not know; but he believed that man had furnished the gentleman from Chautauque, with this entirely false and garbled statement of his remarks.

Mr. SWACKHAMER confirmed Mr. CHATFIELD's statement in regard to the incorrectness of the version given of his remarks, and complimented that gentleman on the stand he took in 1841 in vindication of the honor and sovereignty of the state.

Mr. ST. JOHN moved the previous question, and it was seconded.

The amendment of Mr. SMITH (striking out five years and inserting eight) was agreed to; ayes 61, noes 50, as follows:—

AYES—Messrs. Allen, Angel, Archer, Ayrault F. F. Backus, H. Backus, Bascom, Bierg n, Brayton, Bruce, Bull, D. D. Campbell, Candee, Chamberlain, Lang, Dodd, Dorion, Gardner, Gebhard, H. H. Hawley, H. H. H. Hotchkiss, Hunt, E. Huntington, Jordan, Kemb, Kirkland, Mann, McNitt, Marvin, Maxwell, Morris, Murphy, Nicholas, O'Connor Tarish, Patterson, Peniman, Perkins, Porter, Rhoades, Richmond, Salisbury, Simmons, Smith, E. Spencer, W. H. Spence, Stanton, Stephens, Stow, Strong, Taggart, Tallmadge, Townsend, Van Schoonhoven, Warren, White, Worden, A. Wright, Yawger—61.

NOES—Messrs. Baker, Bowditch, Brown, Brundage, Burr, Cambreleng, R. Campbell, Jr., Chaffield, Clark, Clyde, Cornell, Cuddebach, Danforth, D. Bois, Flanders, Graham, Greene, Harrison, H. H. Hunter, A. Huntington, Hutchinson, Jones, Kerian, Kingsley, Loomis, McNeil, Nelis, Nicoll, Powers, President, Riker, Ruggles, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Stetson, Swackhamer, Taft, J. J. Taylor, W. Tay-

lor, Tuthill, Vache, Ward, Waterbury, Willard, Wood, Youngs.—*AYES*.

The substitute of Mr. W. TAYLOR for the proposition of Mr. ST. JOHN (see above) as amended, was adopted, ayes 76, noes 34, as follows:—

AYES.—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Brayton, Bruce, Brundage, Bull, Burr, D. D. Campbell, Candee, Chamberlain, Dana, Danforth, Dodd, Doron, Gardner, Gebhard, Graham, Harris, Hawley, Hoffman, Hotchkiss, Hunt, A. Huntington, E. Huntington, Kemble, Kernan, Kingsley, Mann, McNeil, McNitt, Marvin, Maxwell, Morris, Murphy, Nellis, Nicholas, O'Connor, Parish, Patterson, Penniman, Perkins, Porter, Rhoades, Richmond, Ruggles, Salisbury, Shaw, Sheldon, Simmons, Smith, E. Spencer, W. H. Spencer, Stanton, Stephens, Snow, Strong, Swackhamer, Taft, Taggart, Tallmadge, W. Taylor, Townsend, Van Schoonhoven, Warren, White, Wibbeek, Worden, A. Wright, Yawger.—76.

NOES.—Messrs. Bowditch, Brown, Cambreleng, R. Campbell, Jr., Chatfield, Clark, Clyde, Cornell, Cuddeback, Dubois, Flanders, Hart, Hunter, Hutchinson, Jones, Kirkland, Loomis, Nicol, Powers, President, Riker, St. John, Sanford, Sears, Shepard, Stetson, J. J. Taylor, Tuthill, Vache, Ward, Waterbury, Willard, Wood, Youngs 34.

Mr. STOW suggested that the blank should filled up before the vote was taken on the section itself.

Mr. CHATFIELD objected to any alteration.

The section as amended was adopted as follows:—

AYES.—Messrs. Allen, Archer, F. F. Backus, H. Backus, Bergen, Brown, Brundage, Burr, D. D. Campbell, Candee, Chamberlain, Cuddeback, Dana, Danforth, Dodd, Dubois, Gebhard, Graham, Greene, Harris, Harrison, Hoffman, Hotchkiss, Hunt, A. Huntington, Kemble, Kernan, Kingsley, Loomis, Mann, McNeil, McNitt, Maxwell, Murphy, Nellis, Patterson, Perkins, Porter, Riker, Ruggles, Russell, Shaw, Sheldon, Simmons, Smith, E. Spencer, Stephens, Swackhamer, Taft, W. Taylor, Tilden, Townsend, Tuthill, Van Schoonhoven, Warren, Wood, Yawger.—53.

NOES.—Messrs. Ayrault, Baker, Bascom, Bowditch, Brayton, Bruce, Bull, Cambreleng, R. Campbell, Jr., Chatfield, Clyde, Flanders, Gardner, Hart, Hawley, Hunter, E. Huntington, Hutchinson, Jones, Jordan, Kirkland, Marvin, Morris, Nicholas, Nicol, O'Connor, Parish, Penniman, Powers, Rhoades, Richmond, St. John, Salisbury, Sanford, Sears, Shepard, W. H. Spencer, Stetson, Snow, Strong, Taggart, Tallmadge, Vache, Ward, Waterbury, White, Willard, Worden, A. Wright, Youngs.—20.

The seventh section was then read as follows:

§ 7. On the final passage, in either house of the legislature, of every act which imposes, continues or revives a tax, or makes, continues, or revives any appropriation of public trust or money or property—or releases, discharges or commutes any debt or demand of the state, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

The same was adopted, *nem. con.*

The article having been gone through with—

Mr. HOFFMAN said the Convention, after a labored effort, had got through with these two articles. Taken together, they would preserve your faith—they would pay your debt. They might not be entirely satisfactory to any one member, but they would produce this result.—They would do more. They would set an example, if the Convention would adhere to it, that would cause every state in this Union, as soon as it should be in the power of such states to do so, to provide for and sponge out its debts by payment, thus removing from representative government the reproaches cast on it, on the

other side of the water. To this extent had this Convention come, and if its labors should be repudiated by the state, nothing could keep down the judgment you had pronounced on this important subject. It would live. It would go down with time itself, until time should mingle with eternity. He predicted that our labors had overcome the greatest disgrace ever attempted to be cast on free institutions. And if you would go on, and fix the individual liability of the banker, compel corporations to be formed under general laws, and guard the power of municipal corporations to make debts, you would have achieved what would bring you, that which you had not had for a quarter of a century—a legislature in these halls. He moved that this article be laid aside and printed.

Mr. WORDEN said after what had fallen from the gentleman from Herkimer, he felt strongly inclined to make one remark. He agreed with him that the labors of this body, in regard to the disposition which had been manifested throughout to preserve inviolate the faith of the state, and to pay the state debt beyond all contingency or doubt, had resulted most auspiciously for the honor of the state and of republican institutions. The difference between us had not been one of principle. It had not been one affecting the entire and perfect integrity of republican government—but one that had no great weight attached to it—for it had been one of time. Mr. W. concurred with the gentleman from Herkimer so far as he went. He thought it would be a proud monument to the integrity of the state, and that our action would go forth to the world evincing that we had met here and kept steadily in view the great object for which we convened—which was to make some provision for placing our credit beyond contingency or doubt. He congratulated the state and the convention on having secured a still further object—the completion of those great works of internal improvement, which more than any thing else had enabled us to assume that high attitude, and to present ourselves in the position we occupied in this Union, and which would serve more than any thing else to secure to this State for all time and forever, the appellation of the "Empire State."

Mr. BAKER desired to renew his motion to recommit the report with instructions to strike out that part of the fifth section which provides for the submission of certain laws to the people, and to insert the matter moved by him yesterday.

Mr. HOFFMAN insisted on his motion to lay the report on the table, and it was agreed to.

The article as amended is as follows:—

§ 1. No moneys shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

§ 2. The credit of the State shall not, in any manner, be given or loaned to, or in aid of any individual, association or corporation.

§ 3. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, con-

tract debts, but such debts, direct and contingent, singly or in the aggregate, shall not, at any time, exceed one million of dollars; and the moneys arising from the loans creating such debts, shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

§ 4. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

§ 5. Except the debts specified in the third and fourth sections of this article, no debt or liability shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein, and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.

No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for or against it, at such election.

On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The legislature may at any time after the approval of such law by the people, if no debt shall have been contracted, or liability incurred, in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision herein specified, to pay and discharge the interest and principle of such debt and liability.

The money arising from any loan or stock creating such debt or liability, shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability and for no other purpose whatever.

No such law shall be submitted to be voted on within three months after its passage, or at any general election, when any other law, or any bill, or any amendment to the Constitution shall be submitted to be voted for or against.

§ 6. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

§ 7. If at any time after the period of eight years from the adoption of this constitution, the revenues of the state unappropriated by the said preceding section shall not be sufficient to defray the necessary expenses of the government without continuing or laying a direct tax, the legislature may at its discretion supply the deficiency in whole or in part from the surplus revenues of the canals, after complying with the provisions of the first two sections of the last preceding article, for paying the interest and extinguishing the principal of the canal and general fund debt. But the sum thus appropriated from the surplus revenue of the canal shall not exceed annually \$350,000, including the sum of \$200,000 provided by the 3d section of the last preceding article for the expenses of the government, until the general fund debt shall be extinguished, or until the Erie canal enlargement and Genesee Valley and Rock River canals shall be completed; and after that debt shall be paid, or the said canals shall be completed, then the sum of \$672,600, or so much thereof as shall be necessary, may be annually appropriated to defray the expenses of the government.

§ 8. On the final passage in either house of the Legislature, of every act which imposes, continues, or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public trust or money, or property, or releases, discharges or commutes any debt or demand of the State, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and three-fifths of all the members elected to either house, shall, in all such cases, be necessary to constitute a quorum therein.

Mr. LOOMIS moved to go into committee of the whole on the report of the committee on corporations.

Mr. TALLMADGE moved that the Convention take up the unfinished business, (on the rights and privileges of the citizens of the state.)

Mr. F. F. BACKUS demanded the ayes and noes on Mr. Loomis' motion. It was agreed to, ayes 57, noes 37.

The same was then taken up in Convention, and having been read through, Mr. LOOMIS moved to adjourn. Agreed to.

Adjourned to half-past 8 o'clock to-morrow morning.

THURSDAY, SEPTEMBER 24.

Prayer by the Rev. Mr. WILKINS.

The PRESIDENT presented a report from the register in chancery of the amount of moneys in that court. Referred.

COMPENSATION OF LEGISLATIVE CLERKS.

Mr. MANN called the attention of the Convention to the compensation of the clerks of the senate and assembly—saying that he had a proposition to offer in relation to it, which he hoped to see adopted. At the first session of the legislature after the adoption of the present constitution, a law passed regulating the salaries of these clerks and other officers of the two houses, (chapter 240, section 4, of session laws of 1821,) providing "that from and after the first day of May next, there shall be allowed to the clerk of the senate an annual salary of \$1,200, and to the clerk of the assembly an annual salary of \$1,800 in lieu of all compensation and perquisites heretofore received by them respectively, and for which they shall provide their own assistants and clerks, and perform all duties

now required of them by law," &c., &c., and that "the said sums of money to be paid to the said clerks by the treasurer on the warrant of the Comptroller on the first day of May in each and every year." But what had been the course since pursued by the legislature? They had evaded the law of 1821, as would be seen by examining the supply bills passed at each session, the clerks having been allowed to draw their full salaries, and their assistants paid by indirect appropriations. Mr. M. said he would not take up time now to refer to all of the supply bills from 1821 to 1846, but would only read a short section or two from that passed at the last session [chapter 337, section 1s]. "The treasurer shall pay," &c., the following sums of money, viz: To each of the deputy clerks of the assembly, not exceeding three in number, the sum of \$450 in full compensation for their services, and of all charges for extra engrossing." Again, in 1844 a law was passed fixing the pay of door keepers, messengers and sergeant-at-arms, but this law had also been evaded by in-

direction in the supply bills passed since. Again in the supply bills of 1846, a section provided—"There shall be paid for the benefit of the clergymen officiating as chaplains to the legislature, the sum of six dollars for each day of the present session." The section he proposed to offer was as follows:

No officer, except the Speaker of the Assembly, Clerks, Sergeants at Arms, Chaplains, Door-Keepers, Librarians or any other officer now or that may hereafter be authorized by law, shall be paid or allowed directly or indirectly, a greater compensation or per diem allowance and mileage than is allowed to members of the Legislature; such compensation shall be regulated by law, and shall not be increased or diminished during their term of office.

Mr. TALLMADGE inquired if the gentleman intended to introduce a clause to recover back the money paid without authority of law; if not, he should do it himself at the proper time?

Mr. JONES asked his colleague to have his proposition referred to a committee.* He suggested several as appropriate.

Mr. MANN did not see the necessity of a reference. The section was a very short one, and every gentleman could readily comprehend every word of it, upon hearing it read. He preferred a vote upon it at once. He had examined the supply bills from year to year since 1821, and found the law of 1821 over-ridden, and these supply bills made a convenient plaster to cover up all stealings and corruptions, by which the treasury was annually robbed of its thousands. The clerk of the assembly had annually received, in addition to his \$1,800, a farther sum for making the index of the session laws. The Comptroller had informed him that he had annually paid an extra compensation for this service, after the legislature had adjourned, to the clerks. The adoption of this section would save to the treasury, for the next 20 years, the sum of \$30,000 in the office of the clerk of assembly alone. He could see no reason why the clerk of the assembly should receive from \$1,800 to \$2,000 for his three months services, while members of the legislature were to receive but \$300, and so of the clerk of the senate, and other officers of the legislature, who were receiving exorbitant pay for light services, by indirection. Mr. M. had no objections to a reference to the committee on the revision of the articles adopted by the Convention. He designed this as section 10 of the first article, in relation to the legislature, or to add it to the 9th section; and if so referred, he desired that it should be with instructions to report this section, or another, that would obviate these legislative abuses, and would make that motion.

Mr. CHATFIELD desired to see a remedy for the evils complained of, but he hoped the reference would be without instructions.

After a brief conversation, it was referred to the committee on the arrangement of the several articles of the constitution.

CHENANGO CANAL.

Mr. J. J. TAYLOR moved a reconsideration of the 7th section of Mr. HOFFMAN's report for the purpose of amending it by adding a provision that the state might dispose of the Chenango canal, to a company, for the purpose of procuring or inducing their extension to the Penn-

sylvania line. He remarked that should the Pennsylvania North Branch Canal be completed, the extension of the Chenango would be of great importance to his constituents, in consideration of the coal trade with Pennsylvania.—The Pennsylvania canal would not be completed further than at present, within about 90 miles of the state line, unless there should be some prospect of a connection with those in our state.

Mr. STRONG said this provision would allow the state to dispose of the entire tolls of that canal to complete it. If the Convention was willing to do this, he had no objection.

Mr. TAYLOR replied that the tonnage which would be thrown upon the other canals by this means would more than repay the state for the loss of these tolls.

Mr. BURR could not understand this disposition to retain these lateral canals as the property of the state. For one, he should think it a good bargain, if we could give away the Chenango canal.

Mr. BASCOM did not like this attempt to open a question that last night we all considered settled. He had a farther objection to this amendment. Though admitting that at some future day there was a possibility, perhaps probability, of the connection of this canal with a Pennsylvania work, which would be advantageous to the interests of the state, yet there was another canal, a little farther west, which was also proposed thus to be connected. He would not like to undertake to decide between these canals. Besides, this was little else than a proposal to sell out this canal. He thought we had enough of the sale of public works in that section of the State. The \$3,000,000 lien on the Erie railroad had been given up and the Ithaca and Owego road sold for the merest trifle. He would not place even this canal in the same category.

Mr. KIRKLAND was in favor of the motion of Mr. TAYLOR. He believed the legislature might be trusted with this matter. That canal was now not only unproductive, but a heavy annual expense upon the state. Adopt this provision, and if, under the management of a company, this canal could be connected with one of the Pennsylvania works, the result would be of great advantage to the interests and finances of this state.

Mr. WHITE moved the previous question on the motion to reconsider.

Mr. HOFFMAN (Mr. WHITE having withdrawn his motion) said if any such amendment were to be made it should be referred to a standing committee. He moved its reference to the committee on canals and finances.

Mr. WHITE renewed his motion for the previous question, and enquired if the motion of the gentleman from Herkimer was in order, the subject matter not being before the Convention until it has agreed to the reconsideration.

Mr. ANGEL moved to lay the whole subject on the table.

Mr. J. J. TAYLOR called for the yeas and nays, and there were yeas, 51, nays 41.

COMMITTEE OF REVISION.

Mr. HOFFMAN said he had just learned that he had been put on the committee to revise the articles of the constitution, which it would be

impossible for him to attend to in the present state of his health. He therefore asked to be excused from service on that committee.

He was excused accordingly, and Mr. Loomis appointed in his stead.

DOOR-KEEPERS AND MESSENGER'S PAY.

Mr. WHITE offered a resolution to appoint the four door-keepers, additional secretaries of this Convention. He said from the constitution given to the Convention act, that was the only way by which they could receive their compensation.

After a brief conversation, in which Messrs. PATTERSON, CHAMBERLAIN, ANGEL, BASCOM and LOOMIS took part, Mr. WHITE withdrew his resolution.

ELECTIVE FRANCHISE.

Mr. BRUCE offered a resolution to make the report of committee number four on the elective franchise, the next in order after disposing of the report of committee number seventeen. He said it would be recollected that he had frequently offered a similar resolution, and he now reiterated the opinion that it was time this Convention should define who "the people" were and what were their rights and privileges. He regarded this as a question of great importance. What greater could there be? At the commencement of this Convention a committee was appointed to divide up the several subjects to be considered in amending the constitution, and to determine what were the proper committees to consider them. They reported 18 different committees, and that upon this subject of the elective franchise was placed as number four. The reports of numbers one, two, and three had already been discussed and disposed of, and he now appealed to the Convention to take up next this which stands next regularly in order. He did not ask gentlemen to vote for the extension of the elective franchise, but he did demand that the important question of who should be considered as the people of the state, and what their rights are, should not be crowded from its place as laid down in the programme of our proceedings.

Mr. CAMBRELENG said the report on currency and banking had for two months been the order of the day, and should take precedence; then there was the report on rights and privileges which should be disposed of; afterwards he would have no objection to consider the report on the elective franchise.

Mr. NICOLL moved to lay the resolution on the table, and called for the yeas and nays, and there were yeas 57, nays 39:

AYES—Messrs. Allen, Angel, Bergen, Bowdish, Brown, Brundage, Cambreleng, D. D. Campbell, Chatfield, Clark, Cornell, Cuddebeck, Danforth, Dubois, Flauders, Green, Hart, Hoffman, Hunt, A. Huntington, Hyde, Jones, Kemble, Kernan, Kingsley, Loomis, McNeil, McNitt, Maxwell, Morris, Murphy, Nellis, Nicoll, O'Connor, Perkins, Powers, Pre-ident, Riker, Russell, St. John, Sanford, Sears, Shaw, Sheldon, Smith, Stephens, Swackhamer, Taft, Townsend, Tutthill, White, Willard, Witbeck, Wood, Yawger, Youngs—57.

NOES—Messrs. Archer, Ayrault, F. F. Backus, Baker, Bascom, Brayton, Bruce, Bu I, Burr, Candee, Crooker, Dorton, Gebbard, Graham, Hawley, Hotchkiss, E. Huntington, Jordan, Kirkland, Marvin, Miller, Nicholas, Parish, Patterson, Penniman, Rhoades, Richmond, Salisbury, Shaver, Shepard, Simmons, W. H. Spencer, Stanton, Stow, Strong, Taggart, Van Schoonhoven, Waterbury, A. Wright, Young—39.

PUBLICATION OF THE ARTICLES

Mr. JORDAN offered a resolution for the printing of 2000 copies of the articles already adopted; and that one copy thereof be furnished to each editor in the state. The object of the resolution he said was obvious. The election at which the constitution was to be passed upon was at hand, and it was desirable to have these articles in the hands of the people.

After debate,

The resolution was adopted, 41 to 33.

CORPORATIONS OTHER THAN BANKING AND MUNICIPAL.

The Convention resumed the consideration of the report of committee No. 17, on incorporations other than municipal and banking.

The 1st section was read as follows:

§ 1. Special laws creating incorporations or associations, or granting to them exclusive privileges, shall not be passed. But the Legislature may pass general laws by which any persons may become incorporated, on complying with the provisions to be contained in such laws. And all Corporations shall be subject to such general laws as the Legislature may, from time to time enact, not inconsistent with the provisions of this constitution.

Mr. LOOMIS opened the discussion with some historical allusions, showing the necessity of corporations, and their existence for a long period in this and other countries. The question was, if they were necessary, how they should be regulated so as to produce all necessary good and prevent unjust inequalities? He briefly alluded to the various applications made to the legislature to obtain charters, and said all this might be accomplished by a general act. He enumerated a large class of companies, whose object was not to produce profit to the company, and which might be formed in that way.—Mr. L. briefly glanced over the several provisions of the article, explaining, as he went along, the objects intended, and the evils to be guarded against—and urging that whilst it would relieve the legislature of a great deal of labor and loss of time, it would give to the community all the advantages of corporations, protect them against their excesses, and do away with all exclusive privileges and special grants.

Mr. PERKINS asked if it was designed to pass a general law to fix the rate of tolls on railroads, for some companies with but little traffic could not afford to charge rates as low as some others with much traffic.

Mr. LOOMIS said it was not proposed to make any such provisions.

Mr. NICOLL moved to amend by inserting in the fourth line after the word "incorporated" the following, "or be entitled to any of the privileges of incorporations;" and in the fifth line after the word "corporations" the words "or associations." He offered the amendment to give the legislature power to pass laws for the organization of societies that did not desire all the powers of an incorporation, which could not be done by this article as it stands.

Mr. LOOMIS said the sixth section amply provided for all that the gentleman desired.

Mr. NICOLL said the word "incorporation" had a definite meaning, and he was satisfied his amendment was necessary to meet the difficulty and set the matter at rest, so as to give societies

and associations the privileges to become *quasi* incorporations.

Mr. LOOMIS thought no difficulty would arise by requiring them all to become corporations.

Mr. VAN SCHOONHOVEN thought there was much force in the position taken by the gentleman from New-York.

Mr. TOWNSEND having made a few observations,

Mr. LOOMIS withdrew his opposition to the amendments.

Mr. MURPHY thought the article would include municipal corporations. Was such the intention of the committee?

Mr. LOOMIS said that was not the intention of the committee, and he therefore suggested an addition of the words "other than municipal corporations," if the gentleman from Kings thought proper to move that amendment.

Mr. MURPHY said he should not, as he desired to include them.

Mr. SIMMONS thought further amendments were necessary. The word "private" might with propriety be introduced, for public corporations, of cities, villages, &c., should not thus be restricted, and only by act of the legislature. In England, banking companies were not called incorporations—they were designated "joint stock companies." The constitution should not be stuffed full of provisions either, in relation to elymosynary institutions.

Mr. SHEPARD doubted the propriety of making the amendment suggested by the gentleman from Essex. It would deprive cities and villages which were *quasi* corporations, of privileges which were necessary and now enjoyed, and would destroy remedies for injuries arising out of a disregard of their responsibilities.

Mr. SIMMONS did not press his amendment.

Mr. VAN SCHOONHOVEN asked if under this article the legislature could not pass a general law for the construction of bridges and highways? If so he was opposed to it, inasmuch as it would give power to obstruct rivers and streams in every direction. He moved the following amendment to obviate this objection, to come in after the word "corporations" in the 5th line:—

"Except as municipal corporations, and except corporations or associations for the construction of bridges, aqueducts or viaducts over the navigable streams or public highways of the state."

Mr. TOWNSEND thought ample provision was made for this in a subsequent section.

Mr. VAN SCHOONHOVEN thought that did not give sufficient security. If they could build a bridge, he cared not what the "terms and conditions" were. He alluded to the attempt made to build a bridge at Albany across the Hudson.

Mr. STOW proposed to amend by inserting after the word "creating" in the first line, the words "manufacturing or banking"—and after the word "incorporated" in the 4th line, the words "for banking or manufacturing purposes." He said the evil was not in incorporating literary or charitable institutions, but such as were established for private gain. He pointed at the mischievous effect this section would have upon charitable, benevolent, religious, and municipal corporations.

Mr. MARVIN said the gentleman from Erie had spoken his views on this subject. He objected to any general provision which would enable companies to spring up without the supervision of the sovereign power. For years he had been opposed to corporations of a certain class, and had been disposed to watch with a jealous eye, every application for exclusive privileges of any kind! But notwithstanding this, he confessed he looked upon this section with a great deal of alarm. He pointed out the evils that would result from it. The gentleman from Troy had pointed out one evil. A general law to build bridges over creeks or rivers, would authorize the building a bridge over the Hudson at Albany on the same terms, as over the Alleghany river or any creek in the state. Now were we prepared to allow this? Should not the sovereign have the right to review each application as it came up? The amendment of the gentleman from Erie obviated this objection. The principle might, without danger, be applied to banking and manufacturing corporations; but he apprehended that the state might hereafter be completely under the control of these corporations. They would be found in the legislature, in the lobbies, and everywhere, controlling the action of government.

Mr. SIMMONS alluded to the general act under which religious and medical societies and manufacturing companies were now established. He thought the state should have an eye upon the establishment and location of these corporations, to prevent them from acquiring vested rights and then defying the authority of the state government, protected as they would be by the constitution of the United States.

Mr. LOOMIS thought all the objections which had been raised were answered on the face of the article if gentlemen had only given it due consideration. There were no special powers or privileges conferred by it. The aim of the committee was to prevent artificial corporations from having or exercising higher rights or powers than those possessed by natural persons. If an individual could have no right to erect a bridge between here and Greenbush, over the Hudson river, to frighten the people of Troy, then a corporation could not do so. Mr. Stow had said that there were no complaints against other corporations than those for banking and manufacturing companies. But by turning to the Session Laws, he found in the index of one volume more than 100 laws for the incorporation of companies, of which but four or five were banking associations, the rest being such general associations as might be incorporated by general law. Religious societies were incorporated in great numbers. There were at least 10,000 incorporations over the state, all finding protection and security under general laws. It might, however, be well to amend so as to exclude municipal corporations from its provisions.

Mr. MURPHY said he thought he could give the gentleman reasons for not making such a motion, and Mr. L. waived his intention to do so.

Mr. MARVIN thought that if the explanation of the chairman of the committee was correct, then there would be certain things which corporations could not do at all. Because, the sove-

reign power of the state had control over every thing in it, and this was called the franchise which it imparted to a company when incorporated for some public purpose. For this reason he had contended that the State should always be careful how it parted with this right, so that it did not lose the control over the corporations created. There were certain cases where it was proper that a company should be created to do something which was for the public good, and that they should enjoy the fruits of it; and the state had the power to allow them to do this by using its right to eminent domain.

Mr. MURPHY said that he hoped the gentleman from Herkimer (Mr. Loomis) who was the chairman of the committee which had reported this section, prohibiting the passage of special acts of incorporation in any case, and requiring the enactment of general laws under which corporations might be formed, would not, as he had just intimated, amend it by excepting municipal corporations from its operation. It was true that he (Mr. M.) had reported as a minority of the committee on municipal corporations a provision of that character in regard to them, yet, as there was a possibility that the subject would not again be reached, he believed it would be best to meet the whole question now. In fact, there was no necessity for distinct propositions of the same character for different corporations. If there were to be a provision on the subject at all in the constitution, it should extend to all the corporations to which it might be deemed advisable to apply the principle of the section before us. At all events, he wished the gentleman to hear before he proposed his amendment. He regarded this as the contest against privileges conferred by law. We were now to determine whether we would preserve that same equality of rights as well between corporations themselves as between corporations and individuals, as is said to exist under our institutions between individuals. On this point he believed the grossest violations of personal rights were to be found in our municipal corporations; and that however important the subject might be in reference to other corporations, it was still more so in regard to them. These innovations upon the rights of individuals resulted almost altogether from the form of legislation by special charters. He did not charge a wanton disregard of those rights upon the legislature; but the evil resulted necessarily from the mode of creating those corporations and investing them with their power by single and separate acts. He would therefore endeavor to show the mischief of this practice and the propriety of an uniform organization of cities, and also an uniform organization for every other species of municipalities. The gentleman from Herkimer had given a sketch of the history of corporations generally, but had not referred to those of cities and towns. He (Mr. M.) would refer to some points in the history of the latter for the purpose of showing how the evil of which he complained had grown up in this country, where we had adopted the same form of legislation for the government of cities as was in use in Europe, without having regard to the difference between the fundamental institutions of the two countries. Charters of cities were originally nothing but grants of

immunities and privileges by virtue of baronial prerogative. They were intended to exempt the inhabitants from personal service to the lord, and were usually purchased by payments of money. They conferred the power of local government, and the corporations thus created, exercised the same absolute power within the territory that the lord had done before. Hence grew up in them customs against common right, forbidding the practice of any trade, except by certain individuals, and directly contravening the rights of the many. Thus the free cities, as they were called, became the refuge of the worst evils of the feudal system, which they served to break up. He wished to tell his friend from Albany, (Mr. HARRIS,) that these charters are essentially feudal instruments. The prerogative of granting them which was at first only exercised by the lords, came to be exercised by the king. This was however only a change of the creating power; and there it has continued ever since in Europe. These charters have always since been granted by the king, or prescribed, which presumes such a grant. The powers conferred have been the same as were exercised by the misnamed free cities. In the same form the system was transferred to this country. The charters of New York and Albany will furnish a sufficient illustration of this remark. They were granted by the Colonial Governor in the name of the King. That of New York, granted by Montgomerie, provides that no person, not being a free citizen of the city, shall at any time hereafter use any trade or occupation within the city and its precincts, or shall sell or expose to sale any goods or commodities by retail, in any house or place, except in the times of public fairs. Ridiculous as this provision is, it may be remarked, that there are those who still maintain that it is not only in full force yet, but also that it is beyond the control of the state. For in a communication made by the comptroller to the common council in 1841, he says that the charter of New York "is a constitution of a body politic, erecting the city of New York into a free city of itself. Her independent sovereignty in her local matters, is older than that of the state itself. That charter still stands as much a protection to her citizens from state encroachments, as it was before the revolution, from the exactions of the British crown." This charter was obtained like the charters of the free cities of the feudal times, by the payment of money—one thousand pounds having been paid the governor for it. Such pretensions as here set up for that instrument, of course cannot be tolerated. [Mr. MORRIS said that no such claims were advanced in this Convention.] Mr. M. proceeded:—He knew that; he merely alluded to the New York charter to show how we had borrowed from Europe. He knew that the members of this house from that city and the great body of its enlightened citizens, repudiated the doctrines to which he alluded, and he doubted not that he would have their support on this question. The form of city organization thus introduced in the colony, has been kept up by the legislature; and though that body has not been guilty of granting privileges so absurd as the colonial government, yet it has retained the form of special legislation in

regard to such organization. Each city still has its separate charter, and no uniformity exists in the powers conferred upon them, such as prevails in regard to the towns and counties of the state. It is to this practice of the olden time that we must attribute the idea of special charters which has come to be considered so necessary for cities and villages, and not to any actual necessity for them. It might well be asked why a city, more than a town or a county, should have a particular organization of its own distinct from other cities. The gentleman from St. Lawrence, (Mr. PERKINS,) said this morning that a population of 10,000 in individuals might need more local powers than one of 1000. This may be true; but it is not more true in regard to cities than in regard to towns. Towns whatever their population may be, are under the same general law. The difficulty of the gentleman from St. Lawrence consists in supposing that all the powers conferred by a general law must be exercised, when in fact the town or the city may exercise it or not as its circumstances require. When not used it is dormant. Thus the right of taking wharfage, if conferred upon all the cities of the state, would be used only by such as had a water front. An interior city would have no occasion to use it. But there would be no objection to conferring that power upon all cities generally. A general law might provide different organizations for different amounts of population, in the same manner as the law in regard to religious incorporations now in force, provides for the organization of different religious denominations in different ways. The great object to be obtained by a general law is to secure the wisdom of the whole state, or at least of all the parts of the state interested in it, for the formation of that law; and to prevent those incongruities which special legislation presents, and which are the causes of many of the evils under which our cities are laboring in regard to debt and assessments. The design of state government is not only to protect from powerful neighbors, but to concentrate the experience and wisdom of a greater number of persons for the common benefit, by wise laws. Special legislation defeats this design. Localities for which this legislation is made, do not derive the benefit of the wisdom of the whole legislative body. A charter as now granted is for the most part a piece of empiricism by the wisecracks of the place where it is to be put in force. After being prepared at home, it is sent to the legislature to be passed. When it reaches that body, no one except the representatives from the locality cares what it contains. It is thus left in charge of the same interest as that which prepared it. He would appeal to every member of the Convention who had been a member of the legislature, if that was not the course pursued in reference to all local bills. They are passed without examination because they affect only a particular community. In this way opposite and dangerous principles are put into the statute book; and the wholesome and beneficent provisions of an united action on the part of the legislature for a long period are oftentimes lost. It would only be necessary for him to show how this mode of legislation had operated in regard

to cities to present to the mind of every candid man the manifest impropriety of it. He had examined for this purpose the charters of the five largest cities of the state, and the powers conferred upon their corporations. He would select one subject—that of opening streets; and by a comparison of the different provisions in those cities in regard to it, furnish an illustration of the contradictions in principle which existed among them—contradictions so direct that if some provisions were right, the others must be wrong.

[Mr. M. was here interrupted by the expiration of the time allowed by the rule for having the floor.]

Mr. RICHMOND thought it was time that something should be done to prevent corporations over-riding and running down the people. He referred to a message of Gov. Tompkins and legislative proceedings on this subject, and said that half of the time of the legislature was consumed with that class of legislation.

Mr. SHEPARD opposed the amendment of Mr. Stow.

Mr. STOW briefly continued the debate in explanation.

Mr. MURPHY continued the remarks which he was interrupted in making before. He would first, however, notice an observation of the gentleman from Erie (Mr. Stow), who had just taken his seat. That gentleman said he would at a proper time show that the cities created by the feudal lords were free cities, and that they were the cause of the civilization of Europe. He (Mr. M.) did not intend to dispute about terms. What he had said, and would now repeat, was that those cities were free only in the sense that they were made independent of their lords by the charters which were granted to them. So far as regarded the liberties of the inhabitants, they were not so. The corporate body exercised the same tyranny over the trades and occupations and other natural rights of the people as did the baron before he exempted them from his control. He would not dispute as to their being the cause of the civilization of Europe. A high state of refinement might exist, as it has often existed, and now exists, in despotic governments. When he was interrupted, he was proceeding to show the incongruities and inconsistencies of the charters of the cities of New York, Brooklyn, Albany, Rochester and Buffalo—the five largest cities in the state. It was to these variations that he traced the cause of the evils under which our cities were suffering, as would appear from an examination of one single subject, that of opening of streets; for from one power we might learn the character of all. It is well known that streets in our towns are opened upon one uniform plan, that is, the same proceedings are had in one town as are had for that purpose in any other. All pursue the same course; and an alteration of the general law affects all equally alike. In cities this power is now generally contained in the acts of incorporation, though it is not in the charters of the old cities, but is conferred upon them by subsequent legislation. When, however, he spoke of a charter of a city he meant that law or body of laws which conferred upon it not only its corporate character, but al-

so the powers which it exercised for the government of its inhabitants, and for their accommodation and convenience. In conferring the power of opening streets, reference must be had to the cases in which the power may be exercised, to the tribunal which is to appraise the property necessary to be taken, to the mode of assessing the means necessary to pay the appraisal, and to enforcing the collection of the assessments, as well as to other particulars. He spoke of these points because he proposed to refer to each of them in detail in regard to each of the cities which he had named, in order to show the irreconcilable character of many, if not all of them.

As regards the cases in which streets may be opened, they may, in the city of New York, be made at the discretion of two-thirds of the common council, whenever they may deem it necessary or convenient; or, on petition of three-fourths of the owners of the land fronting on the street; in Albany, at the discretion of two-thirds of the common council; in Brooklyn, only upon petition, and then at the discretion of the common council, but not if a majority of those to be assessed, remonstrate against the improvement; in Buffalo at the discretion of the common council, but in no case where any building exceeding \$1500 in value shall be taken unless with the consent of the owner; in Rochester, in no case, where the value of the building shall exceed \$1500. Now it is very evident that these plans differ in principle so radically that they cannot all be right. If it be just to prevent the opening of a street in Rochester without the consent of the owner of every building exceeding one thousand dollars in value, then it is unjust to allow it to be done without such consent in Albany; or if it be right to require the vote of two-thirds of the common council of Albany to authorize such an improvement, it is not right to permit a similar improvement in Buffalo by a mere majority vote. The propriety or impropriety of these provisions cannot depend upon localities. The law is intended to meet the public wants and at the same time to regard private rights; and these are the same in all communities. So, in regard to the tribunal to which the duties of appraising the damage and assessing the benefit are entrusted. This is, in New York, three commissioners appointed by the Supreme Court; in Albany, a jury of three freeholders chosen from a panel of twelve summoned by the mayor; in Buffalo, five freeholders chosen by the common council; in Brooklyn three commissioners appointed by the first judge of the county or by the county court. The diversity in principle here is extreme. In some cities it is left to three commissioners selected by the court in the nomination of the local authority, and in others to a jury of three freeholders to determine the damages sustained. There is as much difference between them, as between having a suit tried before a jury or before three men selected for the purpose. Thus, the whole question of trial by jury in civil cases is involved. No one will deny that this is a material distinction in principle. He would hereafter have occasion to show that it is a difference fraught with great evil; but as he was considering this question merely as one of form, it

was unnecessary now to do more than allude to the difference of principle.

The means of paying for these improvements are levied, in the city of New-York, by assessing the lots fronting on the street, and lots lying within half the distance of the next street, on each side of that proposed to be opened, and by imposing one-third of the value of the buildings taken, as a charge upon the city treasury, at the discretion of the commissioners. In Albany and Buffalo, by assessments upon any property which the jury may deem benefitted. In Brooklyn, by assessments only upon property within an assessment district, previously determined by the common council. Thus, in Brooklyn the law undertakes to designate specific property in all cases, as benefitted; while in New-York, it declares that in some cases a portion of the expense may be put upon the general treasury. In other words, local assessments only are considered proper for one part of the state, and assessments partly local and partly general, for another. Could any thing be more inconsistent? Then, as regards local assessments, there is still a further division. In New-York the benefit is limited to one-half the block; while in Albany the whole matter is left to the three jurymen, who may assess the whole block, or as many blocks as they may deem proper. The assessments are enforced also in different ways. In New-York, by distress warrant against the owner or occupant, and by suit against the parties assessed; and in default of payment to the collector, by sale of land, redeemable within two years. In Albany, by sale of land, without any previous demand. In Buffalo, the assessments are made a lien upon the lands for one year only, within which time they must be sold; and when sold, may be redeemed the same as lands sold under execution. In Brooklyn, they are collected by distress warrant; and in default, by sale of lands, subject to redemption within two years. Here again are contradictions. In Buffalo, assessments are a lien upon the land for one year only; in other cities, they are a lien indefinitely. In Brooklyn, lands cannot be sold until the personal property of the person assessed is exhausted; while in Albany they may be sold, even without a demand of payment, except by advertisement.

From this brief analysis of the provisions of the charters and laws relating to one single subject, we find no two alike in principle. The same want of uniformity may be traced throughout in relation to almost every other power. Every city may be said to be a law unto itself; and the sovereignty of the state, instead of being exercised in its behalf, is absolutely surrendered to it, to be used at its own discretion. As I have already said the practice of the legislature has been to confer upon cities just such powers as they asked for. These powers affecting the locality only, the rest of the state has felt indifferent to them. Thus our present incongruous system has grown up, the work of different hands in different parts, without any attempt to produce uniformity. The consequences have been great injustice oftentimes to individuals, damage to the cities, and much trouble to the judicial tribunals of the state, arising from the adoption of wrong principles—from

the consequent mistakes of the corporate authorities—and from the necessity of giving each charter its own judicial interpretation. The only remedy for this is an uniform or general law defining the powers of cities.

It is objected by some that the attempt to bring all the cities to the same form of government would interfere with the franchises which were granted to some of them. In answer to this, it may be remarked that in principle there should be no privileges or immunities exercised by one city which should not be enjoyed if required by the others. But a more satisfactory answer probably is, that so far as those franchises have a permanency of profits and thus partake of the character of private property, this provision would not interfere with them; and so far as they may be political and therefore public, and relate to the exercise of the sovereign power, they are and should be revocable at pleasure. It must be the law in this country, that while the rights of private property are sacred, political power, on the other hand, conferred by the legislature, is a public trust resumable by it at pleasure. There is no novelty in this proposition for general laws for incorporations. We have such laws for the incorporation of libraries, passed as long ago as 1796, and also for religious societies and manufacturing companies. These laws have operated well, and hundreds of companies organized under them are now in being. The principle is not new even as regards municipal corporations—As has already been stated, our towns all exercise their corporate powers under one and the same law, though they are separately erected by special act. But in many of the new states of the Union, as in Indiana, Illinois and Arkansas, even the incorporation of towns takes place under a general law. The simplicity of this plan is most admirable; and he would, for the information of the Convention, read one or two of these statutes. (Mr. M. here read and commented upon the general laws for creating municipal corporations in Arkansas and Indiana.) He hoped now that no one would be startled at the proposition on the ground that it was an untried experiment; and that the gentleman from Erie would see that the different circumstances of different places did not present obstacles to an uniform organization. Before he concluded, he wished to say that he would, at the proper time, when the subject of municipal corporations should be under consideration, endeavor to point out the mistakes of legislation in regard to them, and the abuses which they had given rise to, contenting himself for the present with these observations upon the immediate proposition before the Convention, that of the mode of creating corporations.

The Convention then took a recess.

AFTERNOON SESSION.

The proposition of Mr. Srow to amend the first section, confining the prohibitory clause to the special chartering of banking and manufacturing companies, being still under consideration,

Mr. TOWNSEND addressed the Convention in favor of the principle of generalizing the laws under which corporations should be formed. —

He was opposed, however, to mingling the subject of banks with this article, as that belonged especially to another committee and was the subject of a special article.

Mr. SWACKHAMER preferred to place the whole batch of corporations on the same footing. He hoped the principle would be made applicable to all, without distinction.

Mr. KIRKLAND was disposed to sustain the principle of this section, so far as it was designed to destroy monopoly and exclusive privilege. That he believed was a universal sentiment in this Convention. But he could not see how the principle could be practically carried out in reference to all corporations. Indeed he was quite confident that it would lead to great difficulty, to undertake to prescribe by general laws for the formation of all the classes of incorporations now in existence—to form a Procrustean bed on which they should all be stretched—the legislature being expressly prohibited from granting to one incorporation or association privileges which all others had not. The legislature could devise a general law, under which rail-road, turnpike, bridge, plank-road, charitable, religious and literary associations might be formed—certainly not if all these were to be invested with the same privileges—not if the general laws were made to apply only to some particular classes of corporations. It seemed to him that the section should be limited to banking and moneyed corporations and to manufacturing companies.

Mr. JORDAN said the principle of the section met his approval, and he should sustain it unless convinced by discussion that he was wrong—for he confessed he had not given the subject as much attention as he perhaps should have done. And coming to the subject without any preconceived opinions or prejudices, he should be at all times open to conviction. Mr. J. entered at some length into the operation of this section, as he supposed it was designed to work—urging that there were classes of corporators, and a very large class, that had no franchise, and who had no other privilege than that enjoyed by natural persons—that is the privilege of managing their own property and affairs in their own way, and subject to their own regulations or by-laws, so far as they were not inconsistent with the laws of the land and the constitution. They exercised no dominion over the property of others; and merely had what ought to be a common privilege of being a corporation without being compelled to come to the legislature for a charter. But there was a class of corporations that must have the power of taking private property on paying an equivalent. These also might be formed under general laws in the first instance; but in order to obtain the power of "eminent domain," as it was technically called, they must come to the legislature—for that power resided in the sovereign, and could only be parted with in special cases.

Mr. STOW remarked that that would be a special privilege.

Mr. JORDAN did not so regard it, provided all other like associations would be entitled to the same privilege if they placed themselves on

the presumed ground of public necessity or and commodation.

Mr. STOW supposed the case of such a privilege being granted at one session of the legislature, would that privilege belong to other associations of the same class, without coming to the legislature?

Mr. JORDAN replied in the negative.

Mr. STOW:—Then the privilege would be exclusive for the time being.

Mr. JORDAN thought not, so long as the legislature could prevent another association being formed for precisely the same purpose.

Mr. BASCOM:—Would there be anything to prevent the legislature from giving the right to two railroad companies, for instance, to pass over the same track exactly?

Mr. JORDAN said no, but it was not probable the legislature would do it.

Mr. SIMMONS asked whether, in case of a bridge company being formed to bridge the Hudson here at Albany, and the legislature should give the power—should they not have power also to make the privilege worth something, by making it exclusive, and to say that no other bridge should be built within a certain distance of it?

Mr. JORDAN replied that that would depend on circumstances. The legislature would not be empowered to give the exclusive privilege in the first instance; and if there was another application for the same privilege, they would judge of it and do right.

Mr. STRONG was no advocate of monopolies; but he urged that the Convention should proceed cautiously, and see whether it was best to adopt this iron rule into the Constitution, which would prevent religious and other associations from coming here and asking some privilege not common to all other associations, but which nevertheless it might be very right and proper that they should have.

Mr. CHATFIELD urged the passage of some such provision, and explained its operation in answer to the difficulties that had been suggested.

The amendment of Mr. Stow was further debated by Messrs. SIMMONS, LOOMIS, RHOADES, BASCOM and TILDEN, when

At the suggestion of Mr. O'CONOR, Mr. STOW varied his amendment so as to include "trading" companies

The proposition was further debated by Messrs. CAMBRELENG, BROWN, STOW, MURPHY, MARVIN, RICHMOND, HARRIS, WORDEN, LOOMIS and TOWNSEND, when it was rejected, ayes 33, noes 41, as follows:—

AYES—Messrs Allen, F. F. Backus, Bascom, Bull, Candee, Cook, Gardner, Graham, Harris, Hawley, E. Huntington, Kembl, Kirkland, Marvin, Maxwell, Miller, Nicholas, O'Conor, Patterson, Peniman, Richmond, Haver, Shaw, Simmons, Stow, Strong, Swackhamer, Taggart, Fallmadge, Townsend, White, Worden, A. Wright, Yeang—33.

NOES—Messrs Bergen, Bowditch, Brown, Burr, Cambreleng, Cornell, Cuddeback, Danforth, DuBois, Flanders, Hunt, A. Huntington, Jones, Jordan, Herman, Kingsley, Loomis, Mann, M. Neil, A. Nitt, Morris, Neils, Nicoll, Powers, President, Riker, Sanford, Sheldon, Shepard, Stephens, Stetson, Taft, W. Taylor, Tilden, Tutthill, Vache, Waterbury, Willard, Wood, W. B. Wright, Yawger—41

Mr. STRONG moved a reconsideration, to lie on the table.

Mr. LOOMIS moved to amend by striking out the word "any" in the third line, and the first syllable of the word incorporations. Also to insert after "association," in the first line, the words "other than for purposes exclusively municipal." Agreed to.

Mr. SHEPARD moved to insert the word "natural" before "persons," and also, "having a general capacity to contract," after "persons." Lost.

Mr. VAN SCHOONHOVEN moved to add to the section as follows:—

The assent of at least two-thirds of the members elected to each branch of the legislature shall be required to every general law which may be passed creating corporations or associations, and also to all laws authorizing them to take land or to enjoy a franchise of way for their own or for public use.

Mr. A. WRIGHT moved to adjourn. Agreed to. Adj. to 8½ o'clock to-morrow morning

FRIDAY, SEPTEMBER 25.

Prayer by the Rev. Dr. Wyckoff.

Mr. ALLEN presented a remonstrance from several business firms in New York, against a provision to make stockholders individually liable, beyond the amount of their stock. It was read and referred.

Mr. AYRAULT obtained permission to record his vote in the affirmative on the amendment offered yesterday, by Mr. Stow to the article on incorporations.

PAYMENTS TO LEGISLATIVE CLERKS.

Mr. CHATFIELD, from the select committee to revise the articles of the constitution, to whom was referred the proposition offered yesterday by Mr. MANN, relating to the compensation of the clerks of the two houses, reported that they had examined the proposition, and deemed it inexpedient to incorporate it in the

constitution; and asked to be discharged from its further consideration.

Mr. MANN hoped the Convention would disagree to the report of the committee. It was well known to every member, that the clerks of the Assembly and Senate received their full salaries—and that the assistant clerks were paid by indirect appropriations in the supply bills of every year. The Senate clerk's salary was not too much perhaps, as he performed the duties of clerk of the Court of Errors.

Mr. PATTERSON said he was paid extra for that service in the shape of fees.

Mr. MANN said he was not aware of that. It was so much the more necessary to adopt this or some similar section. There was no reason why the salaries of these clerks should not be placed within some reasonable limit as well as

the pay of members. They could not receive more than \$3 per day, and for a limited time. Why should these clerks receive \$1200 and \$1300 for the same time? As for the assistant clerks, he designed that the legislature should appoint as many as was necessary, and pay them reasonably for their services. The clerks were here no longer than the members, except to make the index to the session laws, for which they were paid extra. The clerk of the Senate would have no extra duty to perform if this constitution was adopted; as the court of errors would be abolished. Under the proposed section, they would be paid a compensation equal to that of members of the legislature.

Mr. PATTERSON thought the committee were right in reporting that that precise provision should not be incorporated in the constitution. It proposed that the clerk shall receive no more than members of the Assembly; but it must be recollected that the clerk had very laborious duties to discharge, and had to employ several assistants.

Mr. MANN reiterated that those assistant and engrossing clerks were paid by the supply bill—as much as \$450.

Mr. PATTERSON said some allowance might have been paid to the assistants of the Assembly for the labor was greater than in the Senate. The salary of the clerk of the Senate differed in consequence—that being \$1200 while the clerk of the Assembly received \$1300. But it must also be recollected that the clerk of the Senate received fees as clerk of the Court of Errors.

Mr. MANN said these clerks were also paid extra for preparing the index of the laws.

Mr. PATTERSON went on to explain saying that he was willing that the salary should be fixed.

Mr. MANN contended that unless some provision were made, the system which had been pursued would be continued.

Mr. SWACKHAMER moved to lay the report on the table.

The vote stood—27 to 10, no quorum.

The vote was again taken, and there were 45 to 14, still no quorum.

Mr. BURR called for the yeas and nays and there were yeas 56, nays 22.

JOURNAL OF THE CONVENTION.

Mr. NICOLL offered the following, which he said was obviously necessary, as the Journal of the Convention was a month in arrear:—

Resolved, That the printers to the Convention be directed by the secretaries to lay the Journal on the tables of the Convention by Wednesday next, printed up to the present time.

It was adopted.

VOTES OF ABSENTEES.

Mr. CONELY offered the following, which was adopted:—

Resolved, That the unanimous consent of this Convention be given to WM S CONELY to record his name in the affirmative on every section of the second article of the report of standing committee number three, on the power to create future state debts, and liabilities and restraint thereof, on account of Mr. CONELY being unfortunately absent at the time.

THE FIFTEEN MINUTE RULE.

Mr. F. F. BACKUS offered the following:—

Resolved, That the "15 minute rule," adopted a few days since for the purpose of limiting debate, be rescinded.

He said the rule was perfectly useless, inasmuch as it was disregarded yesterday several times, and he was not disposed to retain a rule which was so openly disregarded.

Mr. SWACKHAMER moved to lay it on the table. Carried.

BOARD OF APPRAISERS.

Mr. TOWNSEND offered the following:

Resolved, That the committee appointed to revise the articles passed upon by the Convention be requested to consider the propriety of placing the following section in the articles respecting the creation and duties of the state officers:—

§—. The comptroller, treasurer, surveyor and attorney general shall constitute a board to adjust the appraisement of the assessors of the several counties, of the valuation of the real and personal estate therein, and to provide for an equitable imposition of state or national district taxation.

Mr. TOWNSEND stated that he had seen the ineffectual attempts made by the legislature to enforce by salutary laws provisions to equalize the imposition of the state tax, and he now hoped we should be able to establish the principle in the constitution we were making.—While the facts existed as exhibited in the returns before us, of the inequality of the assessors appraisement, with reference to the true value of property returned by them, he hoped no one would oppose the reference of this resolution. In the counties of New York and Kings the full value of the real estate (though not of the personal) was returned, whereas in the county of Albany but about one-half of the real value of property was taxed, and he believed in the county of Rensselaer even a smaller proportional estimate was made. The principle of equal taxation was a just one, and he hoped that we should not be prevented from asserting it in the constitution. He did not care how the board of state assessors or revisors should be constituted; in this respect he would yield to the suggestions of others.

Mr. TALLMADGE objected to the reference. He was surprised at a proposition so extraordinary as a reference to the committee on the engrossment of the constitution, "to enquire into the expediency of the addition of any new matter to the constitution"—any matter, other than the articles which had been adopted by this Convention. The powers of the committee on the engrossment were limited to the amendment of the words:—the language and the grammar of the articles. But certainly not to add to or diminish a single word varying the sense of any article as adopted by the Convention. The proposal for such a course on the part of the committee was not to be endured a moment.

Mr. TOWNSEND said such a reference had been made yesterday.

Mr. TALLMADGE said he was not aware of it. He could hardly think it possible such an error could have been committed. It was a great principle to guard the constitution and have it engrossed precisely as it had been passed by this house, and without any alterations other than in the language. Mr. T. said the motion of the gentleman might be proper for the inquiry of a select committee. He would not discuss

the merits of the motion on this proposed reference to the committee on the engrossment.

Mr. STETSON was opposed to giving, to a central power authority to go 250 miles any where to fix the value of property.

Mr. CAMBRELENG hoped the gentleman would withdraw his proposition, and allow the Convention to proceed with its business.

Mr. TOWNSEND could not assent.

Mr. CAMBRELENG then moved the previous question, and there was a second.

Mr. TOWNSEND asked unanimous consent to modify his resolution, so as to have it referred to a select committee.

Agreed to; and the resolution was referred accordingly.

INCORPORATIONS OTHER THAN BANKING AND MUNICIPAL.

The Convention resumed the consideration of the report of the committee No. 17.

Mr. VAN SCHOONHOVEN was not willing to give power to pass such general laws as was here proposed, without some effective safeguard. It was necessary that the legislature should possess power to take land and property of private individuals for public use, but it should only be by a two-third vote.

Mr. LOOMIS said the gentleman had misapprehended the section entirely, and

Mutual explanations were entered into between them.

Mr. PERKINS and Mr. BRUCE continued the discussion.

Mr. CAMBRELENG insisted that this debate was entirely out of place on this section.

Mr. KIRKLAND, Mr. BASCOM, Mr. LOOMIS, Mr. PERKINS and Mr. NICOLL also spoke at length to the question.

Mr. HUNT moved the previous question.

Mr. O'CONOR desired his colleague to withdraw the motion for the previous question, to enable him to offer a substitute.

Mr. HUNT assented.

Mr. O'CONOR read the following substitute, which he desired to offer, and briefly explained it.

§ 1. Associations for the pecuniary gain or profit of the associates, may be created, incorporated or continued, by virtue of general laws; but not by special acts. All powers acquired under general laws shall be liable to alteration or extinguishment by law.

Mr. SWACKHAMER said the section under consideration had been debated for a long time, and there was a diversity of opinion in relation to it; to reconcile which he suggested that it should be referred to the judiciary committee.

Mr. RICHMOND replied to an objection which had been made to this section, that it would prevent a corporation taking charge of education in this state. He was willing to leave such matters to the people to supply their own teachers without the certificate of fitness from a magnificent state corporation. He further objected to a provision of this character because it would give power to a manufacturing corporation to issue a commission to say what compensation should be paid to a man for lands on which there might be good water privileges, but which he might not be willing to sell to them, and thus private rights might be invaded under pretence of public utility.

Mr. DANA had no objection to the section or to the amendment of the gentleman from Rensselaer, but believing they had been sufficiently debated, he moved the previous question, and there was a second.

The main question was ordered and the amendment of Mr. VAN SCHOONHOVEN was rejected.

Mr. LOOMIS moved the amendment he had indicated by adding after the word "privileges" in the second line, the following, "except as otherwise provided in this article."

Mr. JORDAN desired to amend by inserting "such" after the word "all" in the fifth line; the object of which was to make the laws to be passed applicable to future corporations. He was opposed to the adoption of any thing which would have a retractive effect, unless they had ample time to consider its effect.

His amendment was not now in order.

Mr. MORRIS avowed himself in the broadest sense of the term an anti-corporationist. The legislature should be prohibited from passing any act of incorporation to do that business which is done by individuals or any voluntary association of individuals. He was opposed to the section of the committee because it gave power to the legislature to pass general laws to create incorporations to do all the business of life, be it to make shoes or plows, or to deal in law or physic.

Messrs. STETSON and STEVENS continued the discussion.

The question was taken on the amendment, and it was negatived.

Mr. O'CONOR then offered his substitute as given above.

Mr. WHITE moved to strike out the words at the end of the section "not inconsistent with the provisions of this constitution," which he thought was surplusage.

Mr. RUSSELL thought the words were necessary, or the legislature would have the entire and absolute control of the subject.

Mr. SHEPARD agreed with Mr. WHITE that the words were surplusage.

Mr. LOOMIS thought it necessary to retain the words.

Mr. WHITE withdrew his amendment.

Mr. RUSSELL moved the previous question, but withdrew it at the request of

Mr. JORDAN who desired to move an amendment by adding at the end of the section "or with the provisions of any charter heretofore granted." This was to obviate the objection heretofore stated, and to prevent the retroactive operation of the constitution. He said he wished to avoid the question whether this article would or would not interfere with the existing charters, which were contracts between the state and these corporators.

Mr. LOOMIS said it was not intended to affect such charters as had been referred to. The constitution of the United States would not authorize us to interfere with these contracts, if they were such.

Mr. JORDAN replied, contending that we were bound to preserve as inviolate the faith of the state with corporations as with individuals. He showed how far we might interfere with such charters. By a general law they might be

required to do anything not forbidden in their charters.

Mr. TILDEN could not subscribe to the doctrine that charters were contracts. We could pass general laws not only affecting future corporations, but also those already in existence.

Mr. JORDAN replied showing that the position of the gentleman was fundamentally wrong, and he proceeded to point out the true doctrine on this subject.

Mr. NICOLL suggested that Mr. J. should withdraw his amendment and insert the word "such," after the word "all," in the 5th line, so that it would read "and all such corporations," &c.

This was agreed to.

Mr. RUSSELL moved the previous question, and there was a second, &c.

Mr. F. F. BACKUS called for the yeas and nays, and they were ordered, on Mr. O'CONNOR's substitute; and there were yeas 31, nays 64:—

AYES—Messrs. Allen, Archer, Ayrault, F. F. Backus, Brayton, Bruce, Candee, Cook, Dodd, Gebhard, Graham, Harris, Kirkland, Marvin, Miller, Nicholas, O'Connor, Parish, Patterson, Penniman, Porter, Rhoades, Shaw, Simons, E. Spencer, Stow, Strong, Taggart, White, A. Wright, Young—31.

NOES—Messrs. Bergen, Bowdish, Brundage, Bull, Cambreleng, Campbell Jr., Chatfield, Clark, Clyde, Conely, Cornell, Crooker, Cuddeback, Dana, Danforth, Dubois, Flanders, Greene, Hart, Hawley, Hotchkiss, Hunt, Hunter, A. Huntington, Hyde, Jones, Jordan, Kernan, Kingsley, Loomis, Mann, McNeill, McNitt, Riker, Russell, St. John, Sanford, Sears, Sheldon, Shepard, Smith, W. H. Spencer, Stephens, Stetson, Swackhamer, Taft, W. Taylor, Tilden, Townsend, Tuthill, Vache, Van Schoonhoven, Ward, Waterbury, Willard, Witbeck, Wood, W. B. Wright, Yawger, Youngs—64.

Mr. MORRIS called for a division of the question, so as to take the vote separately on the first part of the section, absolutely forbidding the passage of special laws creating incorporations, or granting to them exclusive privileges.

The PRESIDENT (Mr. MARVIN being in the chair) was of opinion that the division could not be made under the operation of the previous question.

Mr. LOOMIS thought it might be divided.

Mr. STRONG contended that it could not; and Mr. CROOKER and Mr. PATTERSON took the same view—otherwise the effect of a motion to strike out would be obtained.

Mr. CHATFIELD said it was the right of a member to have a division of the question; and he appealed from the decision of the Chair.

Mr. PATTERSON controverted that position.

Mr. RUSSELL supported the decision of the Chair.

Mr. MORRIS withdrew his call for a division, and with that the appeal fell.

The yeas and nays were then taken on the adoption of the first section; and there were yeas 65, nays 33:—

AYES—Messrs. Allen, Bergen, Bowdish, Brundage, Cambreleng, R. Campbell Jr., Chatfield, Clark, Clyde, Conely, Cook, Cornell, Cuddeback, Dana, Danforth, Dubois, Flanders, Gebhard, Greene, Hotchkiss, Hunt, Hunter, A. Huntington, Hyde, Jones, Jordan, Kernan, Kingsley, Loomis, Mann, McNeill, McNitt, Maxwell, Neill, Nicoll, Perkins, Porter, Powers, President, Riker, Russell, St. John, Sanford, Sears, Sheldon, Shepard, Smith, W. H. Spencer, Stephens, Stetson, Swackhamer, Taft, W. Taylor, Tilden, Townsend,

Tuthill, Vache, Ward, Waterbury, White, Wood, W. B. Wright, Yawger, Youngs—66.

NOES—Messrs. Archer, Ayrault, F. F. Backus, Bascom, Brayton, Bruce, Burr, Candee, Chamberlain, Dodd, Graham, Harris, Kirkland, Marvin, Miller, Nicholas, O'Connor, Parish, Patterson, Penniman, Rhoades, Richmond, Shaw, Simmons, E. Spencer, Stow, Strong, Taggart, Van Schoonhoven, Willard, Witbeck, A. Wright, Young—33.

So the section was adopted.

Mr. RICHMOND offered the following as a second section, and asked the yeas and nays upon it:—

§ 2. No laws shall ever be passed granting to corporations or associations the right to take or use private property for corporation or other purposes, without the consent of the owner or owners of such property.

This was negatived—yeas 9, nays 71.

Mr. RHOADES offered the following:

§ 2 The legislature may after the formation of any corporation, confer by law such powers and privileges as may be necessary for carrying out the object of such corporation, not provided for by such general law.

Mr. AYRAULT moved to amend by adding "other than banking, trading, or manufacturing" after the word "corporation."

Mr. RHOADES accepted the amendment.

Mr. STRONG thought the Convention would see cause to regret tying down the legislature by an iron rule, so that they could in no case grant a charter in a special case.

Mr. PATTERSON said the legislature might make every law asked for by localities, applicable to all parts of the state.

Mr. RHOADES said it was his intention to prevent this course being taken by the legislature. Laws passed upon the application of one part of the state might be very injurious to another locality,—as in the case of supplying a city with water and allowing a company to take or divert streams of water. A law which would do well enough in Albany would not be tolerated in Schenectady.

Mr. BERGEN moved the previous question, and there was a second, &c., and

Mr. RHOADES' amendment negatived, yeas 25, nays 55.

The second section was then read as follows:

§ 2 Every corporation for purposes of gain or benefit to the corporators or share-owners, shall cause the names of all its stockholders and officers, and the places of their residence, and an estimate of the value of its property, estimated and appraised as the legislature shall by law direct, and the aggregate amount of all its debts and liabilities absolute and contingent, to be published at stated periods as often as once in each year, in a newspaper published in the vicinity of its place of business. And any such corporation shall not become indebted to an amount greater than its capital stock actually paid in, together with the undivided net profits thereon invested and employed in the business of such corporation, or actually on hand in cash or good securities for such purpose. But this shall not be construed to limit the hazards of any insurance company.

Mr. LOOMIS explained the section.

Mr. CAMBRELENG, believing this whole section was purely legislative matter, moved to strike it out.

Mr. WHITE would also include the 3d and 4th sections.

The motion of Mr. CAMBRELENG was agreed to.

The third section was read as follows:

§ 3 Every corporation or share-owner in any incorporation for gain or benefit to the corporators or shareholders, except insurance and except for purposes

specified in the next section, in case such corporation shall become insolvent, shall be liable for the unsatisfied debts and liabilities of such corporation contracted while he was such corporation or share-owner, to an amount to the same proportion to the whole unsatisfied liabilities, that his stock or share shall bear to the whole stock. "No such personal liability shall not extend to any indebtedness or liability, the payment of which shall have been deferred more than one year by contract with the creditor, or which shall not have been demanded by suit within one year after it becomes due.

Mr. PATTERSON moved to strike it out, as being purely legislative.

Mr. RUSSELL moved to amend the first line by inserting the words "hereafter created," after the word "incorporation." Agreed to.

Mr. PERKINS supported the section, regarding it as the pith of the whole article.

Mr. TUTHILL moved to strike all between the words "shareholders" in the 2d line and "insolvent" in the 4th line: also from the word "share-owner" in the 6th line and "stock" in the 8th; also the words "by suit" in the last line.

The Convention then took a recess.

AFTERNOON SESSION.

The question was still on Mr. TUTHILL's motion to strike out those parts of the third section, excepting stockholders of insurance companies, from personal responsibility, and limiting the responsibility of each to his proportion of the unsatisfied liabilities.

Mr. MANN was in favor of the amendment; at all events the first division of it. Banks received their incomes and premiums from the notes they discounted, or their promises to pay. The risks the banks run in their operations and discounts was only that which might be incurred by taking bad paper; but this risk they were paid for, in the use of their money. How was it with insurance companies? They received these incomes and premiums, in small sums, though in the aggregate to very large amounts, and upon their own promises to pay. They were paid a bonus, for their promises to pay your losses, if any should occur. They bound the company, the stockholders to pay, according to contract. They were paid for this risk, and were bound to meet the losses, if any, and should be made to meet these promises to pay, if a contingency required it. He was in favor of putting these incorporations upon the same footing with others, under the first section of this article, and could see no reason why they should be excluded.

Mr. TOWNSEND expressed the hope that so important a principle as was involved here would not be more definitively settled without a more extended discussion than it had yet received. He went on to show that this principle of limited personal responsibility had been in operation some years under the mutual insurance system, and had been found to work well. The same principle had been in practice in England, and in other European countries, for a long time, and experience had proved it to be the safest and best system, as well for stockholders as for the public, that could be devised. He hoped that before gentlemen made up their minds one way or the other, the subject would

receive all the attention which its importance demanded.

Mr. MARVIN also sustained the amendment saying, however, that he was opposed to the whole principle of the section. But if we were to engraft such a principle into the constitution, he could not see why there should be a distinction between insurance and manufacturing companies. He insisted that when we gave credit to a corporation, we gave credit to the capital invested, and not to the individual corporators, and that it was in fact the essence of a corporation that its corporate property, and that only, should be liable for its debts. He illustrated in various ways the ill effects of such a principle in deterring men of capital from embarking in enterprises of great public benefit—and by the particular case of a mechanic in his vicinity, who had by his ingenuity and application hit upon an invention of great practical value, but who had not the means to enable him to prosecute the manufacture. He obtained a charter, and capitalists stood ready at once to fill up the stock, and enable him to go forward in this business. But had the personal responsibility clause been applied then, no man would have come forward to aid him. He urged that the principle was all wrong, and should find no place in the constitution.

Mr. STETSON said he could not better answer the gentleman's argument than by alluding to the case of a woollen manufacturing company in the northern part of the state, which became insolvent—and to the beneficial effect to the community resulting from the fact that its stockholders were personally responsible.

Mr. LOOMIS explained why the committee had excepted insurance companies from the operation of this section, and why they had inserted the principle of limited personal responsibility. If corporations ought not to exist, and if the design was to prevent them from being formed, there could be no more effectual mode of doing it than by making every stockholder personally responsible to the fullest extent. But if, as he believed, these corporations were salutary in their operations, within certain limits, and if we designed that they should continue to exist, we should be cautious that we did not by a indirect blow, annihilate them. We should take care also to discriminate between the classes of corporations in the application of this principle. Insurance companies, the committee thought, were proper subjects of an entire exemption, and for the reason that their losses were the result of accident or calamity which no human foresight could anticipate or guard against, but which often annihilated immense amounts of property. The losses of other companies resulted rather from mismanagement, or from a desire for excessive gain, from large and ill-judged adventures, when the company willing incurred the hazard, for the sake of the gain, and ought to abide the losses. But if the stockholders in insurance companies were to be made individually liable, no man would hold stock in them one moment. No stockholder could lay his head on his pillow without apprehension that he might wake up in the morning beggared by one of those devastating calamities that sometimes lay waste your cities and

large villages. There was also reason for exempting railroads and other companies having the right of way. Their capital was generally large, and held in large amounts by individuals, and to make them individually liable, even to the extent of their stock, might overwhelm them in ruin. Again, when borrowers, these companies loaned large sums from capitalists who always could and would see to their own security, either in the proper management of the company's concerns, or in the intrinsic value of the improvement, or by liens on the materials or fixtures. Their capital was in fact nearly all laid out in fixtures, and these large capitalists who loaned them money would always take care of themselves. But the small class of creditors, those who labored on the road, and who were employed by them in various capacities, these this article proposed to secure by the personal liability of the stockholders.

Mr. WHITE enquired whether this exemption of insurance companies would not give them exclusive privileges in contravention of the prohibition in the first section!

Mr. LOOMIS thought not, as they would have no other privileges than all other insurance companies that incorporated themselves under a general law. As to other classes of corporations, unlimited responsibility would throw them into the hands of the exclusively rich or of the exclusively poor. But that shareholders in them should be liable to a limited amount, there could be no doubt. Mr. L. alluded to the case of a woolen manufacturing company, which to his own knowledge, would have failed but for the personal liability clause in its charter, which induced the stockholders to contribute and keep up the establishment, and it had now become one of the most prosperous and well conducted manufactories in the state.

Mr. MARVIN replied that if the Convention had listened to the gentleman's argument, they must be satisfied that if it was impolitic to make shareholders responsible to the fullest extent, it was equally impolitic to make them liable to a partial extent—but that if to a partial or to the full extent, it was entirely a matter of legislative detail and discretion which did not belong to a constitution. In some cases this personal liability to a limited extent, might work well, and some corporations might be willing to submit to it—but in other cases it might operate badly. He could not foresee the operation of it in all cases, and nothing could be more unwise than to bind down the legislature by a rule, which it might be impracticable to carry out. But be this as it might, the effect of such a principle would be obviously to throw all these corporations either into the hands of large capitalists or into the hands of men of straw; and either result must be mischievous. It was true that these corporations sometimes failed—perhaps often—but were they the only things that failed? Did not the merchant sometimes fail and involve his creditors in heavy losses? And were these natural persons liable to this extent beyond their property, or to any extent! Why should an artificial person be liable to any greater extent than its capital. Why should not the public be left to deal with them on the credit of

their capital, and on the integrity of those who managed it?

Mr. STETSON followed in reply, and in support of the principle of limited liabilities.

Mr. WATERBURY also sustained the limited liability principle, as applicable to insurance as well as other companies.

Mr. VAN SCHOONHOVEN urged, in reply to Mr. Loomis, that insurance companies stood on precisely the same footing as other corporations whose object was gain, and on the same footing also with individuals so far as either were subjected to losses by unforeseen contingencies, beyond human control. Manufacturing companies failed sometimes from capricious legislation, sometimes from losses by fire or flood—sometimes from those pecuniary revulsions which reached and prostrated natural persons—sometimes from the same spirit of adventure which induced individuals, for the sake of gain, to embark in hazardous enterprises. But all of them were alike liable to delusion, to unforeseen calamity, to disasters beyond their control. And why one class of corporations, whose business in the long run was as profitable, and as little liable to disaster from unforeseen contingencies as other corporations, should be singled out and made an exception to the general rule sought to be established here, he was at a loss to perceive. Though opposed to this whole section, he was disposed, if it must be adopted, so to frame it that it should bear equally upon all corporations whose operations were for gain or profit to the corporators.

Mr. NICOLL said if the Convention had spent the time which had been devoted to this article in perfecting a short section by which the rights of creditors might be protected under a system of liability, we should have done a much better service to the community. A provision securing to creditors a fair distribution of the assets of an insolvent, whether a natural or artificial person, assessing upon stockholders, in case of a corporation, the amount of profits received by them in the shape of dividends, it appeared to him would be of more real benefit than any provision based on the principle of this section. As to the unlimited personal responsibility principle, he had no doubt it would result detrimentally to the interest of trade, as to the rights of creditors—for no one could doubt that in the event of a failure, these corporations would be found to be entirely in the hands of men of straw. Nor should he desire to see such a provision in the constitution as would invite the indefinite multiplication of corporations for any and all purposes, and thus throw all business of the country into the hands of corporations. But all this matter seemed to him to be purely legislative; and should be left there.

Mr. SWACKHAMER here called for the previous question, and there was a second. &c.

The first division of the amendment of Mr. TUTTILL, to strike out "except insurance, and except for purposes specified in the next section, in case such corporation shall become insolvent," was lost, as follows:

AYES—Messrs. Allen, Archer, Ayrault, F. F. Backus, Bascom, Brayton, Bruce, Burr, Cambreleng, Candee, Chamberlain, Cook, Dodd, Dubois, Flinders, Gebhard, Graham, Harris, Hotchkiss, Mun, Marvin, Miller, Morris, Nichols, Parish, Patterson, Penniman,

Richmond, Riker, St. John, Shaw, W. H. Spencer, Strong, Swackhamer, Townsend, Tuthill, Van Schoonhoven, Ward, Waterbury, White, Willard, Witbeck, W. B. Wright, Yawger—45.

NOES—Messrs. Bergen, Bowdish, R. Campbell, jr., Clark, Clyde Conely, Cornell, Dana, Danforth, Gardner, Green, H. T. Hunt, Hunter, A. Huntington Hyde, Jordan, Kemble, Kernan, Kingsley, Kirkland, Loomis, McNeil, McNitt, Maxwell, Murphy, Nellis, Nicoll, O'Connor, Perkins, Porter, Powers, Russell, Sanford, Sears, Sheldon, Shepard, Stephens, Stetson, Taft, Talmadge, Tilden, Wood, Young, Youngs—45.

The remainder of Mr. TUTHILL's amendment to strike out the following words:—"to an amount in the same proportion to the whole unsatisfied liability, that his stock or share shall bear to the whole amount," was also lost, ayes 6, noes 8. [Ayes, Messrs. Bowdish, Flanders, Mann, Shaw, Townsend and Tuthill.]

Mr. WHITE then moved to strike out the whole section.

Mr. TILDEN moved to insert the words, "at least, after share-owner." Lost.

Mr. WHITE moved the previous question, on the section, waiving his motion to strike out, and there was a second, &c.

The section was adopted, ayes 49, noes 45, as follows:—

AYES—Messrs. Bergen, Bowdish, Brundage, D. D. Campbell, R. Campbell, jr., Clark, Clyde, Conely, Cornell, Cuddeback, Dana, Danforth, Greene, Hart, Hotchkiss, Hunter, A. Huntington, Hyde, Jones, Jordan, Kernan, Kingsley, Loomis, Mann, McNeil, McNitt, Maxwell, Morris, Nellis, Nicoll, O'Connor, Perkins, Powers, President, Russell, St. John, Salisbury, Sanford, Sears, Shaw, Sheldon, Shepard, Stephens, Stetson, Swackhamer, Taft, Tilden, Yawger, Youngs—49.

NOES—Messrs. Allen, Archer, Ayrault, F. F. Backus, Bascom, Brayton, Bruce, Bull, Burr, Candee, Chamberlain, Cook, Dodd, Dubois, Flanders, Gardner, Gehring, Graham, Harris, Kirkland, Marvin, Miller, Nicholas, Parish, Patterson, Penniman, Porter, Rhodes, Richmond, Riker, W. H. Spencer, Strong, Taggart, Talmadge, Townsend, Tuthill, Van Schoonhoven, Ward, Waterbury, White, Willard, Witbeck, Wood, W. B. Wright, Young—45.

Mr. AYRAULT moved a reconsideration. He did this to test the question on striking out the clause excepting insurance companies.

The motion lies on the table.

The fourth section was read as follows:—

§ 4. Every corporator and share-owner in any corporation for a public railway, canal, turnpike, bridge, plankway, or other franchise of public way, or for telegraphic or other means of communicating intelligence for public use, shall be liable for the debts and liabilities of such corporation to the extent provided in the last preceding section, except as to debts for money borrowed, for land purchased or taken by authority of law, or for iron for railroads.

Mr. LOOMIS briefly explained this section.

Mr. RICHMOND remarked that, after making corporators in other companies personally responsible to a limited amount, here it was gravely proposed to make other corporations subject to special exemptions. This he regarded as favoritism, and as highly objectionable. Why should these railroad and telegraphic companies be made especial favorites in the constitution, and subject only to responsibility for their small debts? He moved to strike out the latter clause, commencing with the word "except."

Mr. RUSSELL argued in favor of retaining the exception proposed to be struck out, chiefly on the grounds taken by Mr. Loomis.

Mr. DANA, though a member of this commit-

tee, should vote for this amendment. Each member reserved the privilege to vote for any amendment they might deem expedient. He considered the arguments against striking out this part of the section, not valid. This exception was making a distinction between the creditors of corporations. He moved also to strike out the words "telegraphic or other," in the 4th line.

Mr. PATTERSON could see no propriety in striking out these words. As he voted against the preceding section, he could not consistently vote to strike out these words. But he must confess he could not understand the distinction drawn by the gentleman from St. Lawrence, between railroads and manufacturing incorporations. Both invested large sums of money in fixtures; and if a capitalist chose to loan money to a manufacturing or railroad corporation, why should we step in as a Convention, and say what his security shall be? He was opposed to any constitutional action on this subject. Were he a member of a legislature, he would vote to secure the bill-holder of bank bills against loss. But he would let depositors look after their own money. And he would do the same with capitalists who loan money to corporations.

Mr. SWACKHAMER said he should vote to strike out, for he could make no distinctions between large and small creditors, nor between different classes of corporations.

Mr. RUSSELL moved to insert after incorporation in the first line, "hereafter created." Agreed to.

Mr. VAN SCHOONHOVEN advocated the striking out of this clause, as making an unjust discrimination between creditors.

Mr. CAMBRELENG reminded the Convention that ever since 1811, we had had the personal liability principle to a limited extent applied to corporations. And he regretted that the gentleman from Herkimer had not introduced a simple provision, of five lines, based on the existing law. That would meet the object of this whole article; and he now gave notice, that when the article in relation to banks should come up, he should move a general clause, making all corporations liable personally to the amount of the shares held by them.

Mr. AYRAULT enquired if the gentleman intended to apply this to the circulation of banks or to all the liabilities?

Mr. CAMBRELENG replied that he intended to cover all their liabilities.

Mr. SANFORD moved the previous question, and it was seconded.

The motion of Mr. RICHMOND was agreed to, ayes 52, noes 31.

The section as amended was adopted as follows:—

AYES—Messrs. Bergen, Bowdish, Brundage, Burr, Cambreleng, R. Campbell, jr., Clark, Clyde, Cuddeback, Danforth, Flanders, Greene, Hart, Hotchkiss, Hunter, A. Huntington, Hyde, Kemble, Kernan, Kingsley, Loomis, Mann, McNitt, Morris, Nellis, Perkins, Power, President, Richmond, Russell, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Stephens, Taft, Tilden, Tuthill, Waterbury, Yawger, Youngs—44.

NAYS—Messrs. Allen, Archer, Ayrault, F. F. Backus, Bascom, Brayton, Bruce, Candee, Conely, Cook, Cornell, Dana, Dodd, Dubois, Graham, Harris, Hunt, Jordan, Marvin, Maxwell, Miller, Nicholas, Parish, Patterson, Penniman, Rhodes, Riker, Salisbury, W.

H. Spencer, Strong, Swackhamer, Taggart, Tallmadge, Townsend, Van Schoonhoven, War, White, Willard, Witbeck, Wood, W. B. Wright, Young—12.

Mr. JORDAN moved a reconsideration. Table.

Mr. CAMBRELENG thought the 3rd and 4th sections unnecessary. If acceptable, he would offer the following substitute for both. He had used nearly the precise language of the general manufacturing act, which had been in force for 35 years. He believed we could harmonize on this:—

§ 3 Every corporation or share-owner in any incorporation for gain or benefit to the corporation or share-holders shall be individually responsible to the extent of his share or shares of stock in any such corporation or association for its debts and liabilities.

Mr. JORDAN suggested that it would be made applicable to future corporations.

Mr. CAMBRELENG replied that that would make an inequality which would be unjust.

Mr. HARRIS hoped unanimous consent would be given to entertain the motion of Mr. CAMBRELENG. He was willing to vote for that, believing it just and proper.

Objection being made the motion could not now be entertained.

The 5th section was read as follows:—

§ 5. Lands may be taken for public way for the purpose of granting or demising to any corporation, the franchise of way over the same for public use, and for all necessary appendages to such right of way. Such grants and demises shall be made in such cases and on such terms and conditions as the legislature may deem for public good. But no grant or demise shall extend beyond fifty years in duration.

Mr. LOOMIS offered the following substitute:—

§ 5. Lands and streams may be taken for public way or public use, or for the purpose of granting or demising to any corporation, the franchise in or over the same for public use, and for all necessary appendages to such public use. Such grants and demises, and other grants and demises of franchises in or over public lands, highways, and streams, shall be made in each such case on such terms and conditions as the legislature may deem for public good; and such terms and conditions may in each case be altered or modified from time to time by special laws. But no such grant or demise shall extend beyond fifty years in duration.

Mr. JORDAN suggested the following substitute for the 5th section:

§ 5. The legislature shall have power to authorize the taking of private property for public use, on paying a just compensation; and to grant such franchises as the public good may require.

Mr. LOOMIS objected that this would interfere with the first section.

Mr. JORDAN desired to give the legislature the power they now had in special cases.

Mr. PERKINS thought the substitute of Mr. Loomis did not reach his object fully, and so far as it did so, it did it inconveniently.

Mr. STRONG opposed the substitute.

Mr. MARVIN wished to get back to the first section, saying that he desired to offer the following substitute:

§ 1. The legislature may pass general laws authorizing persons to be erected into a body corporate for banking, manufacturing, religious and such other purposes as the legislature may deem safe and practicable, and under such restrictions and conditions, and with such powers and limitations as shall be provided in such laws; but no law shall embrace more than one species or class of corporations.

Several other propositions were sent up, and all of them ordered to be printed.

Adj. to 8½ o'clock to-morrow morning.

SATURDAY, SEPTEMBER 26.

Prayer by the Rev. Dr. WYCKOFF.

Mr. CAMBRELENG moved to discharge the committee of the whole from the report of committee No. 14, on currency and banking. Carried.

SATURDAY AFTERNOON SESSIONS.

Mr. BASCOM moved that the resolution heretofore adopted that sessions shall not be held on Saturday afternoons be rescinded.

Mr. STRONG opposed the resolution. Some time was requisite to clean the house and put it in order, and Saturday afternoons ought to be allowed for that purpose. Besides, these afternoons were the only portions of the week the members themselves had of cessation from attendance in Convention; and it must be admitted that they required some few hours in the course of the week.

Mr. CAMBRELENG said this Convention had not an hour to lose, and therefore the resolution should be adopted.

Mr. BASCOM advocated the passage of his resolution as necessary at this late period of the session, to give them half a day which could be very usefully employed.

Mr. VAN SCHOONHOVEN said it was perfectly idle to attempt to accomplish any great good by saving these few hours. If the session

was not to be lengthened beyond the 6th of October, it was absurd to suppose that they could do much more business than that now before them. If they finished the business now under consideration, it would be as much as they could possibly accomplish. He moved to lay the resolution on the table.

Mr. MANN called for the yeas and nays, and the motion was negatived—19 to 57.

The resolution was then adopted.

DISTRIBUTION OF LAND.

Mr. HUNT presented a petition from the National Reform Association of the city of New York, for the passage of such fundamental laws as would afford to all persons willing to labor, an equal proportion of landed property, and presenting an article precluding any citizen from holding any more than 160 acres of land, and giving two years to those who possess more for disposing of the surplus, &c. &c. Referred to the committee on estates in land.

INCORPORATIONS OTHER THAN BANKING AND MUNICIPAL.

The Convention resumed the consideration of the report of committee number 17.

The pending amendment offered last night by Mr. Loomis was carried.

Mr. KIRKLAND moved to amend by insert-

ing at the end of the 7th line the words "in all cases of the taking of lands or streams, as in this section mentioned, due compensation shall be made to the owner or owners thereof." Adopted.

Mr. RICHMOND moved to strike out the word "corporation," in the 2d line, and insert "individuals." If private property were to be taken, he would as soon trust an individual as a corporation.

After a few words from several gentlemen, Mr. RICHMOND modified his amendment so that it should read "corporation or persons," and, as modified, it was adopted.

Mr. JORDAN desired to offer a substitute for the entire section but not being prepared with it, moved that the section be passed over for the present. Agreed to.

The sixth section was read as follows:—

§ 6. All corporations and associations to be created or formed after the adoption of this Constitution, shall be subject to the provisions herein respecting corporations.

Mr. KIRKLAND said it was perfectly superfluous. Corporations hereafter to be created must necessarily be subject to the fundamental laws of the land. He therefore moved to strike it out.

Mr. LOOMIS said it was necessary that the section should remain as it was.

Mr. BRUNDAGE moved to add at the end of the section (and this took precedence of a motion to strike out) "and shall sue and be sued in the same courts and in like manner as private individuals." He briefly stated his reason for his amendment.

Mr. SIMMONS opposed it.

Mr. RICHMOND thought it necessary to bring companies and individuals on the same level in respect of rights and principles. Corporations should be sued in justices' courts as well as individuals.

Mr. BRUCE also advocated the amendment.

Mr. RICHMOND called for the yeas and nays, and there were—yeas, 74 nays 7.

AYES—Messrs Allen, Angel, Ayrault, Bascom, Bergey, Bowditch, Brayton, Bruce, Brundage, Bull, Burr, Cambreling, Clark, Clyde, Conely, Cook, Cornell, Crooker, Cudd-back, Dana, Dubois, Flanders, Gebhard, Greene, Hawley, H. H. Heman, Hotchkiss, Hunt, Hunter, A. Huntington, Hyde, Jones, Kemble, Kernan, Kinsley, Kirkland, Loomis, Mann, McNeil, McNitt, Morris, Nicholas, O'Connor, Parish, Penniman, Powers, Rhodes, Richmond, St. John, Sanford, Sears, Shaw, Sheldon, E. Spencer, W. H. Spencer, Stephens, Strong, Swackhamer, Taft, Taggart, Tallmadge, J. J. Taylor, Townsend, Tutthill, Van Schoonhoven, Waterbury, White, Willard, Wood, A. Wright, Yawger, Young, Youngs—74.

NOES—Messrs. F. F. Packus, Dana, Miller, Patterson, Shepard, Simmons, Smith—7.

Mr. DANA moved to strike out the words, "herein respecting corporations" in the 3rd line, and insert "of this article." Carried.

Mr. KIRKLAND moved to strike out section 6, and insert the following, which he said met the approbation of the chairman of the committee.

§ 6. The term corporations as used in this article shall be construed to include all associations and joint stock companies hereafter formed having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons.

Mr. RUSSELL desired to insert the words "hereafter created" so as not to extend the provision to existing charters.

Mr. CAMBRELENG opposed the motion, desiring to reach all corporations.

Mr. RUSSELL protested against this as an act of grossly bad faith. There were now invested in corporations in this state, other than banking, more than thirty millions of capital, which would be driven from this state by such legislation as this. Who would build your Erie, your Hudson River, and your Northern railroad, if you made this sweeping alteration in their charters? No one. The capitalists who had subscribed and paid their first instalments, would not give another dollar. He earnestly protested against such retroactive legislation. If the gentleman wanted to reach the Manhattan Bank, let him attack it singly, and not strike at every charter in one fell swoop.

Mr. CAMBRELENG had no reverence for royal charters or relics of antiquity. It was a cardinal doctrine with him, that each generation should take care of itself. He knew the courts were against him, but he knew he was right.—But the gentleman from St. Lawrence need not fear that he intended to invade a single private right. He could excuse the new-born zeal of that gentleman for corporations, especially for railroad corporations. He (Mr. C.) had no desire to strike a blow at the Manhattan Company. That charter was now a dead letter, for the purpose for which it was created had ceased. But he would relieve the gentleman's conscience by modifying his section so as to apply only to future corporations.

Mr. LOOMIS advocated the substitute offered by Mr. KIRKLAND, but opposed the amendment of Mr. RUSSELL. He laid it down as a political principle, that the legislature could not grant away power for the future. Whatever one legislature could do, a future one could undo.

Mr. COOK asked the gentleman from Herkimer (Mr. Loomis), if the public faith was not as much broken by a total change of the nature of the contract, although a charter, when the stockholders of any company had expended their capital in good faith, as when money was borrowed according to law, and the nature and provisions of the law were changed by the succeeding legislature? The passage of this amendment was wholesale repudiation of the worst kind. Millions of dollars had been expended in good faith in this state, and it was an utter breach of public faith to change the nature of the contracts by a general and sweeping provision. Mr. C. admitted the right of the legislature to repeal any charter, they providing for the damage caused by such repeal.

The debate was continued by Messrs. KIRKLAND, RICHMOND, RUSSELL, and STETSON.

Mr. NICHOLAS said a distinction was made here between the rights of corporations and individuals which did not exist in fact. The right of eminent domain, which gave to the government the power to appropriate private property to public purposes, the owner being fully remunerated therefor, was a peculiar but an indispensable power, a power granted by every civilized people to its government for the com-

mon benefit of the whole community. Now this power was just as applicable to the property of corporate companies as that of individuals. If the right of way over lands belonging to an incorporated company was required for the use of the public, it might be thus appropriated as readily as if owned by individuals. On the other hand, all corporations had the same right to legal protection as individuals. A chartered company could not be invested with rights one year, and the next year stripped of those rights by the legislature. He was surprised to hear the gentleman from Herkimer express the opinion that the acts of the legislature were not binding upon subsequent legislatures. Such a doctrine would be subversive of our government, which was a government of laws—for, if adopted, it must destroy the stability of and respect for the laws. He had earnestly hoped, until we took up this report, that the Convention would, to the close of its labors, steer clear of all extravagancies, and he would still entertain the hope that vested rights would be duly respected; but if the result were otherwise, if the legislature were authorized to tamper with such rights, any such interference would prove a nullity, as our constitution would be at once in conflict with the constitution of the United States, which protects all vested rights by forbidding retrospective legislation.

Mr. KIRKLAND accepted the amendment of Mr. RUSSELL.

Mr. CAMBRELENG moved to strike out the words "hereafter formed."

The debate was continued by Messrs. VAN SCHOONHOVEN, CAMBRELENG, STETSON, BASCOM, LOOMIS, JORDAN and SIMMONS.

Mr. WHITE moved the previous question, and it was seconded.

The motion of Mr. CAMBRELENG was lost—39 to 53.

The substitute of Mr. KIRKLAND was agreed to—ayes 63, nays 21.

Mr. JORDAN moved the following as a substitute for the fifth section:—

§ 5. Special laws may be passed authorizing the taking of private property for public use on just compensation first being made therefor; and for transferring public lands, ways or streams, or a right to the use thereof, to individuals or corporations for public purposes, and for granting such franchises as are not by this constitution authorized to be conferred by general laws. But all such special laws shall be subject to be altered, modified or repealed.

Messrs. LOOMIS and RICHMOND discussed this proposition.

Mr. SWACKHAMER moved to amend by providing that the value of the property taken should be assessed by a jury.

Mr. HAWLEY moved to amend the original section by striking out the words "but no such grant or demise shall extend beyond 50 years in duration."

Mr. STRONG moved to amend the amendment by adding to the section, "provided that the Tonawanda railroad company shall not have power to take the lands of any member of this Convention." (Laughter.)

Mr. RICHMOND said he would have no provision which did not apply to all.

Mr. STRONG feared it would not pass if all the companies were included. It was for the

Tonawanda company alone that he desired the amendment to pass. (Laughter.)

Mr. RICHMOND said he had always found the gentleman from Monroe the advocate of these railroad corporations.

Mr. STRONG. If the gentleman don't like the amendment, I will withdraw it, and save him all trouble. (Laughter.)

The former propositions were further debated by Messrs. TOWNSEND and TALLMADGE.

Mr. DODD moved the previous question—No second.

Mr. HUNT moved to amend the amendment of Mr. HAWLEY by providing that the terms and conditions of grants or devises should be fixed by law for a longer period than 50 years.—Lost.

Messrs. MORRIS and BASCOM continued the debate, and the amendment of Mr. HAWLEY was agreed to.

Mr. JORDAN'S substitute next came up.—Mr. J. thought it was not necessary to settle in the constitution the manner of ascertaining the damages in cases where property was taken.—There was a provision that the property should not be taken without compensation, and that was as far as we should go. There were many questions of detail, such as what kind of a jury should be selected, their number, &c., which were proper matters of legislation.

Mr. SWACKHAMER wished to make this uniform with the great principle upon which all such questions were settled in this country. He thought its adoption would make the provision more acceptable to the people.

Mr. SIMMONS thought the amendment of the gentleman from Kings would be more proper when the subject of Private Rights came up.

Mr. SWACKHAMER. But that may not be taken up.

Mr. SIMMONS. It must be taken up. This Convention could not take the responsibility of going home, after a four months' session, without considering that subject.

Mr. SWACKHAMER was satisfied with the assurance that it would be taken up, and withdrew his amendment.

Mr. JORDAN explained his proposition. He understood the term "exclusive privilege" to mean only that when a franchise of way is given, no other company shall occupy the same track, or channel; but not that the route is granted exclusively to one company. We do not intend that the legislature shall not have the right to allow another track to be made along side of the first. The right to take tolls upon a rail-road or canal, was a franchise, and the right of way was of no use unless this franchise accompanied the act of incorporation.

The debate was continued by Messrs. LOOMIS, JORDAN and MURPHY.

Mr. LOOMIS moved to amend the substitute so that it would read as follows:—

"Special laws may be passed granting or demising for public use to any person or corporation, any property so taken, or any franchise therein, or in respect to public lands, ways or streams, on such terms and conditions as may be provided by law, subject to alteration and modification from time to time by law."

The debate was continued by Messrs. STETSON, MARVIN and JORDAN.

The Convention then took a recess.

AFTERNOON SESSION.

The question recurred on Mr. JORDAN's substitute for the 5th section—and first on Mr. Loomis' amendment to Mr. J.'s.

Mr. STETSON raised the question whether Mr. JORDAN's amendment did not authorize the passage of a special charter—insisting that it would.

Mr. JORDAN argued that it would not.

Mr. MURPHY remarked that a constitution should be so plain and simple that at least those who framed it would understand it. But here the utmost difference of opinion existed as to the real meaning of this section. The whole difficulty had arisen from inserting in the first section a clause prohibiting the granting of exclusive privileges to these corporations. He trusted we should go back and strike out that clause.

Mr. KIRKLAND suggested that the only course was to reject these substitutes and then reject the 5th section. Gentlemen could not explain their own amendments, and they should therefore be rejected for uncertainty. He had been trying to understand what all this meant; but he confessed he had been unable to satisfy himself that he understood them fully.

Mr. VAN SCHOONHOVEN labored under the same difficulty. But if this 5th section meant any thing, it meant that the legislature by a vote of a majority of a quorum, might give to a corporation the right to bridge a navigable stream, such as the Hudson here at Albany. He should move at the proper time to add a proviso to the section, to the effect that every bill authorizing a corporation to take private property for public use, or preventing the free navigation of the waters of this state, shall require a vote of two-thirds of all the members elected to both branches to pass it.

Mr. BERGEN moved the previous question, and there was a second, &c.

The amendment of Mr. Loomis was negatived, ayes 36, noes 51. was

The substitute proposed by Mr. JORDAN rejected, ayes 33, noes 54.

The original section was also lost, as follows:

AYES—Messrs. Allen, Bergen, Brundage, R Campbell, Conely, Dana, Danforth, Greene, Hart, Hotchkiss, Hunter, A. Huntington Hyde, Jones, Keenan, Kingsley, Loomis, McNitt, Maxwell, Morris, Nellis, President, Russell, Sanford, Sears, Sheldon, Shepard, Stephens, Taft, Townsend, Tuthill, Ward, Wood, Yawger, Youngs—35.

NOES—Messrs. Angel, Archer, Ayrault, F. F. Backus, Bascom, Brynton, Burr, Cambreleg, Candee, Chamberlain, Clark, Cook, Cornell, Crooker, Dodd, Dubois, Flanders, Gebhardt, G. Gaham, H. C. J. Jordan, Kirkland, Mann, McNeil, Marvin, Miller, Murphy, Nicholas, O'Connor, Parish, Patterson, Penniman, Perkins, Rhodes, Richmond, Riker, St. John, Shaw, W. H. Spencer, Stetson, Stow, Strong, Swackhamer, Teggart, Tallmadge, J. J. Taylor, Vache, Van Schoonhoven, Waterbury, White, A. Wright, W. B. Wright, Young—53.

Mr. MARVIN now moved a reconsideration of the 1st section, with a view of moving a substitute for it—being the substitute he sent up yesterday.

Mr. PERKINS said he voted for the first section, under the expectation that we should be able so to arrange the 5th, as to leave the door open for the legislature to pass special acts conferring special privileges in particular cases.—

But this was found to be impracticable. He trusted we should now reconcile the 1st section, and adopt some substitute like that of Mr. MARVIN.

Mr. NICHOLAS said, during the protracted discussion of this question he had not been able to discover any necessity for compelling the legislature to pass general laws of incorporation. The principle reasons assigned for this requirement were that the legislature had, in former years, been misled by improper combinations, and induced by corrupt means to grant bank charters; and secondly, that the time of the legislature was too much occupied with applications to create or amend individual charters. It could not be denied that a long time since, the prospect of gain and hope of reward influenced legislators in favor of bank charters, which should not have been created, and the people became indignant at this official profligacy. Public opinion soon applied the corrective. A strict scrutiny was kept on all such applications, and at length the legislature framed a general banking law. This law was defective, but its defects would be removed; it might and would be perfected and adapted to the wants of the country. The legislature had for several years ceased to incorporate individual banks, and no gentleman here doubted the permanent and exclusive operation of a general banking law in this state, without any constitutional provision requiring it. As to the other reason referred to, a saving of the time of the legislature, the limit which had already been fixed to the legislative session would compel the legislature to enact general laws when practicable, and when they would subserve the convenience and interest of the people, as well as special legislation. This change in the business of the legislature would be unavoidable, when its session after next winter, was restricted to 100 days, and a system of general laws for creating corporations and associations, would be adopted wherever it could be usefully and safely applied. Where then was the necessity for any action here on this question? It was a fit subject for legislation, and should be left with the legislature.

The section was reconsidered.

Mr. MURPHY then moved to strike out the clause forbidding the granting of exclusive privileges to corporations.

Mr. MARVIN thought the entire section ought to be struck out. The section as it stood, or as amended, destroys the power of the legislature to create corporations, and obliged us to go on and make a constitution of enumerated powers. He suggested that his substitute would meet the whole difficulty. It was this:—

§ 1. The legislature shall pass general laws authorizing persons to be created into a body corporate for banking, manufacturing, religious and other purposes as the legislature may deem safe and practicable, and under such restrictions and conditions, and with such powers and limitations as shall be provided in such laws; but no law shall embrace more than one species or class of corporations.

Mr. MURPHY thought the gentleman misapprehended the section as it would read with these words struck out. It was one thing to create a corporation and another to grant to it special powers. The object was to prevent

special acts of incorporation, and to authorize persons to become corporations under general laws. He would not have the legislature grant special charters; but he would have the legislature empowered to grant powers to corporations already created—and his amendment would not make it necessary to enumerate what powers the legislature might confer.

Mr. CAMBRELENG remarked that simplicity and directness should characterize every provision in a constitution. That was the great desideratum—and it appeared to him the whole object of this article might be attained by four or five lines. He had drawn up a section which he would read as embodying all that it was necessary to insert. It read as follows:—

§ 1 The legislature shall have no power to pass any law granting special charters to any corporation or joint stock association, except corporations exclusively municipal; but such corporations or associations may be formed under general laws.

Mr. LOOMIS remarked that this matter had assumed rather a singular aspect, and he was at

a loss what course to take. One thing he was sure of, and that was that he was placed on the defensive. In a very full house, and after ample discussion, we had adopted the 1st section, struck out the second, adopted the third and fourth sections, and brought up on the fifth—a section which was necessary to carry out the 1st—and finally, with a bare quorum present, had struck it out. He was unwilling to see the Convention turn right about, and in an hour undo all it had been a week in doing. He should have preferred to have reconsidered the 5th section, where all the difficulty was—and he still thought we could get over the difficulty in that. But in order that the whole subject might be reviewed in a fuller house, he moved that the report lie on the table.

This was agreed to, ayes 49, noes 34.

Mr. CAMBRELENG moved that the committee now take up the article on banking.

Mr. STRONG moved an adjournment, and the Convention

Adj. to 8½ o'clock on Monday morning.

MONDAY, SEPTEMBER 28.

Prayer by the Rev. Mr. BENEDICT.

The PRESIDENT presented a communication from the Chancellor in relation to a resolution passed a few days ago, which was interpreted as an implied censure on the register, assistant register and several clerks, for not making returns in answer to an enquiry sometime since transmitted to them. The Chancellor made a statement of the labor to be performed, and excuplated the officers alluded to. An accompanying letter was also read from Mr. Emmett, assistant register.

They were ordered to be printed.

FORMATION OF NEW COUNTIES.

Mr. BRUNDAGE offered the following provision, and moved its reference to the select committee to revise and arrange the new articles of the constitution, with instructions to insert it in the constitution:

In case of the formation of a new county from different senate districts, the legislature may at any time reorganize the judicial senate-district or assembly districts which may be affected by the formation of such county.

Mr. ST. JOHN moved to lay the resolution on the table. Carried, 47 to 23.

ORDER OF BUSINESS.

Mr. W. B. WRIGHT offered a resolution to discharge the committee of the whole from the following reports, and that they be considered in the order in which they are placed, after disposing of the report now under consideration:

The appointment or election of all officers whose functions are local, and their tenure of office, powers, duties and compensation.

The elective franchise, and the qualification to vote and to hold office.

In relation to municipal corporations, their powers of taxation, &c.

Mr. CAMBRELENG asked the gentleman to modify his resolution so as not to conflict with the report on currency and banking, which stood next.

Mr. W. B. WRIGHT said the Convention had but six working-days left, and they should not be excused by their constituents if they left matters of principle to determine matters of expediency only. Should not the great question, "who shall be the constituent body," be decided, while they have yet time to do it? It was a question of great importance and should have an early consideration.

Mr. ALLEN desired to add to the list the report of committee No. 14, on municipal corporations which was as important as those which had been designated.

Mr. JORDAN suggested that the report on cities and villages, and then that on the elective franchise should take precedence of the subjects suggested.

Mr. ALLEN accepted Mr. JORDAN's amendment.

Mr. PATTERSON said that when we had disposed of the two reports of Messrs. Loomis and CAMBRELENG, we should have done as much as could be expected, in the line of incorporations. The subject of rights and privileges was entitled to attention, and many of the other matters could be disposed of by the legislature. He thought the Convention should give preference to such matters as could not as well be left to the legislature.

Mr. RUSSELL moved the previous question and there was a second, &c. The amendment, and the resolution as amended, were adopted.

CONSOLIDATION OF REPORTS.

Mr. SWACKHAMER moved that the several reports on corporations, banking, and municipal corporations, be referred to a select committee of seven to consolidate them into one article.

Mr. CAMBRELENG hoped it would not be agreed to. The committee had given a careful attention to the subject of the currency and banks, and he had since revised the committee's

report, and he believed no select committee would be able to get it into a better shape.

Mr. SWACKHAMER said a sense of duty had compelled him to offer his resolution. It was impossible for this Convention to go through those reports section by section, and the plan he had suggested would be the only way of disposing of these matters during the present session.

Mr. CAMBRELENG said he was assured they could get through his report by 2 o'clock. He therefore hoped the resolution would be laid on the table.

He made that motion and it was carried.

Mr. TALLMADGE asked that committee number Eleven be discharged from the further consideration of a petition on the rights of the clergy, &c., and that it be referred to the committee of the whole having in charge the report on rights and privileges. Agreed to.

Mr. WHITE, on leave, presented the memorial of Wm. Jay, respecting an assessment. It was referred to the committee of the whole on that subject.

Mr. MURPHY said he was accidentally absent when the resolution throwing the report of committee number Fourteen to the heel of the session, was passed, and therefore he gave notice of a motion to reconsider.

Mr. SHEPARD moved that Mr. CHATFIELD be discharged from further service on the select committee to revise the articles of the constitution, on account of his health. Agreed to.

Mr. LOOMIS also asked to be excused on the same ground. Agreed to.

Messrs. POWERS and RUSSELL were appointed to fill the vacancies.

Mr. STOW asked and obtained permission to have the following sections printed, which he intended to offer as amendments of the report of committee number Four:—

§ —. An elector owning a freehold, or having an unexpired term of not less than twenty-one years in a leasehold, (now existing) may, by an instrument executed by him declare that he intends to exempt from incumbrances, for debt, the property described in such instrument—the value of such property shall not be less than one thousand dollars.

§ —. The value of the property mentioned in the last section shall be ascertained by the assessors of the town or ward in which it shall be situated; who shall make a certificate of their appraisal.—Such instrument and such certificate shall be acknowledged, or proved in the manner entitling a deed to be recorded, and shall be recorded in the clerk's office of the county in which the property is situated; and notice of such record shall be published in such manner, and at such time as shall be prescribed by law, after such record; and notice thereof shall have been duly published, such property shall not be unincumbered by, or for, any debt created or contracted by such elector. This privilege shall not enable an elector to hold more than one piece of property thus exempt at the same time; and such exemption shall cease whenever he shall cease to be a resident of this state.

CURRENCY AND BANKING.

Mr. CAMBRELENG moved that the Convention proceed to the report of committee number Sixteen. Agreed to.

Mr. C. then sent up the following substitute for that report, which was read:—

§ 1. The legislature shall have no power to pass any act granting special charters for banking purposes, but associations may be formed for such purposes, under general laws.

§ 2. The legislature shall have no power to pass any law sanctioning in any manner, direct or indirect, the

suspension of specie payments, by any person, association or incorporation issuing bank notes of any description.

§ 3. The legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require for the redemption of the same in specie, ample security by pledges of property.

§ 4. The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, after the first day of January, 1851, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind contracted after the said first day of January, 1850.

§ 5. The legislature shall limit the aggregate amount of bank notes to be issued by all the banks and joint stock associations in this state, now existing, or which may be hereafter established.

§ 6. All incorporated companies and associations exercising banking powers, shall be subject to visitation and examination at the instance of their shareholders, or of their creditors, under regulations to be established by the legislature; and in case of the failure of any such incorporation or association to discharge its debts or liabilities, or of any of its members to discharge the debts for which they may be personally liable as members of such incorporation or association, provision shall be made for the speedy and equitable settlement of the affairs of such incorporation or association and for dissolving the same.

Mr. AYRAULT objected to this as entirely new matter, which should not be acted upon until printed. These changes were very important, and should be carefully considered.

Mr. CAMBRELENG desired to explain the provisions. He thought he could show that they might be easily understood.

Mr. AYRAULT again urged that the document should be first printed; but if the gentleman desired to explain, he would interpose no further objection.

Mr. CAMBRELENG said, before proceeding to the consideration of the amendments proposed, it is perhaps proper, that I should ask the indulgence of the Convention to submit some general remarks on the subject of banking, and especially that branch of it relating to the currency. The question of currency—the question by what standard the contracts, property and labor of a state shall be measured—is one of the most important that can be presented to the attention of this Convention—involving, as it does, the interests and welfare of every class of the community. Past legislation has rendered it an embarrassing question. We have, through the agency of monied corporations, attempted, for more than half a century, to substitute our own measure of value, for one recognized in all civilized countries and in every age of the world, as a universal standard. The experiment is not new. Governments, ancient as well as modern, have, through state necessity or the profligacy of monarchs, waged frequent wars against the currency established by the common consent of nations; but wherever they have occurred they have uniformly produced bankruptcy, poverty and crime. Whatever form these wars have assumed, whether by debasing the coin, issuing government bills of credit, or bank bills of credit under government authority, the effect has ever been to excite alarm, paralyze industry and suspend the employments of labor. Whether the depreciation is in either form, the effect on the community is essentially the same, varying only according to the extent of the abuse. The

tyrants of antiquity began this war by debasing the coin—the monarchs of China and Persia renewed it in the 13th century in the form of bills of credit; and in both forms most European nations, from time to time, continued it. But England, of all countries has suffered most from an abuse of currency, in various forms. For two centuries her Edwards and Henrys debased the coin; and for generations these acts of tyranny were followed, to use the language of the historian, “by galling oppression, sanguinary executions and a right sore famine.”

It was reserved, however, for our more enlightened eye to discover a new mode of warfare against the currency of the world, by bank bills of credit, circulating as money under government authority. England is entitled to the credit of this discovery. It sprang out of state necessity in 1694, when the Bank of England was founded on a government loan. Originally its notes were of large denomination and not designed to circulate as coin; but even then it suspended specie payments in two years—in 1745 it was driven to the necessity of paying in sixpences, and in 1780 it was near suspending again. The crisis however, of this new system of paper money occurred in 1797, when, although the bank issued no note under five pounds sterling, it suspended specie payments and continued to do so for more than a generation. From that moment confidence was destroyed and the spell broken. The bank finally resumed in 1821, but in four years, during the panic of 1825–6 it applied to ministers for an order to suspend, which was refused. In 1839 came the last trial of this currency, when the Bank of England was saved from suspension by the Bank of France, through whose agency a loan of two millions and a half sterling was negotiated.

Satisfied by an experiment of just a century and a half, from 1694 to 1844, that the more a paper currency was enlarged the weaker and more dangerous it became, and that England with her immense capital and resources, must in every revolution rely on France and her immutable currency.—Ministers in the latter year surrendered the question and commenced a retrograde movement. By the acts of 1844, the currency and business departments of the bank of England were separated; its issues limited to the amount of its government securities, coin and bullion; and the banks of England and Wales prohibited from issuing notes beyond the average amount in circulation within a given time—being two millions three hundred thousand pounds less than their circulation in 1833. No new bank of issue is to be authorized, and banks ceasing to issue notes are prohibited from doing so again. The bank of England may compound with banks of issue to withdraw their circulation, and may issue their own notes for two-thirds the amount so withdrawn, paying the government the net profit on all issues on securities beyond fourteen millions—deducting the amount paid to bankers for withdrawing their issues. In 1845 the circulation of Scotland and Ireland was in like manner limited. The design of Ministers appears to be to concentrate in the bank of England the whole authority to issue notes in England and Wales, and, still

further, to reduce the aggregate circulation. Such is the result of this protracted and severe contest in England between paper and coin. After a struggle of a century and a half—after enacting statutes relating to the bank of England, the mere titles of which fill more than two hundred pages of the index to the Statutes at large—after commencing with a debt of little more than a million and ending with one hopelessly irredeemable—after a succession of revulsions and panics from generation to generation, filling a country, overflowing with wealth, with bankruptcy, poverty and crime, and reducing the peasantry to a condition more wretched than exists in any civilized land—after all these appalling results, ministers at last discovered, that an unrestricted issue of paper money is wholly impracticable and that commercial credit, though sustained by government, can never permanently contend with the universal coin of the world.

What is the history of our experiment to substitute paper for coin? We had much reason to be cautious at the outset. No people had suffered more than ours during the revolution, from an issue of three hundred millions of bills of credit, and every precaution was taken in 1787, by the strongest constitutional guards to protect this country from the ruinous effects of a paper currency in any form. In the strong language of Oliver Ellsworth, it was “a favorable moment to shut and bar the door against paper money.” The states were prohibited from “coining money, emitting bills of credit or making anything but gold or silver a lawful tender in payment of debts,” and the federal government was refused the power to emit bills of credit or to grant charters of incorporation. And that these hard money men might not be misunderstood, the first revenue act of 1789 expressly required “that the duties and fees collected by virtue of this act shall be received in gold or silver coin only”—thus as it was supposed, forever “shutting and barring the door against paper money.” The discovery, however, was soon made, that it was lawful to do by our authorized agent, what we could not constitutionally do ourselves, and all our governments, state and federal, established their incorporate agents throughout the union to emit bank bills of credit without limitation, and to expand and contract the currency at their pleasure. The consequence has been a succession of revulsions and panics, producing bankruptcy and crimes. The mischiefs of this paper system were not perceptible at first, the amount issued being inconsiderable and our currency being protected by European wars and the suspension by the bank of England in 1797. But even as early as 1803–9, and long before the bank resumed specie payments, this paper currency exploded in New England, with disastrous consequences. During the war all the banks, out of New England suspended—in 1818 there were partial suspensions—in 1819 and 1825 general panics—in 1837 every bank in the union stopped payment, and in 1839 they suspended south and west of New York. In twenty-two years, from 1817 to 1839, we have had no less than eight revulsions or periods of partial or total stagnation of trade and suspension of labor. The apprehension of war for two years past has

suppressed the spirit of speculation or we should now be in the midst of another revulsion; and the moment peace is restored with Mexico, we may anticipate a sudden expansion of credit, soon to be followed by another explosion of our paper system. Such must forever be the calamitous history of trade, so long as our currency expands and contracts with the fluctuations of commercial credit and government revenue; and so long as its convertibility depends on the absurd fiction, that one dollar in specie can redeem five or six dollars in notes and deposits!

The suspension in 1837 was the most memorable and disastrous event which has occurred during this war of ours upon the currency of nations, and forcibly illustrates the danger, and indeed the impracticability of a system which connects commercial credit and public revenue with bank notes circulating as money. Between 1834 and 1837 our banking capital had increased ninety-one millions—the deposits near fifty-two millions, of which about forty millions were government revenues—and the banks had increased their issues more than fifty-four millions—making an aggregate of one hundred and ninety-seven millions. The consequence was a sudden increase of their loans from three hundred and twenty-four millions in 1834 to five hundred and twenty-five millions in 1837—making an expansion of credit of two hundred and one millions. The immediate effect of this increase was a simultaneous and speculative movement throughout the union, and an excess of over-trading unparalleled in modern times. If we measure the contracts of the nation by this enormous increase of bank loans, we may form some idea of the countless millions of credits exchanged in 1835 and 1836, founded upon valuations wholly imaginary, and ending in the common bankruptcy of individuals, banks and states. Indeed there has been nothing like it since the South Sea and Mississippi schemes of England and France in the last century. In the latter we are told that the man who was one day a millionaire could not the day after buy a breakfast with a hundred millions of paper in his pocket, and our great capitalist of 1836 would have starved in 1837 had he depended on his contracts for a hundred lithographic cities. It is not the speculator, however, who suffers most from these periods of commercial delirium. It is of little consequence to those who are perpetually revolving with the wheel of fortune. Still less to the wealthy capitalist—to him, on the contrary, revulsions are profitable. It is the capitalist alone who revels in an explosion of credit. While the wrecks of bankruptcy lie centered around, he, and he alone, has money and credit enough to reap the periodical harvest of the paper system. Far otherwise is it with the laboring classes. Speculation and revulsion are destructive to labor. They raise prices without increasing quantities or the wages of labor. While they give no additional employment, they increase the expense of living—the succeeding panic brings all industry to a stand, and leaves the artisan, mechanic and laborer without employment and their families without bread—suffering all the pangs of famine in a land overflowing with every blessing which can contribute to the comfort and

happiness of man! Such is the harvest which labor everywhere reaps from the paper system. Well may we exclaim in the language of one of our most distinguished men, “of all the contrivances for cheating the laboring classes of mankind, none has been more effectual than that which deludes them with paper money. This is the most effectual of inventions to fertilize the rich man’s field by the sweat of the poor man’s brow. Ordinary tyranny, oppression, excessive taxation, these bear lightly on the happiness of the mass of the community, compared with fraudulent currencies or the robberies committed by depreciated paper. Our own history has recorded for our instruction enough, and more than enough, of the demoralizing tendency, the injustice, and the intolerable oppression on the virtuous and well disposed, of a degraded paper currency, authorized by law or any way countenanced by government.”

If our state governments do not adopt prompt measures to arrest the further increase of our paper currency, the scenes of 1835 - 6 and 7 will soon be enacted over again. Its fluctuations in a generation past indicate another crisis. After the expansion and speculations following the war and the revulsion of 1819, the amount of bank notes issued was reduced in 1821 to about forty millions—it rose in 1837 to more than a hundred and forty-nine millions—being an increase of more than a hundred millions. From this excessive expansion it was reduced in six years—in 1843—to fifty eight millions and a half—a sudden reduction of more than ninety millions of dollars—and in the last three years it has risen again to more than a hundred and five millions, at the rate of a hundred millions in six years. I appeal—earnestly appeal—to the wisdom and patriotism of this Convention. I entreat gentlemen to reflect upon the excessive and violent expansions and contractions of our currency—this rising of a hundred millions, and falling of ninety millions—this sudden increase again at the rate of a hundred millions in six years. What stability can there be in the value of property or contracts—what steady employment can labor expect—when the artificial standard by which property, contracts, and labor are measured is thus constantly and violently fluctuating—in other words, when your currency is periodically depreciated by an over-issue of paper? What would be thought of a government which should attempt to meet its extravagant expenditures by debasing its coin, or depreciating its measure of value ten per cent every ten years? Both bring industry to a stand and rob labor of its employment. The power to do either is fatal to the welfare of the community. And yet this monstrous power to violate all contracts and prostrate labor, which wherever exercised by tyrants, brought upon them the just execrations of mankind, has been bestowed by the legislatures of republican governments on monied corporations. Government dare not debase its coin; but banks are invested with the sovereign privilege to depreciate the currency at their discretion; and, as an encouragement to perpetuate the abuse, they are authorized to levy an annual tax upon the country nearly equivalent to the interest on two hundred millions of circulation and deposits. While this

privilege is enjoyed—while our bankers have the power to create money without limitation—requiring security for the circulation to protect the bill holder is a mere mockery; for we must anticipate a succession of expansions and contractions of the currency, at the rate of a hundred millions and upwards every six years, overthrowing all credits and prostrating every branch of industry.

Such a system of banking and currency was never contemplated by the bankers and legislators of this state at the outset of our government—they had then nothing to do with each other, and fortunate indeed would it have been for both, and still more for the community, had the secession continued to this day. The first bank in this state, the old bank of New York, was a voluntary association formed in 1784; it remained such, unaided and unrestricted by government, for seven years—until 1791—when the same hand which drew the charter of our first national bank framed the act to incorporate the Bank of New York. The framer seemed to be aware that notes payable to bearer and circulating as money were bills of credit, and they were therefore made “assignable by endorsement,” and not redeemable in state bills of credit. The state became a shareholder. This was the first and most unfortunate connexion of our government with the trade of banking. In 1804 the war commenced between free-banking and privileged corporations. Prior to that the Manhattan Company, though chartered for another purpose, had assumed banking powers. An association had been formed in New York, called the Merchants’ Bank, and had been some time in operation, and another in Albany called the Mercantile Company. The influential stockholders in the Manhattan Company petitioned the legislature not to grant charters to these companies; but to prohibit all voluntary associations from engaging in the business of banking. The legislature, accordingly, in 1804, passed that celebrated and extraordinary law, called the restraining act, prohibiting, under severe penalties all associations or individuals, not only from issuing notes, but from “receiving deposits, making discounts, or transacting any other business, which incorporated banks may or do transact.” No person was permitted to subscribe to any such association. While this despotic measure was under consideration in the senate, a proviso was added that it shall not affect the Merchants’ Bank, upon condition that the stockholders should be “personally liable as in the case of ordinary partnerships,” but even this was afterwards lost. Another restraining act still stronger was passed in 1818. These abominable restraints on banking continued for thirty-three years, and were not repealed until 1837. Such was the origin of our banking system—the miserable abortion of legislative despotism and a privileged monopoly.—Had government never meddled with the question—had banking been left as free here as it has been in Scotland for more than a hundred years, it would have grown up under voluntary associations, more profitable to them and infinitely more useful to the community. Competition would have compelled them to allow interest on deposits, uniting, as the Scotch banks

do, the business of trust companies for capitalists—savings banks for the poorer and laboring classes, and banks of discount for the merchant, trader and manufacturer. Ours might have had in time, as theirs have, thirty millions sterling in deposits, more than half of which is in sums of ten to two hundred pounds—the savings of the poorer and laboring classes. Such is the admirable result of banking where it is free from every legislative contrivance and independent of all government control. When this useful branch of trade acts as the voluntary agent of the community, it cultivates frugality, makes the savings increase the employments of labor, draws together the earnings and dormant capitals of every class, distributes them to every branch of industry, and gives accelerated velocity to the annual accumulations of national wealth.

Free banking is one thing—free trade in the manufacture of paper money is a very different affair. I have always been, and I trust I shall continue to be, the advocate of free trade and the natural rights of man; but I have never advocated the natural right of monied corporations, or of bankers, to circulate their own credit as a substitute for coin, in violation of the federal constitution and of the law of the world. Free trade in the issue of paper money has never succeeded anywhere, and will inevitably fail here, notwithstanding the opinion of some intelligent men that competition would correct any evils resulting from such issues. The more free the manufacture of paper, the more it is enlarged, and as the amount increases, revulsions become more frequent and violent. The only effect of competition is to encourage over-issues and to win up this excess of credit by the periodical sacrifice of trade and labor. Neither banks nor bankers can anywhere be trusted with the power to create money without abusing it, and inflicting serious injury on the community. The example of Scotland cannot be relied upon. There is no resemblance between that currency and ours. Their circulation never passes beyond the Tweed; they have no note under a pound sterling; their issues are in a constant and quick process of redemption, less liable to excess, and act more as a medium of transfer than as a loan of credit. But the currency of Scotland, like that of England, depends on government securities, and is liable to the same suspension of specie payments. It is sustained by exchequer bills and drafts on London, while the coin of the continent sustains that of England and the whole paper fabric of Great Britain.—Had the banks of Scotland been transferred to the borders of the British channel, they would have been among the first to suspend; for this currency can nowhere stand in conflict with coin amidst all the fluctuations of the foreign trade. After a long trial, the experiment has failed in Great Britain and Ireland, and ours has had no better success; for we have had repeated suspensions in one generation. We may go on with ours, we may prostrate trade and labor every ten years by an excessive issue of paper money; but after a series of revulsions and panics, and a vast increase of pauperism, we shall be compelled eventually to abandon our war against the currency of the world, and limit the issues

of paper money as they have done in England, Wales, Scotland and Ireland. This auxiliary medium of circulation can be perpetuated in no country, without limitation—the only measure which can effectually prevent over-issues and moderate the evils of periodical over-trading.

The first amendment proposed is to substitute general for special laws, leaving bankers at liberty to form associations without applying to the legislature. When these general laws are applied to other branches of trade, the power should be exercised with great caution; for if there is no limitation, all ordinary partnerships may come in under general laws, trade would soon become a lottery, and under a limited responsibility, the bankrupt partners might be richer than their creditors. General laws should be limited to such purposes only, as cannot well be accomplished without an association of capital and such as special charters would have been granted to effect. Further the legislature should never interfere with trade. But for our unwise legislation, which has cultivated the growth of government corporations, there would be no necessity for such laws, special or general, in relation to banking or any other branch of trade; and the interference of government never would have been required, unless the sovereign authority was necessary to effect the object of the corporation. Trade, if left to itself, would have found its own expedients to accomplish every other purpose, whether through the agency of individual or associated capital, and to any amount, wholly independent of legislation. The progress of reform may eventually leave trade without any such laws, special or general, and entirely free from all government regulation.

The second proposition is to prohibit the legislature from passing any act sanctioning the suspension of specie payments. It is true, that in 1837, the legislature did not directly authorize the suspension; but the measure adopted indirectly sanctioned it, and had the same practical effect, not only as it regarded contracts between banks and individuals, but between the banks and the state. At the time of their suspension, they held more than five millions and a half of the public money. When called upon to pay only about a million of that in specie, or the premium upon it, they refused, and the loss fell upon the canal fund; and that too, after the state had expended \$275,000 for premiums on the debt paid in anticipation, to divide the payments for the accommodation of the banks—That act not only indirectly sanctioned the suspension of specie payments, but directly violated the constitution of the United States. The federal constitution prohibits the states from making anything but gold or silver a lawful tender—the suspension act made it a condition that the banks should receive the notes of each other in payment of debts, and thus gave currency to irredeemable paper, instead of compelling them only to receive and redeem their own notes. In every suspension of specie payments, our laws should remain unchanged. Our monied corporations may trample upon them, as they have done repeatedly, but the legislature should have no power, directly or indirectly, to sanction the suspension, or to participate in any manner in violating the contracts of the community.

Personal liability is not new even in this country. Our first bank was a voluntary association. The principle has been introduced into some of our modern acts and more than twenty of our individual bankers are personally liable without limitation. There are three degrees of liability—first for the notes issued—second for an amount equal to the stock of each shareholder, as in the Commercial Bank of this city, and third, unlimited liability, as it has existed for more than a hundred years in England and Scotland. Responsibility for the circulation only, would be of very little importance, while security is held for the amount of notes issued—if not unlimited it should certainly extend to an amount equal to the shares of each stockholder. This is indispensable under our present system, which without additional responsibility will prove a failure. As it now stands, we offer a bounty on the manufacture of paper money, while we take from the parties the means to redeem it. We encourage the deposit of securities drawing interest, in exchange for bank notes to be loaned—thus producing nearly double interest on the same capital—while the most available means of the banker are locked up here beyond his reach—rendering his suspension more certain at every commercial crisis. It would be exceedingly unwise to perpetuate, by a constitutional provision, a system, which thus encourages the increase of paper money and weakens the bank at home, where alone the pressure will be felt. Unlimited personal liability, relinquishing these securities, would be infinitely preferable to the present system; for the credit of the banks would then rest on a broad and firm basis and in possession of all their available means they would be better prepared to meet any demand which might be made upon them. If we mean the keep the securities for the circulation we must extend the liability to strengthen the banks wherever they are located. The private resources of the partners must be brought in to sustain the bank, or it must inevitably stop payment. At present the large bill holder, who can send his bills to Albany may be protected; but it affords little protection to the small bill-holder who cannot do so—extend the liability and you protect both by sustaining the bank. We are bound by other considerations to strengthen the security of the banks. We have made them the authorized agents of the state—we hold their plates and their funds—the notes are countersigned at, and issued from, the comptroller's office—they go forth with our endorsement and we thus give these banks a fictitious—nay, a state credit, which secures the confidence of the community and they become the trust-holders of the money of all classes, whose interests we are bound to protect from the insolvency of our agents. Unlimited liability is the best substitute for our present system. Voluntary associations on that principle began in Scotland more than a century ago. They would have extended to England but for the act of 1703 which limited the number of partners to six, to protect the monopoly of the Bank of England. When that restriction was removed in 1826 such associations were immediately formed and the latest publication I have seen, gives a list of one hundred and ten joint-

stock associations and 506 branches in England and Wales, with from eleven to one thousand partners. Banking in Great Britain rests on a broad security, is conducted with greater skill and economy and yields larger dividends to the stockholders, notwithstanding their low rate of interest. But as we have, in this state, security for the issues—whether we continue the present plan of actual deposits, or restore the safety fund system, which experience, I think will prove to be better for the banks and the community—a limited personal responsibility to the amount of the shares of each stockholder will place the credit of our banks on a more solid foundation. That provision is in the charter of the Commercial Bank of this city and the same principle was embodied in the act of the 22nd March, 1811 and applied to certain trading companies. It is somewhat extraordinary, that it never should have been applied, until recently and in one instance, to the trade of banking, in which the whole community have so deep an interest. That liability has saved the Commercial Bank and many of our trading companies from bankruptcy and had it been applied to all our banks, for the last thirty-five years, it would have saved many that have become bankrupt. As it is desirable to place all banks on the same footing, it is proposed that the liability should commence on, and apply to, all the debts contracted after the 1st January 1850.

Were this an original question, I should prefer dissolving all connection between our government and the banks, and should recommend the provision adopted last year by the Convention of Louisiana. The severe losses of that state—where a debt has been incurred of near twenty millions, by banking—has introduced this most salutary reform. They deny their legislature the power to create or renew any bank charter. Other states have since adopted a similar provision. Fortunate would it be for us were we in a condition to adopt the same wise policy.—But this paper currency is so interwoven with our commercial system, we are driven to the necessity of providing the best remedies we can. Besides those referred to, other measures are necessary. All notes, which are substitutes for our gold and silver coin, should be excluded from circulation. It is of little importance to the people of the United States, to have expended millions on our mint establishments, to secure for their use an enlarged and sound metallic currency, if our coins are to be driven from circulation, by the credit of bankers circulated as money. In no other country but ours are all coins, except the fractions of a dollar, banished from circulation. If our currency is to be wholly and permanently regulated by our bankers, we had better abolish our mints, and save this annual tax upon the people for the exclusive benefit of our monied corporations. The circulation of the notes of banks of other states should also be prohibited; and all the states should adopt the same policy. Without this mutual restriction, there can be no limitation of currency, and no security against over-issues. Notes circulating at a distance are seldom if ever redeemed, and form the worst part of our currency, which they increase and depreciate in defiance of any limitation or regulation of

our own. It is in vain to attempt to restrict over-issues, while the notes of other states circulate with ours. We prohibit our banks from receiving them; but that only enlarges their circulation among traders. We thus give currency to the notes of some of the weakest banks in neighboring states, for which we have no security, and discourage the circulation of our own notes, though secured by stocks and bonds to protect our bill-holders! If we must have a paper currency, it is certainly proper to have that only which we can preserve sound, and one which we can regulate, control and limit. Whenever the other states shall judiciously limit the amount of their issues, and require security or their redemption, such prohibition will be unnecessary. To limit the amount of notes issued is the most important provision that can be adopted. This is the only effectual safeguard to protect the community from constant and excessive fluctuations and to prevent a progressive augmentation of paper money. During the last twelve years, these fluctuations in our currency have been detrimental to every interest. In 1834 the issues of the banks of this state exceeded fifteen millions—in three years they increased to more than twenty-four millions, in 1837, when the banks suspended specie payments—the next year, 1838, they fell to a little over twelve millions—the year after, rose again to more than nineteen millions in 1839, and in 1840 fell to about eleven millions. Since then this currency has been steadily increasing, and in May last reached near twenty-one millions. The war with Mexico has for the moment checked its increase, but the whole amount created from time to time by the incorporated banks and issued by the Comptroller, is more than twenty-eight millions and a half, including the small portion which may have been lost or destroyed. Between nine and ten millions of these notes are in possession of the banks, and as soon as peace with Mexico is restored and speculation begins, they will be issued to an excess beyond that existing in 1837, producing, as it did then, an explosion of the currency. Had these issues been limited by our laws, such extraordinary expansions and contractions of this artificial measure of value, could not have occurred.—Issued, as they now are, by the Comptroller, the amount could never have risen so high nor fallen so low, the course of trade would have been more uniform; and commercial credit and bank credit, would not have been mutually stimulated by speculation to expand and destroy each other. Without some limitation—not exceeding twenty millions—this modern auxiliary medium of circulation cannot be sustained, suspension must ever follow over-issue and the amount will be progressively augmented—increasing the embarrassments of trade and the violent effect of revulsions on every class of the community.

The currency of this state is important, not only to ourselves, but to the whole Union, owing to our position and our commercial relations, foreign and domestic. Our capital is the centre of exchanges, internal and external, and must necessarily, at every crisis, bear the whole pressure of commercial credit. When our bank issues are too much expanded, and over-

trading brings exchanges against us, specie will flow out from New York,—there the alarm will begin, and there will be the first suspension of specie payments. If we go on without any limitation on the amount of this currency, such an event, and at no distant day, is unavoidable. I trust we shall adopt efficient measures to avert such a calamity, not only to protect our commercial interests from such vicissitudes, but our laboring classes from the excesses of our paper system. It cannot be denied, that in our legislation in this country, we have adopted the maxim of monarchy, that property is the primary—nay the sole object of government. We have not only clothed it with extraordinary privileges, but armed it with the federal power to regulate the currency, and with a power to be found in none of our constitutions—the formidable power to create money. Labor, on the contrary, the origin of all wealth, has not only been wholly disregarded, but trampled upon. It solicits no privileges—it asks only for a sound currency to secure to trade steady profits, and for itself steady employment. It has a right to expect, that the moneyed interest, powerful as it is, will not be armed with the authority to suspend all labor every ten years by depreciating the currency and suddenly arresting every branch of industry. It has a just right to anticipate that this Convention will interpose the sovereign power of the state, as a shield to protect the laboring classes from the abuses resulting from the substitution of the credit of bankers for the current coin of the world. But whatever may be our measures, I hope we shall all unite in an earnest and patriotic desire to provide the strongest constitutional guards against future explosions of our currency—and to place the welfare, fortunes and labor of all classes on some foundation more solid and secure, than a fluctuating, progressive and unlimited issue of paper money.

Mr. AYRAULT felt bound to renew his motion to lay the report on the table, and that it be printed. If any argument was needed in defence of this motion, we had it in the very able speech just delivered. The gentleman had shown the great importance of the subject, and that it was one worthy of the gravest deliberation. Mr. A. would go with that gentleman to provide for the amplest security of the community. If he would consent to adopt the first section and leave the rest to legislation, Mr. A. would go with him. But we differed as to detail. The gentleman would redeem all notes in specie, and yet in his argument he told us how he would secure this—that is in the way a portion of our banking is now conducted. Mr. A. differed with him as to that mode being the most secure to the community. And he was sure that experience had shown that he was right. The deposite of securities with the Comptroller had not proved judicious in practice. The securities should always be within the control of those who issue the circulation of the state. Then the commercial community would be secured from loss, and have something permanent to fall back upon. At present the banking system, under the general banking law, was based wholly on credit.—There was no capital for those banks to rest upon. Whatever the securities might be, they should be at all

times available. Our state stocks, which so many favored as the basis of banking, would be soon out of market, as we had provided for the payment of our entire debt. As it had been, our own stocks had been forced to a sale to redeem notes of broken banks, at a depreciation of $11\frac{1}{2}$ per cent. Besides this, bonds and mortgages perfectly good, had been in like manner forced to a sale at a depreciation of 32 per cent. All this was a loss to the community. The loss from these sources had amounted to \$45,000 a year, besides the loss to individuals. The only safe system was one that employed capital like our safety fund. Pass a general law, which he was in favor of, and that was all that was required. The community had not been subjected to the loss of a single dollar from the safety fund. But if the securities now deposited with the Comptroller should be forced to a sale at the rate heretofore sold, it could not be done with less than the loss of a million of dollars to the community. He desired to amend this report, and for this he asked delay. He renewed the motion to lay on the table and to print.

Mr. CAMBRELENG moved that the amendments be printed and the subject postponed till to-morrow, at 10 o'clock.

Mr. AYRAULT could not consent to a shorter postponement than to the day after to-morrow.

Mr. JONES had looked over the amendment, and the only essentially new propositions were very few. He thought so long a delay was perfectly unnecessary, and he called for the yeas and nays on postponement.

After a conversation, Mr. AYRAULT amended his motion so as to postpone till half-past 3 to-morrow.

Mr. STETSON hoped the postponement would not be agreed to. If it were postponed, when it was taken up the gentleman from Livingston might bring in an amendment and another postponement might with equal propriety be asked for by other members, and so they might go on from day to day to the time of adjournment.

Mr. SHEPARD also hoped it would not be postponed.

Mr. TOWNSEND likewise advocated its immediate consideration. He also questioned the accuracy of Mr. AYRAULTS' statements in regard to the losses by the depreciation of state stocks, &c., and that there had been no loss by the safety fund system.

Mr. AYRAULT said it was a new principle, he thought, that we should provide for the safety of stockholders. He re-iterated his statement that the community, as such, had not lost by the safety fund banks. He meant the bill holders. An individual, here and there, might have sold his bills at a discount, but it was unnecessary. He could tell the gentleman from New-York, that the contributions to the safety fund, made and to come in, would redeem every dollar of circulation and leave a surplus of a quarter of a million.

Mr. MANN also opposed the postponement. He said the proposition in fact was not new, for it consisted of several propositions which had been long on our table.

Mr. DANA could see no necessity for a postponement.

Mr. LOOMIS regretted the bringing up of this subject until the Convention had finished the work it had in hand on Saturday. He had hoped that by a compromise, his report would have been disposed of, and then the first section would have embraced the material part of this article. And other propositions could be engrafted upon it to make it all one, instead of two. He thought this article could not be disposed of by two o'clock to-day, as intimated, for it was a subject on which there was a diversity of opinion, and it would be discussed section by section.

Mr. CAMBRELENG again explained that his proposition had been printed, and did not again require to be printed. The article reported by the gentleman from Herkimer he hoped would not be passed in its present shape. Several of its sections were only carried by small majorities, and they were such as were better adapted for legislation than constitution-making.

Mr. SIMMONS would not agree to act upon any constitutional provision without seeing it in print. He called attention to the safeguards in legislation, there being two houses and a governor to consider every measure, however unimportant, but here, with but a single house, they should proceed with greater caution.

Mr. TAFT moved the previous question, and there was a second.

Mr. AYRAULT desired to withdraw the latter part of his motion.

There were objections to any modification, the first two having been sustained, and ultimately Mr. A. withdrew his motion.

Mr. AYRAULT subsequently moved to lay on the table and print.

The previous question was demanded and seconded and the motion was lost, ayes 37, noes 52.

The report was then taken up by sections and the first section having been read,

Mr. TAGGART moved to add "or corporations" after the word "associations."

Mr. CAMBRELENG desired as much as possible to avoid the word "corporation." He had objected to the insertion of that word in committee because he desired to get rid of it—as applied to every thing but municipal establishments. He believed the word associations was sufficiently descriptive of the character of all other bodies.

The amendment was rejected.

Mr. FLANDERS offered a substitute for the first section, thus:—

The power of issuing paper money shall not be granted by this state.

Mr. SIMMONS would go for that if it was necessary; but he did not think it was; for it was already in the U. S. constitution, and to put it in ours would be a work of supererogation, "paper money," he supposed, was old continental money, of which he had a specimen with him.

Mr. MURPHY moved to amend, by adding after the words "paper money," the words "or bills of credit."

Mr. TOWNSEND: What are they?

Mr. FLANDERS accepted the amendment.

Mr. WHITE moved to add the words "of a less denomination than \$5," to come in after "paper money."

Mr. SHEPARD hoped the substitute would be adopted, but he was opposed to the amendment of Mr. WHITE because it did not go far enough.

Mr. BASCOM was opposed to the proposition for he feared it would place us too much at the mercy of the general government, whose treasury notes would be poured in upon us.

Mr. SIMMONS said if that was not sufficient we could have plenty of Canada shin plasters.

Mr. BASCOM was more disposed to fear the parent government.

Mr. BOWDISH moved the previous question, and there was a second.

Mr. BAKER called for the yeas and nays on Mr. WHITE's amendment, and there were yeas 9, nays 77. [Yeas—Messrs. Cambreleng, R. Campbell, Conely, Hart, Murphy, Riker, Townsend, Vache and White.]

The substitute of Mr. FLANDERS was rejected, ayes 11, noes 79, as follows:

AYES—Messrs. Cambreleng, Conely, Flanders, Hunt, Mann, McVie, Morris, Shepard, Swackhamer, Townsend, Vache—11

NOES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, Baker, Bascom, Bowditch, Brayton, Bull, Burr, D. D. Campbell, R. Campbell, jr., Candee, Clark, Cook, Crooker, Cuddeback, Dana, Danforth, Dodd, Dorlon, Dubois, Gebhard, Graham, Harris, Harrison, Hart, Hawley, Hoffman, A. Huntington, Hyde, Jordan, Kernan, Kirkland, McNitt, Marvin, Maxwe l, Miller, Munro, Murphy, Nellis, Nicholas, O'Connor, Parish, Patterson, President, Rhoades, Richmond, Riker, Russell, St John, Sanford, Sears, Shaw, Sheldon, Simmons, Smith, K. Spencer, W. H. Spencer, Stanton, Stetson, Stow, Strong, Taft, J. J. Taylor, W. Taylor, Tilden, Tutbill, Van Schoonhoven, Ward, White, Witbeck, Wood, A. Wright, W. B. Wright, Yawger, Young, Youngs—79.

Mr. MORRIS offered as a substitute for the 1st section, as follows:

§ 1. Laws creating corporations shall not be passed, except for municipal purposes, and for the construction of such works and for the performance of such business as necessarily require sovereign prerogative powers, rights and privileges. The legislature may pass general laws under which associations may be formed for business, religious and charitable purposes.

Mr. M. explained his purpose in offering this amendment.

Mr. RHOADES pointed out the impracticability of the substitute in question. Under it, the sovereign power could not be called into exercise, until it had been ascertained that it was absolutely necessary. For instance, take the case of the New York and Erie Rail Road Company. The power of the state to take land could not be called into exercise until the experiment had been tried along the whole line, and it had been ascertained that the lands could not be bought of the individuals owing them.—Mr. R. pointed out other difficulties in the way of the adoption of such a rule.

Mr. BASCOM was inclined to think that if we were to adopt any proposition on this subject, in the Convention, the section just offered was the nearest right of any that had been submitted. Mr. B. pointed out the distinctions which must be drawn between different kind of corporations—where they were necessary and where not. He doubted whether we should be

justified in going the length of this amendment. But believing it far preferable to the original section, he should vote for it.

Mr. MURPHY opposed the substitute.

Mr. RUSSELL said there were some in this Convention termed "Barnburners," but he did not believe there were many who were disposed to burn all the barns in one fire. He hoped we should not sanction any such wholesale proposition as this, but that we should go rationally to work upon the plan submitted by the gentleman from Suffolk.

Mr. SIMMONS briefly continued the debate.

Mr. MORRIS said his object was to prevent the establishment of the same kind of society here which had been described as existing in other counties. He did not wish to see women and children carrying baskets for the emolument of those who did not labor, or children from an early age trudging off to factories to toil from early day to night-fall for the good of others.—This in Great Britain did exist; and the system might in some measure be traced to the law of primogeniture. He proceeded to shew that what primogeniture did on the other side of the Atlantic, corporations would do here.

Mr. SIMMONS said in his neighborhood, the corporations did not make so much profit as individuals in their employment.

Mr. MORRIS then proceeded and concluded, in reply.

Mr. STOW controverted Mr. MORRIS' position that corporations were detrimental to equality. He said they tended to elevate and not to depress the poor: they enabled men of moderate means to compete with the rich. He referred to the city of Cincinnati, the largest manufacturing city in the union, where the largest part of the stock was owned by the manual laborers. He also spoke of the railroad stockholders in Massachusetts for the same purpose. Unless small means were united, nobody but the very rich could enter into certain enterprises. It was therefore a misapprehension to suppose that corporations were the same in effect as the law of primogeniture.

Mr. CAMBRELENG rose to vindicate voluntary banking. There was not a business in the world more useful to the public than banking as pursued in Scotland. He trusted the interests of bankers in this county would lead them to the same result.

Mr. JORDAN understood that there was a sentiment prevailing here in favor of free banking; but he apprehended this would not be accomplished by this section. If he were right in supposing that banking was a franchise, this would carry them back to the original mode of chartering banks. But he would not proceed, for if they had four or five weeks to devote to its consideration it would not be more than sufficient.

Mr. RUSSELL moved the previous question, and there was a second.

Mr. MORRIS called for the yeas and nays on his amendment, and there were yeas 9, nays 78.

Mr. STOW suggested a division of the section, believing that all the latter part was provided for by the constitution of the United States.

The President stated that no division could be permitted under the previous question.

Mr. TOWNSEND called for the yeas and nays on the section, and there were yeas 84, nays 1, (Mr. BURR.)

The second section was then read.

Mr. STETSON called for the yeas and nays and they were ordered.

Mr. SIMMONS said the whole section was surplusage, for ample provision was made in the constitution of the United States. The legislature never had, never would, and never could pass a law authorizing the suspension of specie payments.

Mr. CAMBRELENG admitted that the act of 1837 was not a direct authority to suspend specie payments, but it did so effectually in an indirect manner. He wanted this section adopted to prevent the passage of another like law in a panic. A more useless law never was passed. Such was the recorded opinion of Gallatin.

Mr. SHEPARD contended that the act of 1837 was a virtual authority to suspend specie payments, and had this section then been in the constitution that law would never have been passed, or would have instantly been declared unconstitutional.

Mr. STETSON followed on the same side.

Mr. BOWDISH moved the previous question but withdrew it.

The debate was continued by Messrs. STOW and CAMBRELENG.

Mr. R. CAMPBELL moved the previous question, and it was seconded.

Mr. ALLEN, by consent, explained his vote. He intended to vote against this section. He remembered well the history of the war of 1812, and here undertook to say that that war could not have been carried on unless it had been for the banks. To do this they were compelled to suspend specie payments, and then every dollar they could get, they loaned to the government. He spoke of the Eastern banks and of this state. For in the Eastern States there was opposition to the war, and there no money could be borrowed and hence there was no necessity for suspension. As to the second suspension in 1837, he undertook to say that had it not been for that suspension every merchant in New York would have broken down. If the banks had been compelled to pay specie, they would have required the merchants to have paid them in specie. This none of them could have done. He cited this to show that there were times when the suspension of specie payments was absolutely necessary.

The section was adopted, 56 to 37.

The Convention then took a recess.

AFTERNOON SESSION.

The third section being under consideration, as follows:—

§ 3. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security, by pledges of property, for the redemption of the same in specie.

Mr. CAMBRELENG said he would not tie up the hands of the legislature in regard to the kind of security that should be given for the redemption of bills. For himself, he believed the

safety fund system provided the best and most ample security ever devised; and that but for the frauds of the banks in Buffalo, and the misconstruction put upon the safety fund act, by which the debts, rather than the notes of the banks, were paid, it would have provided ample security. He would therefore leave the legislature to provide such security as they might deem expedient; and he moved to strike out the words, "by pledges of property."

Mr. AYRAULT concurred with the gentleman as to the security of that mode of banking. But he had no regrets that this system had given place to the free bank system, which he believed had been found to work equally well. He could have wished that the gentleman, preferring, as he did, the safety fund system, had made provision for commencing anew under that system immediately. The sooner we got into it, the better. We had had the safety fund system for about sixteen years. Something like one hundred banks had been organized under it, and there had been but eleven failures. We had had the free bank system in operation about seven years. Something like one hundred banks had been organized under that system, and there had been twenty-nine failures. As he intended this morning, he now offered an amendment, to strike out all after the word "money," in the second line, and insert:—

"But the amount of bills or notes to be issued by any bank, shall be in proportion to the actual capital of said bank, paid in specie, or its equivalent, which capital shall in no case be less than \$100,000; and the same amount of capital shall be employed in the business of the bank during its continuance. But the foregoing provision shall not be construed to prevent the legislature from imposing other restrictions, limitations and provision, in the creation of banking corporations or associations."

Mr. A. said, if he could have his way, these restrictions would be sufficiently numerous and stringent to secure the most perfect safety.—One of them would be, to prohibit stockholders or officers from using the money of a bank. From this circumstance, and the want of a registry of notes, had resulted all the disasters that had happened.

Mr. CAMBRELENG said he should be willing as a member of the legislature to vote for such a provision as this; but he could not vote to put it in the constitution. All this detail should be avoided, as purely legislative, and we should confine ourselves to laying down general propositions, leaving the legislature to fill out the details.

Mr. COOK remarked that this amendment was precisely the present law in regard to the circulation of the safety-fund banks. It was merely constitutionalizing that act; and if that was inserted, we might as well go on and constitutionalize the general banking law. A great deal had been said about the evils of the free banking system; but if gentlemen would advert to the circumstances under which they started, the only wonder would be that they had not all failed. He went on to point out the defects in the law originally, particularly in that it did not require the securities deposited to be the stocks of the state—and which permitted the deposit of all the wild cat stocks in the land, which could be purchased on a long credit. He was connected with the starting of one of these free

banks, and he deposited the stocks of the state. He found no difficulty in keeping up his circulation and the credit of the concern, through all the panic created by what was called red-dog banking. It was unfair to visit on the system, the results of defects that had now been cured. He regarded the system as now perfected, better than the safety-fund. The difficulty with that system was that the bankers held in their own hands the security for their circulation. Under the free bank system, the security for the circulation was beyond the control of the banker, and whatever excesses he might commit, or whatever frauds the officers of the bank might be guilty of, the public were always sure they could rely on the securities on deposit.

Mr. RUSSELL concurred in this view of the great defect in the safety fund system—and illustrated it by the fate of the banks chartered in 1836, when he said every dollar nearly of the capital paid in was paid out again the moment the bank was in operation. The idea of a banker's paying into his own pocket the security for his own responsibilities, was a perfect humbug. Nor did he believe in the soundness of the principle of making a combination of banks responsible for the frauds and excesses of each other. It might answer to make them pay into the hands of some public officer a per centage on their capital, equal in the aggregate to the amount of their circulation. As to this section, it contemplated leaving the details of all this matter to the legislature—and that was preferable, in his judgment, to the amendment—and as to the kind of securities, it might well be, that railroad stocks would take the place of state stocks for investments—in which case the legislature would be at liberty, if they deemed it safe, to authorize such stocks to be deposited as security. In New England the stocks of sound, well managed railroads had become a favorite species of investment.

Mr. PATTERSON could not see the necessity of the original section nor of the amendment. It was all legislation. This section was nothing more than was now embodied in the statute-book. The notes of all banks, chartered and free, were now registered; and unless there was an apprehension that the legislature might dispense with this regulation, there was no necessity for this section.

Mr. CAMBRELENG was as much opposed to legislating in the constitution as any gentleman could be—but if any thing required a place in the constitution, it was such a provision as this. Every thing in relation to the currency involved the interests of every man in the community, and every thing in regard to it should be as unchangeable as the constitution itself.

Mr. AYRAULT agreed with the gentleman from Chautauque that this was all legislation—and the only question was to what extent we should legislate, if we legislated at all. He hoped his remarks were not understood as reflecting on the general banking system; for he regarded most of the banking associations as sound banks as any other. His object was to make the most of the privilege of circulating notes as money—and he contended that when a banker or an association had the right to issue \$100,000 of currency, they should also be com-

pelled to put a given amount of real capital with it—otherwise, in a pressure, their power to relieve the community, being based on circulation, which was credit only, would be in a measure paralyzed.

Mr. WORDEN enquired whether the gentleman from Suffolk intended to embrace bonds and mortgages in these securities?

Mr. CAMBRELENG said he would not, if it were left to him; but he referred that to the legislature.

Mr. WORDEN should be glad if the gentlemen would exclude bonds and mortgages on agricultural lands.

Mr. CAMBRELENG would readily go for that as a legislator; but did not like to have it in the constitution.

Mr. WORDEN thought it unsafe to the agricultural interest, to leave it open to the legislature to make landed property the basis of commercial credit, thereby subjecting it to all the fluctuations incident to commerce and trade.

Mr. CAMBRELENG concurred entirely with the gentleman. The only difference between them was that he did not think it a proper provision for a constitution.

Mr. WORDEN went on to say that great mischiefs had resulted from the exercise of this power by the legislature. These bonds and mortgages, thrown into market upon the failure of a bank, depreciated the general value of real estate in the county where the bank was, more than the whole amount of the security.

Mr. AYRAULTS' amendment was here rejected, ayes 6. noes 73.

Mr. TILDEN moved to strike out the words "as money," and insert "as currency."

Mr. HUNT had an amendment drawn, intended to effect the same object. Mr. H. sent up the following:—

"Strike out in the second line 'or put in,' and insert 'by any bank or banks, or for general,' and also to strike out 'as money'."

Mr. PATTERSON said, in his section of the state, people sometimes gave notes, that were transferred from hand to hand. Would the gentleman have all these sent down here to be registered?

Mr. TILDEN withdrew his amendment to enable Mr. HUNT to offer his.

Mr. NICHOLAS said he would move to strike out this section, but the sense of the Convention could be tested in less time by a direct vote upon it, and he hoped it might be rejected, for it seemed to him that we were constantly encroaching on the province of the legislature.—The first proposition in this section requiring a registry of all bank notes, had been acted upon by the legislature for several years. The second, compelling banks to give ample security for their indebtedness, was a power which had always belonged to the legislature; and this constitutional requirement would effect nothing, for the nature and the extent of the security not being specified, the term ample would receive various constructions, and the whole matter would at last be at the disposal of the legislature. He would rely upon public sentiment to direct legislative action on all such questions; and as he was not prepared to believe that the representatives of the people were destitute of

integrity and common sense, he was still disposed to repose confidence in them, and not unnecessarily to interfere with their ordinary duties.

Mr. HUNT's amendment was lost.

Mr. SWACKHAMER moved to strike out "as money." Lost.

Mr. TILDEN now renewed his amendment.

Mr. WORDEN enquired of Mr. CAMBRELENG whether a note put in circulation was not money?

Mr. CAMBRELENG:—According to the construction of trade, which he was more familiar with than Blackstone, he should say a promissory note did not mean money.

Mr. WORDEN:—The law, for some 300 years, has been that it was.

Mr. CAMBRELENG:—Then adopt Mr. TILDEN's amendment.

Mr. TILDEN said currency was the precise technical term suited to the case. As the section stood, it was inaccurate in point of language—recognizing that as money which in contemplation of the constitution and laws was not money.

Mr. T.'s amendment was lost—34 to 35.

Mr. JONES moved to vary the language of the section—but

Mr. CAMBRELENG stated that it was now in the precise words of the Revised Statutes.

Mr. WORDEN replied, that you could not use language more vague. It had never been settled what the phrase "circulating as money" meant.

Mr. RUSSELL urged that language in a constitution should be used in the ordinary acceptance, and not in a technical or legal sense.—These words "issued as money," were well understood, and no legislature could hesitate about it.

Mr. J. J. TAYLOR read from the Statutes to show that it was the precise language that had long been used in the law against unauthorized banking.

Mr. WORDEN was aware of that, but the construction of that language had never been settled by the courts.

The question was then taken on the section and it was adopted, ayes 74 noes 20.

The 4th section was then read as follows:

§ 4. The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money after the first day of January, 1850, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind, contracted after the said first day of January, 1850.

Mr. KIRKLAND proposed to amend the section so as to confine this liability to corporations and associations hereafter to be formed. By a large vote, one of the sections of Mr. Loomis' article was so altered on Saturday. Besides, he insisted that the provision would be entirely nugatory as to existing corporations. It was entirely beyond the power of this constitution, or of any law passed under it, to create a liability which was not created by the act under which they were formed. The remark applied as well to safety fund banks as to banking associations. Again liability for all the debts and

liabilities of a bank or association, diminished the security of the bill holder, and that, he supposed to be the great object of any such provision. He offered the following amendment:—

After the word "purposes" add "hereafter authorized or formed" strike out after "it," to the end of the section, and insert, "notes or bills issued for circulation as money, whenever payment thereof shall, after due demand, be refused by such corporation or association."

Mr. SWACKHAMER thought it very strange if the people had put these corporations beyond their control. He always supposed they were amenable to the power that created them. Mr. S. indicated an amendment he should offer, by adding at the end, "all bank charters shall expire in the year 1850, after which they may recommence business after the manner provided by this constitution."

Mr. CAMBRELENG took issue with the gentleman from Oneida, as to the right to include existing corporations—saying that no charter had been passed since 1822 that did not contain a provision that the legislature might repeal or modify it—and the general banking law was certainly open to amendment at any time. He said he offered this section as a compromise. He should have preferred unlimited responsibility himself. Without some responsibility in addition to what we now had, we should have an unsafe system of banking. He alluded to the case of the Commercial Bank of this city, to show the salutary operation of the limited liability, and said if it had been applied 25 years ago, it would have saved many from bankruptcy.

Mr. COOK read from the charter of the Commercial Bank to show that the liability was precisely that proposed by Mr. KIRKLAND.

Mr. CAMBRELENG referred to the amended charter. His object was to place the banks on a perfectly sound footing; and every sound banker should wish to see it so. It was important that the weaker banks should be made strong by a more extended liability.

Mr. COOK argued that the section rendered the billholder less secure than now. He stated the case of the failure of a bank with a capital of \$200,000, a circulation of that amount, and a deposit of \$100,000. If the failure was a bad one and the creditors were driven to the liability provided in this section, the effect was to take from the bill-holder one-third of his security, and give it to the depositors. The billholder, he insisted, should be first paid—leaving the residue of the assets to go pro rata among the depositors and other creditors.

Mr. CAMBRELENG urged that there should be no discrimination between bill-holders and depositors—that the deposits in a bank were a trust fund as sacred as any other obligation—and that were it otherwise, the provision extending this liability of the banker to all debts, was a superadded security to the small billholder, who might, but for this, be thrown into the hands of the broker. Indeed he regarded money deposited without interest as creating a more sacred obligation than any that a bank could come under. Those banks too, were to all intents and purposes, government banks, and we were bound to protect the community

against their insolvency, whether depositors or bill-holders.

Mr. KIRKLAND would secure the depositors, but not by a provision that would be partial and nugatory. He farther urged that the legislature, could not, by an alteration of the general banking law, impose personal responsibility on the individual associates. And so of charters—the legislature might alter the terms of them, but could not impose new obligations on the stockholders.

Mr. STETSON contended, in reply to Mr. KIRKLAND, that the section did not contemplate any ex-post facto operation. On the contrary, it contemplated only that, after 1850, there should be no banking establishment without the individual liability to this extent—thus giving the legislature ample time to bring them all in on the same stable footing. He concurred also with Mr. CAMBRELENG, that there should be no distinction between depositors and bill-holders.

Mr. PATTERSON took opposite ground on this point. When a government authorized any other circulation than gold and silver, it should make ample provision to keep that currency sound. But it was no part of the duty of government to step in between individuals, and direct that the one should give to the other a definite kind of security. He argued further, that the section itself recognized the distinction he contended for between depositors and bill-holders. It provided that stockholders in banks that issued notes for circulation, should be responsible for bills and deposits; but those of banks of discount and deposit only, were not to be liable for deposits. The banks in New-York, that had little circulation, could at once draw it in, and rid themselves of all responsibility. He repeated, that it was the duty of government to take care of the bill-holder, and leave depositors to take care of themselves.

Mr. LOOMIS pointed out defects in the section, which he insisted was legislation as much as the corresponding section in his own article; and yet did not go far enough to relieve the detail from embarrassment and doubt.

Mr. CAMBRELENG insisted that the section was clear and definite, as far as it went, and that all detail had been purposely avoided, as unnecessary and inappropriate in a constitution. The legislature could find no possible difficulty in carrying out the detail, and to them he would leave it. In reply to Mr. PATTERSON, Mr. C. said the reason for protecting the depositor was that it gave more strength and stability to the banks. It was a government, and not a private reason; and if the provision of the section had been in the law authorizing banks in the first instance, there would have been few failures.

Mr. MURPHY desired to ask the gentleman a question. By the 3d section just adopted, was it intended to require the safety fund banks to furnish additional security for their bills above their contribution to the safety fund?

Mr. CAMBRELENG replied in the negative. The half per cent. contributed by these banks was abundant security for the redemption of their notes.

Mr. AYRAULT, on this point, desired to say in confirmation of the remark advanced by him

to-day, that he held in his hand a statement drawn up by the comptroller, which showed that the contribution to the safety fund would redeem every dollar of broken banks by 1859. From 1859 to 1866, when the last bank charter expires, the contributions will amount to a quarter of million.

Mr. CAMBRELENG:—I am glad to hear it.

Mr. NICHOLAS differed with Mr. CAMBRELENG as to the claims of depositors and bill holders on the state. The obligation of a bank to protect its voluntary creditors was one thing—that of the state to protect the involuntary creditors or bill holders, was another. He insisted that the state was under no obligation except to protect the bill holder.

Mr. CLYDE moved the previous question, and there was a second.

The first amendment of Mr. KIRKLAND, adding the words "hereafter authorized or formed," was negative 1, ayes 32, noes 47.

The other amendment of Mr. KIRKLAND (see above) was lost as follows:—

AYES—Messrs. Allen, Archer, Ayrault, F. F. Backus, Baker, Bascom, Brayton, Bruce, Bull, Burr, Candee, Cook, Cornell, Danforth, Dodd, DuBois, Gebhard, Greene, Harris, Harrison, Hawley, Jordan, Kirkland, Loomis, Marvin, Maxwell, Munro, Nicholas, Parish, Patterson, Penniman, Riker, Simmons, W. H. Spencer, Stow, Strong, Vanschoonhoven, Warren, Warren, Worden, A. Wright, W. R. Wright, Young—42.

NOES—Messrs. Howard, Cambreleng, R. Campbell, Jr., Clark, Clyde, Conely, Cudd back, Dana, Darlon, Flanders, Hunt, A. Huntington, Hyde, Jones, Kernan, Kingsley, Mann, McNeil, McNitt, Murphy, Nellis, O'Connor, President, Rhoads, Richmond, Russell, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Smith, Stanton, Steison, Swackhamer, Taft, Taggart, J. J. Taylor, W. Taylor, Tilden, Townsend, Tuthill, White, Witbeck, Wood, Yawger, Youngs—43.

The 4th section was adopted as follows:—

AYES—Messrs. Bascom, Bowditch, Burr, Cambreleng, R. Campbell, Clark, Clyde, Conely, Cuddeback, Dana, Danforth, Darlon, Harrison, Hunt, A. Huntington, Hyde, Jones, Kernan, Kingsley, Mann, McNeil, McNitt, Maxwell, Munro, Nellis, President, Rhoads, Richmond, Riker, Russell, St. John, Sanford, Sears, Shaw, Sheldon, Shepard, Stanton, Steison, Swackhamer, Taft, Taggart, J. J. Taylor, W. Taylor, Townsend, Tuthill, Ward, Witbeck, Yawger—49.

NOES—Messrs. Allen, Ayrault, F. F. Backus, Backus, Brayton, Bruce, Bull, Candee, Cook, Dodd, DuBois, Gebhard, Graham, Greene, Hawley, Jordan, Kirkland, Marvin, Nicholas, O'Connor, Parish, Patterson, Penniman, W. H. Spencer, Strong, Tilden, Vanschoonhoven, Warren, White, Wood, Worden, A. Wright, W. B. Wright, Young—35.

Mr. BAKER moved a reconsideration. Table.

The 5th section was read as follows:—

§ 5. The legislature shall limit the aggregate amount of bank notes to be issued by all the banks and joint stock associations in this state, now existing or which may hereafter be established.

Mr. WHITE moved to insert the words, "and the denomination," after "amount," in the first line.

Mr. TOWNSEND opposed the entire section.

Mr. SHEPARD sustained it at some length.

Mr. JONES moved the previous question, and there was a second, &c.

Mr. WHITE's amendment was lost, and the section adopted, ayes 50, noes 27.

Mr. JORDAN offered the following additional section:—

"In case of the insolvency of any bank or banking

association, the bill holders thereof shall be entitled to a preference in payment, over all other creditors of said bank."

Mr. CAMBRELENG assented to it.

Mr. PATTERSON was glad to hear that. This was a much wiser provision than any other in the article. As to the last section, he regarded it as mischievous in the extreme. If the legislature limit the circulation of our own banks to a small amount, the bills of other state banks must flow in upon us to supply the deficiency.

The section was adopted unanimously—ayes 85, noes 0.

Mr. NICHOLAS moved a reconsideration of the vote on the section in regard to circulation. Table.

The sixth section was then read, as follows:

§ 6. All incorporated companies and associations exercising banking powers, shall be subject to visitation and examination at the instance of their shareholders, or of their creditors, under regulations to be established by the legislature; and in case of the failure of any such corporation or association to discharge its debts or liabilities, or of any of its members to discharge the debts for which they may be personally liable as members of such corporation or association, provision shall be made for the speedy and equitable settlement of the affairs of such corporation, or association and for dissolving the same.

Mr. TOWNSEND asked for the ayes and noes, but they were not ordered.

Mr. MARVIN inquired if under this section the Legislature would have the power to relieve a bank from the penalties imposed, if it should only suspend specie payment for 48 hours?

Mr. CAMBRELENG said this section was not his own, but he had introduced it at the request of the gentlemen from Dutchess (Mr. Ruggles) and Saratoga (Mr. Cook.) His own opinion was that this was purely legislative.

Mr. COOK said this was not the section he desired. He only desired an equitable remedy as between different stockholders.

Mr. KIRKLAND agreeing with the chairman of the committee that this was purely legislative matter, moved to strike out the section.

The debate was further briefly continued by Messrs. MARVIN, CAMBRELENG and RUSSELL.

Mr. SWACKHAMER moved the previous question, and it was seconded.

The motion to strike out the section prevailed—ayes 45, noes 35.

Mr. TILDEN moved to recommit the article with instructions to strike out of the 4th section the words—"to the amount of their respective shares," &c.

Mr. CAMBRELENG:—That is only raising the old question of unlimited against restricted liability. I hope it will be voted down at once.

Mr. PATTERSON called for a division of the question, so that it should first be taken on the motion to recommit.

Mr. CAMBRELENG:—I move to lay the whole question on the table. Carried—ayes 43, noes 19.

The whole article was then laid aside and ordered printed.

The Convention then adjourned to 8½ o'clock to-morrow morning.

TUESDAY, SEPTEMBER 29.

Prayer by the Rev. Mr. PATES.

Mr. TOWNSEND presented a memorial from the city of New York for the organization of a state board of assessors—Referred to the select committee heretofore appointed on this subject.

Mr. CLYDE presented a petition of Peter Groat and others for the merging of the Literature in the Common School Fund, instead of its appropriation to the support of the Normal School—Referred to standing committee No. 12.

Mr. JUDSON presented a petition of Seth P. Staples and others for the abolition of the superior court at New York, and that an addition be made to the supreme court of that city—Referred to the committee of the whole.

COUNTY COURTS.

Mr. BRUNDAGE moved the consideration of the resolution laid on the table yesterday, respecting the creation of new counties. [Published yesterday.]

Mr. W. TAYLOR opposed the consideration. The law now prevented the breaking up of county lines, except in anticipation of a new census, and he thought it unwise to disturb the present order.

Mr. RUSSELL also opposed the motion. Once in ten years was often enough for the agitation of the question of the creation of new counties, and that was already provided for. He moved to lay the motion to reconsider on the table.

Mr. TALLMADGE also hoped the question of consideration would not be carried.

The motion to consider was laid on the table.

LIMITATION OF BANK CIRCULATION.

Mr. TILDEN moved a reconsideration of the votes taken yesterday on the adoption of the fifth section of the report on currency and banking, in relation to the limitation of bank circulation, on which he had voted by mistake. He feared the consequences of allowing the legislature to regulate the circulation. He went on at some length into a discussion of the question of currency.

Mr. CAMBRELENG opposed the motion to reconsider. He said the section was but a necessary safeguard. If gentlemen were disposed to favor that kind of circulation, the amount should be limited. As to the difficulties contemplated by the gentleman from New York, they were perfectly visionary; and as to the distinction between the currency of one county and another, that was visionary also. The provision alluded to was worth all the others the Convention had adopted. He moved to lay the motion on the table.

Mr. KENNEDY called for the yeas and nays and there were yeas 41, nays 45.

Mr. CAMBRELENG reiterated his conviction that the provision now proposed to be reconsidered, was the best the Convention yesterday adopted. Upon it depended the question whether in this state we shall have an unlimited issue of paper money. He appealed to gentlemen to look well to their votes on this subject. If they wished to avoid the suspension of specie payments this was the only mode by

which it could be done with safety to the community.

Mr. NICHOLAS said he yesterday gave notice of his intention to move a reconsideration of this section which compels the legislature to limit the aggregate amount of bank notes to be issued by all the banks in the state. He was glad the question was now called for by one who voted for the section, but was now convinced that it should not have been adopted. The general banking law which the constitution required to be kept in force, authorized associations for banking purposes wherever citizens have the funds to spare, and the country required more banking capital. The objects of this law must be defeated by the operation of this section. An association might be formed in the county in which he resided whose issues would be only sufficient for the business wants of the community. A populous city like Buffalo, with growing commercial interests, would be frequently requiring additions to its banking capital, and whenever a new bank was started you swelled the aggregate issues in the state, and in order to keep them within the proposed limit you must reduce the circulation of other banks, which had only circulated paper to an amount authorized by the general law, and which the business interests of their vicinity had required. Hence the commercial and banking interest of the state would be kept in a constant state of agitation and uncertainty, and all the anticipated benefits of a general banking law frustrated. He should deem it unwise under any circumstances, to compel the legislature to make such an experiment, to embark upon an untried system which might involve such important consequences to the country, especially as it was a question which had not been thoroughly examined and which we had not time to examine. The legislature had the power and would have the wisdom to dispose of the whole question in a manner best adapted to the wants of the people, and it should be left at their disposal.

Mr. MARVIN thought it unwise to tie the people of New York down by such a constitutional provision, when all the other state banks of the union were unlimited in their issues. He desired a large infusion of specie into our circulation, but how could it be accomplished so long as other states were placed under no such restrictions?

The debate was continued by Messrs. LOOMIS, SWACKHAMER, TOWNSEND, CAMBRELENG, AYRAULT, and TILDEN, when Mr. MANN moved the previous question, but withdrew it at the request of

Mr. TILDEN, who went into an argument to show that the provision of the article as adopted, would be the annihilation of free banking. He was surprised at the course of the gentleman from Suffolk, by whose side he stood in 1837, in the great contest then in progress.

Mr. CAMBRELENG. Did not the gentleman at that time go with a party that advocated an exclusive metallic currency? If not, he was not with the party with which I acted.

Mr. TILDEN said he had never advocated an exclusively metallic currency. He went on to argue in favor of free banking, which would be prevented by this section if adopted.

Mr. MANN renewed the motion for the previous question, and there was a second.

The reconsideration was ordered—ayes 57, noes 41.

Mr. JONES moved the previous question on the adoption of the section, and there was a second: and the section was rejected, ayes 44, noes 53.

AYES—Messrs. Angel, Bascom, Bowdish, Brundage, Cambrelen, R. Campbell, jr., Clark, Clyde, Cuddeback, Dana, Dorion, Flanders, Harrison, Hart, Hoffman, Hotchkiss, A. Hunington, Hyde, Jones, Jordan, Kernan, Kingsley, Mann, McNitt, Nellis, Kiker, Kusell, St. John, Shelton, Shepard, Stanton, Stephens, Swackhamer, Taft, Taggart, J. J. Taylor, Tithill, V. Che, Waterbury, White, Wibbeck, Wood, Yawger, Youngs—44.

NOES—Messrs. Allen, Archer, Ayrault, F. F. Backus, Baker, Bergen, Bruce, Bull, Burr, Candee, Chamberlain, Conly, Cook, Crooker, Danforth, Dodd, Dubois, Furey, G. Gebhardt, Graham, Greene, Harris, Hawley, Kemple, Kennedy, Kirkland, Loomis, McNeil, Marvin, Maxwell, Miller, Munro, Murphy, Nicholas, O'Connor, Parish, Patterson, Penniman, Rhoades, Richmond, Shaver, Shaw, Simmons, Smith, E. Spencer, W. H. Spencer, Stow, Strong, Tallmadge, W. Taylor, Tilden, Townsend, Vanschoonhoven, Ward, Warren, A. Wright, W. B. Wright, Young—58.

INCORPORATIONS OTHER THAN BANKING AND MUNICIPAL.

The Convention resumed the consideration of the report of the standing committee number Seventeen, which was laid on the table on Saturday.

The question was on the first section, which had been reconsidered.—to which Mr. MURPHY had moved an amendment, to strike out from the second line the words, "or granting to them exclusive privileges except as provided in this article."

Mr. LOOMIS explained, that the legislature possessed the power to create corporations by general law or special act; and therefore it was not necessary to give them that power by constitutional provision. It was desirable to restrain the legislature by the constitution, and not to give it power. He hoped therefore that the amendment would not be adopted; but he would move to add the fifth section to the first, by striking out the word "first," after "compensation."

This proposition was debated by Messrs. MURPHY, JORDAN, SIMMONS and STOW, and withdrawn.

Mr. LOOMIS moved to amend as he had before indicated.

Mr. SWACKHAMER moved to amend by adding the word "first," after the word "compensation."

Mr. PERKINS, as a lawyer, might construe this section in a way which did not appear to be contemplated by the gentleman from Herkimer. The amendment sought to provide that the legislature might pass general laws for certain purposes; but these terms would not permit the legislature to pass laws to adapt these charters to the circumstances of the company incorporated. For instance, the legislature could not prohibit the railroad company between Utica and Schenectady from taking more than three cents a mile for transportation, without making the

same provision applicable to all other companies.

Mr. STETSON hoped the gentleman from Kings would not press his amendment; for land must otherwise be first paid for, which the owners would be willing to give, inasmuch as the construction of a road would increase their property ten-fold.

Mr. SWACKHAMER moved the previous question upon the section and amendments, but it was not sustained.

Mr. BASCOM moved it upon the amendment alone, and it was sustained.

Mr. SWACKHAMER'S amendment was rejected.

Mr. RICHMOND said the amendment of the gentleman from Herkimer had been once voted down by a large majority. He hoped it would again be voted down. Its introduction now, and its support by the gentlemen from Columbia, looked very much like the union of Mr. Fox and Lord North in the support of a measure—(laughter) but he hoped the Convention would support its previous decision.

Mr. JORDAN said he had not been so palpably flattered since he had been a member of the Convention as by the compliment of the gentleman from Genesee. This was as far as he felt called upon to answer him. He thought upon a question of law he might be able to measure swords with the gentleman from Essex, and he went on to draw the distinction between special and exclusive privileges.—The question to be decided by the passage or rejection of this section was, whether it should be necessary for companies who wish for a charter to enable them to engage in some public improvement or a particular description of business, to come to the capitol to obtain it.

Mr. VAN SCHOONHOVEN desired the further protection of a two-third vote to permit corporations to take private property. This was a right affecting the interests of too many to be given without a pretty strong expression in its favor by the legislature. There had been instances where a small company had taken the farms of individuals under circumstances of peculiar hardship; and sacred rights of property should not be disturbed without at least a two-third vote. He moved to amend accordingly.

Mr. LOOMIS had ever found the two-third vote, in the case of corporations more a shield to protect them in their abuses, than anything else. He would prefer that one hundred members should be required to be present in the House, and that the vote shall be taken by yeas and nays.

Mr. VAN SCHOONHOVEN explained, and demanded the yeas and nays on his amendment, which were ordered.

Mr. WORDEN could not concur in the incorporation of mere abstractions in the constitution. The propositions now made were evidently not understood, and yet it was gravely proposed to put them into the constitution. He thought it would be wise either to recommit them or to have them printed. He moved to recommit the report with the amendments proposed, with instructions to report complete tomorrow morning.

Mr. MARVIN believed the more we discuss-

ed this matter the more we were satisfied that it would be unwise to legislate specially on it in the constitution. He proceeded to show the impracticability of any such course, and argued that his substitute was abundantly sufficient.

Mr. WORDEN replied to some of the positions of Mr. JORDAN, and withdrew his motion to refer.

The previous question was again moved and seconded.

Mr. VAN SCHOONHOVEN modified his amendment so as to apply the two-third clause to special laws conferring grants, &c., and called for the yeas and nays thereon, and there were yeas 52, nays 44.

Mr. LOOMIS'S amendment, as amended, was then adopted, yeas 58, nays 37.

Mr. MARVIN'S substitute was next in order.

It was carried—yeas 53, nays 50.

Mr. LOOMIS moved a reconsideration, which lies over.

Mr. LOOMIS desired now to move to refer to a special committee, with instructions.

The PRESIDENT decided that motion to be out of order.

The section as amended was adopted—yeas 53, nays 51.

Mr. TILDEN moved to refer this section to a select committee, with instructions to report to-morrow morning at ten o'clock. By a close vote the committee's section had been rejected and another adopted, and he hoped this would be referred as desired, that some satisfactory provision could be made.

The section as adopted, is as follows :

§ 1. The legislature may pass general laws authorizing persons to be erected into a body corporate for banking, manufacturing, religious and such other purposes as the legislature may deem safe and practicable, and under such restrictions and conditions, and with such powers and limitations as shall be provided in such laws; but no law shall embrace more than one species or class of corporations, nor shall the legislature grant any special act of incorporation in any case provided for in such general laws.

Mr. WORDEN said the section had been adopted, and therefore could not be referred.

The PRESIDENT (Mr. PATTERSON pro tem.) thought it could be referred. It was but a section. But if the whole article had been adopted the reference would be out of order.

Mr. BASCOM asked what the committee would have to report—that the Convention had done a very foolish thing?

Mr. WORDEN:—That would be the effect of it.

Mr. CAMBRELENG hoped the whole subject would go to a select committee. He was satisfied on reflection, that he had voted without proper consideration.

Mr. O'CONOR concurred in the remarks of the gentleman from Suffolk, and moved that the matter be referred to a select committee with instructions to report the two following sections:

§ 1. Provision shall be made by law, as far as practicable, enabling persons to become incorporated for manufacturing, religious, charitable, and for other purpose.

§ 2. Dues from corporations shall be secured by such individual liability of the corporations, and other means, as may be prescribed by law.

Mr. LOOMIS acquiesced in the motion to refer to a select committee, and he hoped it would

be more fortunate than the standing committee had been.

Mr. MARVIN thought there was no mistake or misunderstanding on the part of the Convention.

Mr. RUSSELL advocated the reference to a select committee.

Mr. SWACKHAMER opposed the instructions, though he was not unwilling to vote for the reference.

Mr. PERKINS apprehended it would be necessary that this subject should go to a committee without instructions.

Mr. VAN SCHOONHOVEN thought the section made provision for everything required, and therefore that a reference was unnecessary. If, however, it must be referred, it should be without instructions.

Mr. BERGEN moved the previous question, but withdrew it that

Mr. O'CONOR might make an explanation of his motion. On concluding, he renewed the motion for the previous question, and it was seconded, &c.

Mr. O'CONOR's motion was negatived, 35 to 49.

The question recurred on Mr. TILDEN's motion to refer the whole article with instructions to report complete to-morrow.

Mr. PATTERSON called for a division.

Mr. TILDEN consented to withdraw the instructions, and the number of the committee was fixed at 5.

The yeas and nays were then taken on Mr. TILDEN's motion, and were yeas 53, nays 44.

The Convention then took a recess.

AFTERNOON SESSION.

The Convention, pursuant to previous order, took up the report of committee No. 7, on the election, &c., of

LOCAL OFFICERS.

The first section was read, as follows:—

§ 1. Sheriffs, clerks of counties, including the register and clerk of the city and county of New York, coroners, not exceeding four in each county, and district attorneys, shall be chosen by the electors of the respective counties, once in every two years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next two years after the termination of their offices. They may be required, by law, to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff; and the Governor may remove any such officer, except district attorney, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.

Mr. ANGEL said there were a number of local officers who were not specifically provided for in their report, and from the difficulty of changing the mode of appointment. The committee had endeavored, however as far as possible, to strip the Executive of patronage,—believing that it was desirable that this central patronage and influence should be diminished, if not entirely obliterated. This had been a source of great complaint, and there seemed to be a general disposition to cut this thing all loose from the capitol here, and throw these officers into the hands of the people, who were no doubt the best depositories of it. Mr. A. enumerated the different classes of officers now appointed

by the Governor and Senate, showing which of them had been done away with by the present constitution, and how far the article proposed to go in respect to others. But the article spoke for itself, and he should be happy to hear any suggestions that would improve it.

Mr. BASCOM moved to strike out "and district attorney." He preferred that they should be appointed by the supervisors. Let the district attorney discharge his duty ever so well, he could not, if elected, escape the imputation that he had in view his re-election.

Mr. ANGEL said he believed it to be the public wish to have this officer in their own hands; and hence he consented to this provision.

Mr. SWACKHAMER opposed the amendment. This officer was emphatically the people's officer, and there was great propriety in electing him.

Mr. SIMMONS said he should be in favor of appointing this officer by the supervisors, if the judges were not elective. But to say that this officer should be appointed, and leave the judges to caucus with one party or the other, he did not believe in.

The Convention refused to strike out.

Mr. FORSYTH moved to strike out "two," before "years," and insert "three." He could see no reason for changing the term of a sheriff or a clerk.

Mr. SIMMONS favored this amendment—for the reason that it would bring round the election for sheriff in a different year from that of governor, &c., and two years was not long enough to enable a sheriff to get through his business.

Mr. PATTERSON said the judges of the court of appeals and of the supreme court were to be elected once in two years. His idea was that the legislature would provide, instead of a special election, that the judges should be elected in each alternate year, when the gubernatorial election did not take place. If three years were fixed as the term of these local officers, it would come sometimes happen that this election would come round at the same time with that for judges. He suggested the propriety of so arranging the election of these local officers that their election might come round with that of the judges or the governor, and have no special election.

Mr. ANGEL thought three years was short enough for a sheriff especially as we proposed to make him ineligible for the next term. He was overruled by the majority of the committee in regard to the term.

Mr. ARCHER said there was a difference of opinion in the committee on this point. He was himself for a two years' term. The spirit of the age favored the return of power frequently to its source. And why should a sheriff hold longer than your governor, senators, &c.—longer indeed than any officer, except your judges?

Mr. SWACKHAMER. Why then make him ineligible, and an exception in that respect from all the rest!

Mr. ARCHER had no objection to striking that out.

Mr. FORSYTH insisted that we should not

go off upon a mere abstraction, as to the frequent return of power to the people. The practical effect of this restriction should be the controlling consideration. And he could not see the analogy between the duties of this officer and those of governor and senator.

Mr. RICHMOND urged briefly that a sheriff should not be ineligible. As to the length of the term, it was a matter of indifference to him.

Mr. KIRKLAND advocated the short term, and re-eligibility for the sheriff.

Mr. STRONG preferred the short term and the ineligibility of the sheriff.

The motion to strike out two and insert three years, prevailed, ayes 46, noes 42.

Mr. VAN SCHOONHOVEN thought the authority to remove local officers of the class mentioned, was too great a power to be given to the Governor. He might overthrow the decision of a county from partizan motives. He moved to amend by striking out the words "except district attorneys," and to provide that the removal should be made by and with the advice and consent of the board of supervisors of the county in which such officer may reside." This would give the officers against whom charges were preferred an opportunity to be tried by their peers.

Mr. ANGEL said the Governor had already the power to remove sheriffs, &c., and he had not heard that there was any complaint against that power, which had not been very frequently exercised.

Mr. STOW hoped if the amendment prevailed, it would not be imposed upon the Governor to see that the laws were faithfully executed.—His powers had already been so restricted that he could not do much more than look on and wish that the government might do well. He could see no good reason for a change of the present constitution in this respect.

Mr. RHOADES concurred in this view of the question. Nothing certainly could be more proper and necessary than that the Chief Executive should have this control over the subordinate executive officers of the counties.

Mr. VAN SCHOONHOVEN replied to Mr. Stow, saying that if the Governor had nothing else to do, he might employ himself in this way, for that reason. His objection was to giving any one officer absolute power to remove another.

Mr. PATTERSON had never felt any danger from this provision, and he did not believe any Governor of this state would descend to the exercise of this power from mere partizan motives. He knew that in one instance it had been exercised with great propriety.

Mr. BASCOM suggested that the power of removal might be properly transferred to the supreme court. These officers might then be tried by a tribunal very capable of deciding whether they had committed anything worthy of removal. He would he tried at home, too; while if the Governor was to decide there must be the expense of a journey to the capital.—There was no danger in leaving this power where it was, though it would result in some inconvenience and expense to the party dealt with.

Mr. SIMMONS insisted that it would not do to sever the Chief Executive from the subordi-

nate executive officers of counties. There might be occasion for the prompt exercise of this power of removal—pervading excitement, which would admit of no delay in the removal of the officer.

The amendment was lost.

Mr. MARVIN and Mr. KIRKLAND suggested alterations in the wording of the section, and it was amended, by striking out the exception of district attorneys, and inserting a clause giving the Governor power to remove all the officers mentioned in the section.

Mr. HARRIS moved to strike out the limitation in regard to the number of coroners. Agreed to, 45 to 31.

Mr. STOW thought there should be a time fixed when the office of a sheriff should expire, when elected to fill a vacancy. Otherwise the object of electing for three years might be defeated, so far as the intention was to have these elections come round at a general election. By the decision of the courts, when a sheriff was elected to supply a vacancy, he served for the full term of three years. He proposed an amendment providing that when elected to fill a vacancy, the sheriff should serve only for the unexpired term.

Mr. KIRKLAND inquired what evil had resulted from the present mode, under the decision of the courts. It might be well to avoid the additional excitement which the election of these local officers at the same time, would be likely to produce.

Mr. STOW desired to produce symmetry and uniformity in elections.

Mr. FORSYTH would like to secure the object of the gentleman from Erie, if it would not cost too much; but he thought the counties would thus be too often put to the expense of special elections.

Some further conversation occurred.

Mr. BASCOM thought it would be well to allow the board of supervisors to fill vacancies.

The amendment of Mr. Stow was negatived, 30 to 33.

Mr. STOW moved to insert, after the word "offices," in the seventh line, as follows:—

"No person shall be eligible to the office of sheriff who shall have been a deputy sheriff, or under sheriff, within one year next preceding the election at which the sheriff is to be chosen."

Mr. S. referred to the evils which had resulted from the election of deputies to the office of sheriff—they procuring their nomination through the influence of the retiring officer, who is again appointed under sheriff. It also degraded the character of the officer, and tended to reduce the responsibilities of the station.

Mr. SWACKHAMER thought this was a narrow and restrictive policy, which he hoped would not prevail. He would rather strike out the limitation in the report.

Mr. STOW took a different view of public office from the gentleman from Kings. He admitted no man's right to public station. All offices belonged to the people, and it was their duty to decide upon the fitness of a person. Complaint had been made of the present system, and it should be remedied.

Mr. BASCOM hoped the proposition would not be rejected without consideration. If there

was a propriety in excluding the sheriff from reelection, there was an equal propriety to exclude the under and deputy sheriffs. And he would go farther still, and prohibit the sheriff from becoming an under sheriff within two years.

Mr. VAN SCHOONHOVEN thought unless we were to descend to particulars and decide between the availability of candidates for this office, we had better leave this out of the constitution in regard to eligibility. He was totally opposed to this amendment.

Mr. MANN was opposed to this amendment. He had always noticed in this city that when we did not take the sheriff from one of the deputies, we almost invariably got a poor stick, who ruined himself and all his bondsmen.

The discussion was continued by Messrs. KIRKLAND, YOUNG, RICHMOND, STOW, and SIMMONS.

Mr. STOW, though still convinced of the propriety of his amendment, yet as he saw the sense of the Convention was against it, he would withdraw it.

Mr. SWACHAMER moved to strike out the words which declare the sheriff to be ineligible.

Mr. DANA opposed this and it was lost.

Mr. DANA had leave to record his vote in favor of the three years' term for sheriff.

Mr. STETSON had leave to record his vote against it.

Mr. CROOKER gave notice of a motion to reconsider that vote.

Mr. HARRISON moved an addition to the section providing that in all cases of vacancy by removal or death, the board of supervisors shall fill the same for the unexpired term.

At the suggestion of Mr. WORDEN, the mover waived his amendment for the time being.

The first section was then adopted.

The second section was then read as follows:

§ 2 District attorneys may be removed from office, at any time within the term for which they shall have been elected, by the county courts of the respective counties of this state, giving to such district attorney a copy of the charges against him, and an opportunity of being heard in his defence.

Mr. MARVIN remarking that the amendment to the first section had rendered this unnecessary, moved to strike it out. Agreed to.

Mr. SWACKHAMER offered a section that no county clerks or district attorneys should receive any fees of office, but that both should receive a salary to be fixed by the board of supervisors, the same to be neither increased nor diminished during their continuance in office.

Mr. ANGEL said the proper place for this amendment would be in another section.

This section was debated by Messrs. STRONG, NICHOLAS, ANGEL and STOW, and laid on the table.

The third section was then read as follows:

§ 3. The board of supervisors shall fix the number of superintendents of the poor, who shall be chosen by the electors, not exceeding three in each county; and where more than one shall be chosen in any county, they shall divide them into classes, so that one shall be chosen each year, after the first election.

Mr. STETSON doubted whether this office was likely to be permanent enough, to be provided for in the constitution. The legislature

might change the whole poor system and abolish the office.

Mr. MARVIN moved to strike out the section.

Mr. ANGEL had no feeling about it. This was an evil complained of in his county, and for this reason, he had proposed this remedy.

The motion to strike out was discussed by Messrs. SIMMONS and BERGEN and prevailed.

The 4th section was read as follows:—

§ 4. A county treasurer shall be annually chosen by the electors of each county. He shall hold his office for one year, unless sooner removed. He may be required by the board of supervisors to give such security as they shall approve, and to renew the same from time to time; and in case of default in giving, or renewing such security, when required, his office shall be deemed vacant. The board of supervisors of each county shall have power to remove such treasurer from office, whenever they shall deem such removal necessary for the safety of the county, giving such treasurer a copy of the charges against him, and an opportunity of being heard in his defence; and shall have

power to fill all vacancies in the office of county treasurer, by appointment, until the next annual election.

Mr. HAWLEY, after a few remarks, offered a substitute providing for the election of commissioners for loaning money, whether of this state or of the U. States, as well of county treasurer.

Mr. BERGEN opposed the substitute, and it was further debated by Messrs. WORDEN, PATTERSON, RUSSELL, HAWLEY, RHOADES, DANFORTH and HARRIS.

Mr. ST. JOHN moved the previous question, and it was seconded.

The substitute was rejected, ayes 23, noes 48.

The section was further debated by Messrs. BERGEN and SIMMONS.

Mr. ALLEN moved to except N. York from the operation of this section.

Mr. ANGEL moved to adjourn. Agreed to. Adj. to 8½ o'clock to-morrow morning.

WEDNESDAY, SEPTEMBER 30.

Prayer by the Rev. HENRY BENSON.

Mr. TOWNSEND presented the memorial of several firms in the city of New York for a state board of assessors. Referred.

TO EQUALIZE TAXATION.

Mr. BRAYTON, from the committee of revision, of the new articles of the constitution, offered a resolution to excuse the members of that committee from attending the sittings of the Convention. Agreed to.

CLOSING BUSINESS OF THE CONVENTION.

Mr. JONES offered the following which was laid on the table until half-past 3 o'clock this afternoon.

Resolved, That after Saturday next the Convention will not take up and consider any of the reports of the standing committees of this body then unacted on, but will on the ensuing Monday proceed to consider the report of the select committee appointed to revise the several amendments adopted by the Convention.

CURRENCY AND BANKING.

Mr. BAKER called for the consideration of several motions of reconsideration of which notice was given on the adoption of sections of Mr. CAMBRELENG's report. The first question on which he called for action was on the adoption of the fourth section.

Mr. TOWNSEND hoped the report would not be disturbed. He called for the yeas and nays thereon, and they were ordered.

Mr. BAKER said it had been represented to him that the report of the select committee, on Mr. LOOMIS' report would accomplish a settlement of the questions involved and therefore he would withdraw his motion.

Mr. CAMBRELENG hoped it would not be withdrawn, if it was again to come up. He was called away from the city for a few days, and should leave this evening, and he desired a disposition of this matter now as he was anxious to be present when it was acted upon.—His desire was to strengthen the banks and that was the interest of the twenty or thirty gentle-

men on this floor who were either bankers or holders of stocks in banks; and the section would not accomplish that purpose. But he was opposed to a reconsideration, for the question had been decided satisfactorily by the compromise on the amendment of Mr. JORDAN.

Mr. KIRKLAND briefly addressed the Convention on this subject.

Mr. RUSSELL suggested that the subject should be postponed until Monday at 10 o'clock A. M., at which time the gentleman from Suffolk would be present; and at that time gentlemen might submit the amendment they desired to see adopted. On that day a full attendance might be expected, and then the final vote would be more satisfactory.

The question was postponed until Saturday, by consent.

RIGHTS AND PRIVILEGES.

Mr. SWACKHAMER moved to discharge the committee of the whole from the consideration of Report No. 11, on rights and privileges, and that it be taken up next after that on the elective franchise.

Mr. LOOMIS supposed that this report would be placed first in the report of the revising committee, and when the Convention came to the consideration of that report this would necessarily have to be decided upon and amended. He thought it would be well to make no more special orders, but spend a few days in discussing the general report.

Mr. AYRAULT moved to lay the resolution on the table. Agreed to.

Mr. STRONG moved to lay all the other orders of business on the table, and that the unfinished business be taken up. Agreed to.

LOCAL OFFICERS.

The Convention resumed the consideration of the report of standing committee No. 7.

The 4th section was under consideration.

Mr. ALLEN withdrew his amendment to the section.

Mr. MARVIN moved to strike out the entire section.

Mr. RUSSELL moved the previous question, and there was a second, &c.

The 4th section was stricken out.

The 5th section was next read as follows:—

§ 5 Mayors of cities in the several cities in this state, shall be chosen annually, by the electors entitled to vote for members of the common councils of such cities, respectively.

Mr. CORNELL desired so to amend as to give the city of New York authority to elect its mayor biennially.

Mr. STOW also desired such an amendment to be made. He thought the day was not far distant when our cities would elect their mayors for two years.

Mr. HARRIS hoped the whole section would be stricken out.

Mr. MORRIS entered into some explanations in relation to it. The motion to amend was withdrawn and the section was stricken out.

The 6th section was read thus:

§ 6 All officers now elective by the people shall continue to be elected. All county officers whose election or appointment is not provided for by this constitution shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, as the legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may, by law, direct.

Mr. KIRKLAND said some question had arisen whether loan commissioners were county officers. To obviate all difficulty, he moved to strike out the second sentence as follows:

"All county officers whose election or appointment is not provided for by this constitution shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, as the legislature shall direct."

Mr. ANGEL thought this would produce a derangement of the design of the section.

Mr. KIRKLAND explained.

Mr. BASCOM said it would leave a fragment of central appointing power, by striking out the sentence; and he was in favor of retaining it.

Mr. JONES said if the amendment prevailed the power might be given by the legislature to the central appointing power—the Governor—which it was the desire of the committee to avoid.

Mr. PATTERSON said it would not do to take out this provision, for it was the best in the section. Strike it out and the Governor might be given power to appoint county treasurers.

Mr. KIRKLAND withdrew his amendment.

Mr. DANA, after some remarks, moved to amend by striking out the second and third sentences, and inserting "and" before "all" in the 9th line.

Mr. CROOKER:—Why, that is more objectionable than the other.

Mr. HARRIS also objected to the amendment. He thought the section was admirably drawn, and should not be amended.

Mr. PATTERSON thought the section was

admirably drawn, and that it should be kept as it was.

Mr. DANA explained.

Mr. BAKER moved to amend the matter proposed to be stricken out, by inserting after the word "constitution," in the third line, the words "including commissioners of loans, and the commissioners for loaning certain moneys of the United States, deposited with the state of New-York for safe keeping."

Mr. RUSSELL thought the majority of a county should make choice or their own county officers. He therefore desired the section to remain as it was.

Mr. ANGEL would regret to see the amendment adopted. The section was left in such a shape, that the legislature might direct the election or appointment of the loan commissioners as they might see fit, and this was obviously proper.

Mr. BERGEN moved the previous question, and there was a second, &c.

Mr. BAKER'S amendment was negatived—ayes 29, noes 63.

Mr. DANA'S motion to strike out the second and third sections was negatived—ayes 1, noes 85.

Mr. O'CONOR moved a verbal amendment, to add after "villages," in the eighth line, "or subdivisions thereof;" so as to provide for the division of cities, towns, and villages.

Mr. ANGEL assented to the amendment.

Mr. LOOMIS moved to add the words "or other county authorities," after the word "supervisors," in the fifth line.

Mr. RICHMOND objected.

The section was then adopted.

Mr. LOOMIS gave notice of a motion to reconsider.

The 7th section was read:

§ 7 The several officers in this article alluded to, shall possess the powers and perform the duties now provided by law, and such as the legislature shall, hereafter, from time to time, by law direct.

Mr. HARRIS was disposed to strike it out as unnecessary.

Mr. ARCHER followed on the same side.—

He moved to strike out "and such," in the second line, and insert "subject to such modification."

Mr. MARVIN thought the section was unnecessary, but if it were retained it should be further amended. He suggested several amendments that ought to be made.

Mr. ANGEL thought the section should be stricken out.

The amendment was withdrawn and the section rejected.

Mr. SWACKHAMER offered the following as an additional section:

§ 8. The legislature shall establish by law the fees to be paid to and received by the county clerks and district attorneys of the several counties of this state; and such clerks and district attorneys shall account for all fees received by them to the treasurers of their respective counties. And the county clerk, district attorney, and county treasurer in the several counties, shall be compensated for their official services by annual salaries to be fixed by the boards of supervisors of such counties, and paid out of the treasury thereof, which shall not be increased or diminished during the official term of such county clerk, district attorney or treasurer.

Mr. LOOMIS said the thoughts of the gentleman from Kings had been running in the same direction with his own. He had prepared a section which he should have offered if the gentleman from Kings had not made this motion.

Mr. ST. JOHN moved to amend the substitute by striking out all after the words "thereof," and inserting "which shall not exceed the amount of fees paid into the treasury by such officers respectively."

Messrs. RUSSELL, SWACKHAMER, PATTERSON, LOOMIS, TOWNSEND, STOW, SIMMONS, RUGGLES, PERKINS, and others explained and debated this proposition.

The debate was terminated by the previous question.

Mr. ST. JOHN's amendment was negatived.

Mr. SWACKHAMER's section was also negatived.

The 8th section was read thus:—

§ 8 The legislature shall regulate by law, the fees or compensation of all county, town or city officers, for whose compensation no other provision is made in this constitution.

It was rejected.

The 9th section was read thus:—

§ 9. The board of supervisors, in each county, shall fix the annual compensation of the district attorney, which shall not be changed, after his election, during the term for which he shall have been chosen.

Mr. SHAVER moved to amend by striking out all after "attorney," and make the section read as follows:—

"The board of supervisors in each county shall annually fix the compensation of the district attorney."

Mr. MANN thought the section had better be stricken out and the whole matter left to legislation.

Mr. SHAVER withdrew his amendment to permit the vote to be taken on striking out.

Mr. RICHMOND opposed the amendment. The boards of supervisors could best determine what ought to be the salary of this officer.

Mr. CROOKER was most decidedly in favor of the motion to strike out, and for two reasons: It was well known that he did not regard the board of supervisors a proper body to fix the amount of salaries of county officers. He had had experience enough in those boards to know that their action was sometimes influenced by motives that ought not to have influenced their decisions. They were too often governed in their action by political feeling. Local excitements arising from temporary causes many times exerted a controlling influence over the action of these boards. Their political complexion was constantly changing. There was danger that the amount of salary would too often be controlled by the political partialities of the members. While a political friend might be liberally paid, a political adversary would be liable to be denied a fair compensation for his labor. He admitted most cheerfully that when the boards of supervisors had a fair opportunity for calm consideration, they generally acted with great fairness. But if this section was retained they might be called on to fix the salary of a political opponent immediately after the close of a contested election, and before the bitterness excited by it had subsided. If the fixing of the amount of compensation of district

attorneys was left where it should be, with the legislature, there would be something like uniformity in amount in proportion to the business done. The amount would be regulated without passion, prejudice or local and temporary excitement. Again, he was opposed to making the district attorney a salary officer. It could not be done with propriety. There was a vast difference in the amount of business required to be done by district attorneys in different years. In times of excitement and crime, like those through which several counties in this state had recently passed, a salary fixed without reference to it, and before their occurrence, would afford a very inadequate compensation. Making the office a salaried one would strongly tend to induce the officer to neglect his duties. If he could receive the same pay whether he did little or much, it was not to be supposed the district attorney would be over diligent in attending to the business of his office. Such a course would inevitably lead to a neglect of the business of the people. He was therefore in favor of leaving the whole subject in the hands of the legislature where it belonged.

Mr. SIMMONS likewise favored the striking out of this section.

Mr. HARRIS said there ought to be a general law fixing the salaries of district attorneys, but this was not matter for a constitution.

Mr. BOWDISH moved the previous question, and there was a second, &c.

Mr. RICHMOND called for the yeas and nays on the motion to strike out, and they were yeas 53, noes 32.

The 10th section was read thus:—

§ 10. When the duration of any office, is not provided by this constitution, it may be declared by law, and if not so declared, such office shall be held, during the pleasure of the authority making the appointment.

Mr. BASCOM desired to amend by striking out all after the word "law," in the 2d line.

Mr. SIMMONS doubted the propriety of striking it out. There might be many officers removable at pleasure, which would require this provision to regulate them.

Mr. BASCOM said it should be stricken out, otherwise officers appointed by the people would remain in for life.

The motion to strike out was lost, 33 to 39, and the section was adopted.

Mr. SWACKHAMER offered an additional section thus:—

§ —. The legislature shall not fix the fees or compensation of attorneys or counsellors at law, and the fees and compensation now established are abolished; but provision may be made by law for all owing to the prevailing party in any suit as a part of the recovery, an equitable compensation for the expenses of prosecuting or defending such suit or proceeding.

Mr. RUSSELL complimented the Convention for its action on this report. It had adopted everything that was good, and rejected what was bad, and he hoped its symmetry would not be destroyed by any other amendment.

Mr. BASCOM said, having made sure from the beginning to the end, against fees and perquisites of office—all officers except the privileged class to which he belonged (lawyers)—he would now put his hand on that class by going for the amendment.

Mr. PATTERSON thought this was no place

to fix either lawyer's or doctor's fees. All this should be left to the legislature.

Mr. CROOKER said this provision would prevent the legislature from saying that the legal profession should not receive fees. It was giving to the lawyers what they would not think of asking for themselves.

Mr. SWACKHAMER and Mr. VAN SOONHOVEN explained.

Mr. HARRIS said the effect of the amendment would be, to give the profession one-third more fees than they now received; but he apprehended they ought not to put such a provision in the constitution.

Mr. JORDAN thought the section should be referred to a select committee—and he made that motion.

The previous question was moved and seconded, and the motion to refer was lost.

Mr. SWACKHAMER advocated the adoption of his proposition. It was very easy for gentlemen to sneer down a provision which was to effect their pecuniary interests. But he was not to be driven from his position, in opposition to legal monopoly, by any such attempts. He did not wish to make war upon the legal profession—his proposition did not effect their character and dignity; but in all his action here, he endeavored to follow the wishes of the people.

Mr. FORSYTH moved the previous question, which was seconded, &c.

Mr. SWACKHAMER's section was negatived—ayes 29, noes 60.

Mr. LOOMIS moved to amend the sixth section by inserting the words "or other county authorities," after the word "supervisors," in the fifth line. He explained that, as the section stood, it prevented the sheriff appointing his own deputies.

Messrs. LOOMIS, RICHMOND, SIMMONS and RUSSELL made brief explanations, and the motion was agreed to.

Mr. WORDEN said some provision should be made, or the sheriffs to be elected under the present constitution, but who would not come into office before the first of January, would be ousted by the operation of the new constitution. He moved the reference of a section to the standing committee, from which the article was reported, as follows, with instructions &c. :—

§ — All officers mentioned in this article elected by the people of the several counties and in office on the 1st day of January, 1847, shall hold their respective offices until the 1st day of January, 1850, and the terms of all officers mentioned in this article, and not elected by the people, in office when this constitution takes effect, or appointed to fill any vacancy in such office, shall expire on the 1st of January, 1848, and the legislature shall provide by law for supplying any vacancies occurring in any office created in this article until they shall be supplied by election or other wise, and all elections to fill vacancies shall be for the residue of the current term.

Mr. DODD moved that the article be laid aside and printed. Carried.

CORPORATIONS.

Mr. TILDEN from the select committee to whom was referred the report on the subject of corporations made the following report :

§ 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment

of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section, may be altered from time to time or repealed.

§ 2. Uses from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

§ 3. The term corporations as used in this article shall be construed to include all associations and joint stock companies having any of the powers of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all the courts in like cases as natural persons.

Also, on behalf of himself and Mr. LOOMIS, the following substitute for the 2d section :—

§ 2 After the 1st of January, 1850, every stockholder in any corporation for pecuniary gain or benefit to the stockholders, except in insurance companies, shall in case such corporation become insolvent, be liable for the unsatisfied liabilities of such corporation, contracted whilst he was a stockholder, to an amount in addition to his stock equal to the nominal amount of such stock. But such liability shall continue as to persons who shall cease to be stockholders for such time and under such restrictions as shall be established by law.

Mr. TILDEN moved that the Convention now proceed to the consideration of this report.

After a conversation in which a wish was expressed to have it printed, he consented to lay it on the table until the afternoon session. The printing was ordered, and the report was laid on the table until half-past 3 o'clock.

ELECTIVE FRANCHISE.

The report of committee No. 4 was next taken up.

The 1st section was read thus :—

§ 1. Every white male citizen of the age of twenty-one years who shall have been a citizen for sixty days, and an inhabitant of this state one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, shall be entitled to vote at such election, in the election district of which he shall have been an actual resident during the last preceding sixty days, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people.

Mr. BRUCE moved to strike out the word "white" in the first line.

Mr. BURR said he rose to make a little speech which was not intended altogether for Buncombe, for he knew it would be unpopular with his constituents. The amendment proposed by the gentleman from Madison appeared like one of small amount; but it was in fact of vast magnitude. The standing committee, whose report we had under consideration, intended, it seems, that the color of a man's skin should be the test of his fitness to approach the ballot-box. He dissented from this altogether. The carrying out of this principle was beset with difficulties. He did not see how a board of inspectors could, in all cases, determine who were "white male citizens." It was true that if an Anglo-Saxon, especially one who did not labor in the sun, should offer his vote, he would at once be recognized as a white man, and if he had the other necessary qualifications, his vote would at once be received. If the full-blooded African should approach the poll—whatever his other qualifications were—he would readily be known as a man of color, and his vote would be promptly rejected. But suppose the next man who offered his vote should be a free native born citizen, whose father was a white man and his

mother a black woman, and possessing all other qualifications of a voter; was not he entitled to vote? He should probably be answered that as he was not a white man, his vote must be rejected; and such he supposed would be the case, judging from the practice under our present constitution, with a man who had but one-sixteenth of African blood, and such there were among us, some of whom had skins as fair as many who had no taint of the African. Suppose one of these persons should offer his vote—common fame said he was tainted with African blood—he denied it: how should the inspectors determine the question? Were they to do as was done in Missouri a few years since, in the case of a young man who was arrested for the crime of having African blood in his veins, and dragged before a legal tribunal, and who plead not guilty; when in the absence of witnesses the court ordered that several skillful physicians should be summoned to examine the accused, and to determine by their knowledge of physiology, whether he had African blood in his veins, or not? They pronounced him a white man. He consequently escaped being sold as a slave to pay the expense of the prosecution.—Or should the inspectors themselves be permitted to determine the question on the spot? If so, he feared that sometimes the color of a man's political coat might be taken into consideration as well as the color of his skin. But, it was proposed not only to continue to withhold the right of suffrage from a large class of native born citizens, who did not now enjoy it, but to disfranchise a numerous class who did—and for no other crime than that of being "guilty of a skin not colored like our own." The constitution of 1777, made no distinction in the qualification of voters, founded upon color. It was left to the distinguished gentlemen who framed the constitution of 1821, to introduce this objectionable feature into our organic law. And with due deference to those gentlemen, he must say that he then believed, and still believed, that they made a retrograde movement—that they took a step toward the dark ages. And should this Convention in 1846, take still another step in that direction, by continuing this odious provision, and by disfranchising another portion of our tax-paying native born citizens? He trusted that a majority of this honorable body were not prepared to perpetrate such an act of injustice; and that no such anti-republican provision as this would appear as a blot upon the fair face of the constitution. But we were told of an inferior race, dwelling in our midst. We talked about "people of color." What did we mean by that? Those whose ancestors were Africans? He could not concede that such a distinct race existed among us. There were individuals of pure African blood, but their number was constantly diminishing, and the process of amalgamation which was going on, in a few generations more would whiten them out of existence. It was his opinion that a majority of those who had African blood in their veins, could boast that they had also a portion of European blood. And of what parentage were these persons? Not more than one of a thousand was the child of a white woman. They were the children of our "free white male citi-

zens;" and by our laws the child followed the condition of the father; and bore his name, regardless of the condition or color of the mother. And should we undertake to deny the right of suffrage to the sons of our qualified electors?—Mr. B. was acquainted with an individual of the class we proposed to disfranchise. He was for years a neighbor. Mr. B. knew him to be a man of intelligence, respectability and moral worth. He owned a good farm, and few men managed farming better than he. He paid taxes promptly, and performed all the duties of a good citizen; but the fact was (and the man was too honest to a tempt to conceal it) that one-sixteenth, or may be one-eighth, of the blood that coursed his veins was of the proscribed kind. This fact might not be established by his color, his skin to be sure was not white—nor darker than that of many a sun-burnt farmer, who claimed to be Anglo-Saxon; but his hair had something of the African curl. This man had always enjoyed the right of suffrage, and had exercised it much more discreetly than many of his neighbors; but he had exercised it under that aristocratic feature in our constitution—a property qualification. Now, if we incorporated this section into our constitution, unamended—we disfranchised this worthy man, and for no other reason than that his hair was a little curly; and Mr. B. was almost tempted to say—not more so, than the hair of some of us here. It would be no more unjust—no more an act of tyranny—to disfranchise a portion of us who occupied seats on this floor, because our heads were silvered with age. Against such monstrous injustice he entered his protest and recorded his name.

Mr. BRUCE spoke energetically in favor of human equality. The rights of all men, as set forth in our declaration of independence, he said, were derived from the Creator. There was no distinction found in the sacred scriptures, and he proceeded to show that the great atonement was offered for all. He likewise quoted from communications by General Jackson to the colored population of the south in the last war, to show that they were treated as worthy to be enrolled amongst the defenders of the country.

Messrs. BASCOM, WATERBURY and PENNIMAN addressed the Convention in favor of human rights, and in opposition to distinctions based on shades of complexion.

Mr. W. TAYLOR understood the gentleman from Seneca (Mr. BASCOM) to say that he was in favor of submitting to the people, as a separate proposition, the question of extending the elective franchise to the colored man, and that he would not give any vote which should go to deprive those of the right to vote who, by the provisions of the present constitution, are entitled to that privilege. In these respects he fully agreed with that gentleman, and at the proper time, he should propose to amend the section by adding the provision of the present constitution, which admitted colored men to vote on a property qualification. In doing this he wished it to be distinctly understood, that he repudiated the doctrine that property constituted, in any sense, a just criterion of qualification for the exercise of the elective franchise; but he was unwilling to leave the section, as re-

ported by the committee, without this provision, for the reason, that if the ninth section should be submitted to the people as a separate proposition and should by them be rejected, then all of the colored population now entitled to vote would be disfranchised, a result he did not wish to see. As to the property qualification of the present constitution, he would say, that he presumed the framers of the constitution did not regard it as constituting a just criterion of qualification, for the doctrine was at that time repudiated as to all others. He therefore presumed that it was retained as to the colored man for the reason, that color constituted a physical characteristic which distinguished a class of persons who for many reasons were not supposed to be well qualified for the exercise of this right and that the acquisition of property would be regarded as exhibiting that degree of improvement, and those habits of industry, prudence, and good morals that indicate a better state of qualification, and that the provision would offer an inducement to them to adopt those habits by which they might acquire the requisite qualification. It was fair to presume that some such reasons influenced the Convention in making the distinction which was adopted; but whether the reasons, whatever they may have been, were well founded or not, or if well founded at the time, whether the period had not arrived for the removal of the distinction, were questions upon which the public mind was divided; and he was in favor of submitting the question to the people, that they might have an opportunity of deciding it for themselves. If the people adopted it, all would acquiesce; if they rejected it, then the question would be settled for a long time to come, and agitation upon the subject would cease. He thought it would be best for all concerned, that the question should be settled in the manner proposed. He could not however vote to strike out the word "white" in this section, for if that motion should prevail, then we incorporate in the constitution to be submitted to the people a proposition which would jeopard the whole instrument, or if submitted in a separate article, it must be in connection with other important amendments all which would be in danger of rejection by being thus combined. He would add that the committee to which had been submitted the subject of revising the constitution and proposing the manner of submission, had bestowed some consideration upon this question, and although they desired, if practicable, to submit the constitution, or the amendments adopted, in separate articles, yet it was apprehended that this would be attended with difficulty, from the reason, that the rejection of any one article might disjoint and derange the whole; still as no action had yet been had upon it, it might be found practicable thus to submit it. If the proposition relative to the extension of the elective franchise to the colored population be submitted as a separate proposition, it would stand upon its own merits in the estimation of the people, and its fate would not involve any other proposition. He hoped, therefore, the Convention would adopt the 9th section as reported by the committee, and the amendment he had suggested.

Mr. RUSSELL wanted to ask if every member here did not feel bound to represent on this question the views of his constituents, no matter what his individual theories might be?—The constituent body must be consulted. There were more single women in the state—two to one in number to the negroes, and of infinitely greater intelligence—and yet they were excluded from all participation in the elective franchise. For one, he knew that nine-tenths of the people in St. Lawrence county—abolitionists and all—were opposed to the admission of the negroes to the right of suffrage. They believed the Almighty had created the black man inferior to the white man—that the history of the world had shown him incapable of free government. They believed our own white race were the only ones capable of self-government—that if the negroes should be admitted, our republic would soon be degraded to a level with those of Mexico and South America. He felt bound, as representing the constituency of St. Lawrence, to say to this race, we cannot admit you to be voters—if so, we must admit you to an equal seat with us in the jury box, and to hold office. He agreed in this perfectly with his constituents.—This was the only issue in St. Lawrence at the Convention election. He was interrogated on this subject, and informed them expressly that he should vote against suffrage to the negro.—He denied that this was the expression of a prejudice. It was but the expression of the sentiment of the Almighty, who had ordained the colored man to be inferior to the free white race. The right of suffrage should be confined to the free white citizens over 21 years of age. He believed a vast majority of the constituent body of this state were opposed to this extension, and it was our solemn duty, as republicans, to carry out that will, and vote down this proposition.

Mr. STRONG said it seemed to him, after having such a storm as we had witnessed, there ought to be a calm. The gentleman in his rage said if we gave the negro the right of suffrage, he would have the right to sit in the jury box. He (Mr. R.) must be a curious lawyer if he didn't know that a negro could now sit in the jury box. [Mr. CROOKER:—"I have seen a negro sit on a jury in Buffalo."] He says the abolitionists in his county are opposed to this extension. Were he (Mr. S.) an abolitionist—which he was not—he should pray to be delivered from such representatives as the gentleman from St. Lawrence. There was no use of getting mad on this subject. We could act upon it calmly and coolly. It was a question which we could put down by main force; but it would return with ever increasing strength, until right should be done to all classes of the citizens of the state.

Mr. KIRKLAND offered a proposition which he believed would enable the Convention to decide upon this question with a great deal of unanimity. There were few gentlemen, he believed, who desired to deprive the colored population of their natural rights, while there were many who doubted the propriety of at once admitting them to share with white citizens the benefits of the elective franchise. His proposition was to save to the colored people the same

privileges which they now possess, and also to submit to the people the question of allowing them to enjoy the elective franchise. He said he would present them in form in due season.

The Convention here took a recess.

AFTERNOON SESSION.

Mr. JONES' resolution was taken up, providing that after Saturday next, the convention will not take up or consider any article not then acted upon, &c. (as above).

Mr. F. F. BACKUS proposed to strike out Saturday, and insert Friday.

Mr. JONES, though in favor of commencing the work of revision at the earliest day, preferred to leave the question on the amendment to the decision of the Convention.

Mr. BASCOM thought we had better not tie ourselves up to this—as delegates might leave for home on Saturday, in the expectation that nothing new was coming up; and yet something might occur making that necessary.

Mr. LOOMIS moved a substitute, as follows:

Resolved, That this Convention will, on Friday morning next, at nine o'clock, proceed to the consideration and revision of the articles of the Constitution which have been acted upon, and also of so much of the existing constitution as shall not have been considered before then.

Mr. TALLMADGE opposed the resolutions—saying that whenever the committee on the engrossment of the articles should make their report, we could then take up the articles for revision, and keep the matter within our control.

Mr. STRONG said we should not have to wait for that committee to report. They would be ready as soon as we should. Again, if we were to prolong the session a month, we should be just where we were now, with articles before us that we could not act upon, except in a hurry, and we had better not touch them unless we could have time for it. We could not pass on all these reports, and do our work well; and hence we had better leave the old constitution to stand in such cases, than to kick over what we had done well, by something badly done.

Mr. A. W. YOUNG was opposed to any resolution which would preclude taking up any of these reports that were behind—saying that it might compel us to adjourn, leaving our work half done.

Mr. JONES said his object was to secure time enough for a revision of what had been done, that it might be well done. He did not believe we should sit beyond Tuesday; and that would leave the people little time enough to consider the articles we should submit. The Convention of 1821 gave the people some seventy days to overlook their work. We should give them but twenty-seven, if we adjourned on Tuesday. He had thought that we might revise our work on Monday and Tuesday; but the gentleman from Herkimer thought otherwise. He was inclined to think we might want more time, and perhaps it would be well to begin the work on Saturday. But he disliked so much of that gentleman's proposition as contemplated taking up other and new articles, after we had gone on with the revision.

Mr. VAN SCHOONHOVEN opposed the resolution, and ran over several articles which were yet behind, and which it was all important

to act upon—among them the article concerning estates in land.

Mr. RUSSELL had no doubt a resolution would pass unanimously to instruct the engrossing committee to bring in that article precisely as it stood.

Mr. VAN SCHOONHOVEN said he had no assurance of that. He went on to urge that if we proceeded to dispose of these articles as they came up, we could dispose of them by Tuesday, and if the session was extended until Wednesday evening, that would be better than to break off abruptly, and leave these important subjects untouched.

Mr. WORDEN remarked that as we had so little time, we had better do something. He suggested Saturday as the day when we should proceed to the revision.

Mr. SWACKHAMER moved to lay the whole subject on the table—which was done.

CORPORATIONS.

The report of the select committee to whom was referred for revision, Mr. LOOMIS' article on corporations, was taken up—and the first section read. [See morning proceedings.]

Mr. TILDEN explained that this was a compromise section. He should have preferred a more comprehensive section, as he thought we could safely prohibit special acts except in cases where a franchise was necessary.

The section was adopted.

The 2d section was read, (see above.)

Mr. TILDEN moved the substitute reported by Mr. LOOMIS, and himself. [See above.] Mr. T. said the committee were not able to agree on this section. [A voice "who cares for that?"] The one he had offered, was preferred by Mr. LOOMIS and himself to the section reported by the majority. The latter clause, he said was intended to give the legislature a power which was supposed to be withheld by a section of the article on banking. And if the section was adopted, it might supersede the provision in that article, which was less carefully drawn, and was objectionable in the particular he had mentioned.

Mr. O'CONOR said the select committee were unanimously in favor of some suitable provision to secure the creditors of all corporations, particularly those for pecuniary gain to the corporations. But they found it difficult to prescribe in advance the precise extent to which they should be liable, by an inflexible constitutional rule, applicable to all classes of corporations, without sacrificing to mere uniformity, all other considerations of public policy. The committee believed that some discretion should be left to the legislature to adapt the measure of liability to each particular class of corporations. He confessed that he came here in favor of personal liability to the utmost limit; but he had been compelled to perceive from the light that had been thrown upon the subject here, that it would be unwise to fix this unchangeable rule in the constitution. And as between these two antagonist sections, either of them might be made a sort of Aaron's rod to swallow up the corresponding section in the article on banking.

Mr. SIMMONS asked the gentleman if he supposed an existing corporation could be affected by this constitution, without giving them an

opportunity to consent or not to consent?

Mr. O'CONOR remarked that this section in itself, had no operation on any corporation, now or hereafter created.

Mr. SIMMONS asked if the antagonist section was constitutional?

Mr. O'CONOR replied that that was not for him to say. He repeated, however, that either of them would answer the purpose of the individual liability clause in regard to bankers.

Mr. MORRIS, in view of the provisions of the first section, which permitted the legislature to create corporations for the transaction of all descriptions of business—to make shoes, to practice medicine, or to cultivate farms—either in a "batch," or by special laws, as they themselves might decide to be necessary—regarded the second section, which purported to secure the community, as a mere "tub to the whale," to amuse the people with the idea that they were safe from these corporations, while indeed they were destroying them. He was in favor of adopting the substitute, with some amendments, as best calculated to afford security against the excesses of corporations.

Mr. LOOMIS said the view taken by Mr. O'CONOR was the view of those who objected to personal liability altogether—that as these corporations were useful, and as persons having dealings with them trusted the capital, and not the corporators, creditors should lose their debts rather than the corporators should suffer beyond their stock. It was a question in fact between individual liability and no liability.—The minority of the committee thought it practicable and just to put the same class of corporations on the same footing as to liability, and their section would effect their object.

Mr. SIMMONS sustained the majority section, which left this whole matter to the legislature, subject to the injunction in it. He denounced the unlimited personal liability principle, as the essence of aristocracy, and as calculated to drive out the middle classes from corporations, and let in the rich only. To a limited extent, he was willing to go for the principle—but that question he would leave to the legislature. He had opened to be the owner of a small amount of bank stock. Did gentlemen suppose they could make a new contract for him, and impose additional liabilities, without giving him an opportunity to agree to it? If they thought so, and should undertake it, he would join issue with the whole state and see where the right was.

Mr. AYRAULT preferred the section reported by the committee, but as there was to be a vote upon the other, he would propose an amendment. He moved to strike out "except insurance companies." The objection to including such corporations was that the liability was unlimited; but since that had been obviated by limiting the liability, he saw no reason why they should be excepted. All admitted that they were the most profitable of all.

Mr. MARVIN followed in opposition to the substitute.

Mr. TOWNSEND continued the debate on the other side of the question.

Mr. MANN moved the previous question, and there was a second.

The amendment of Mr. AYRAULT was agreed to—ayes 53, noes 37.

The substitute for the 2d section was rejected as follows:—

AYES—Messrs. Bowdish, Brundage, Burr, R. Campbell, jr., Chamberlain, Clyde, Conely, Cornell, Cuddeback, Dana, Danforth, Greene, Hart, H. Himan, Hotchkiss, Hunt, A. Huntington, Jones, Kernau, Kingsley, Loomis, Mann, McNeil, McNitt, Maxwell, Morris, Nellis, Powers, President, St. John, Saulford, Sheldon, Stephens, Swackhamer, Taft, W. Taylor, Tilden, Townsend, Tuthill, Waterbury, Yawger, Youngs—42

NAYS—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Berg, n, Brayton, Bruce, Bull, Candee, Cook, Dodd, Dorton, Dubois, Graham, Harris, Harrison, Hawley, Jordan, Kemble, Kirkland, Marvin, Miller, Nicholas, Nicoll, O'Connor, Parish, Patter-on, Pennington Perkins, Rhades, Shiver, Simmons, E. Spencer, W. H. Spencer, Station, Stow, Strong, Tallmidge, J. J. Taylor, Van Schoonhoven, Ward, Warren, Willard, Wood, Worden, A. Wright, W. B. Wright, Young—51.

The section as reported was then adopted, ayes 70, noes 25.

Mr. VAN SCHOONHOVEN moved the following as the third section:—

§ 3 All special laws passed by virtue of the provisions of the first section of this article, and granting a power to take private property for public use, without the consent of the owner thereof, or granting a franchise or right of way over the public highways or public streams of this state, shall be passed by a vote of at least two thirds of the members elected to each branch of the legislature.

Mr. O'CONOR said that the select committee would have reported some such provision, had they not been pressed for time.

Mr. DANFORTH remarked that the mover of this section offered an amendment to a section of another article, in the same words, and it was adopted. The same gentleman, however, afterwards voted the same amendment out.

Mr. VAN SCHOONHOVEN said the gentleman was mistaken.

Mr. DANFORTH was not mistaken.

Mr. SIMMONS said it would never do to pass this section as it stood. There were a great many other purposes besides the building of a ditch for which private property would necessarily be taken for public use, as in cases of war, &c. There had never been so restrictive a provision as this in the constitution, and he trusted it would not be adopted now.

Mr. VAN SCHOONHOVEN thought there would be no difficulty in getting a two-third vote in cases where there was an evident public necessity for any measure.

Mr. MORRIS moved to amend by striking out the words "of at least two-thirds," and inserting "a majority of all the members elected." He said his experience had shown that under the two third provision of the constitution, a small number of members (forty-three, if the House was full) could control the entire legislation of that body, under the direction of a judicious lobby and instead of being a safeguard against unwise legislation, it only enabled men to combine and enforce the passage of laws that otherwise never could have got through.

Mr. DANA said the amendment was based then on the assumption that it was easier to corrupt two-thirds than a majority.

Mr. SIMMONS said the argument was that it was easier to corrupt one-third than a majority.

Mr. CLYDE moved the previous question, and there was a second.

The amendment of Mr. MORRIS was agreed to—54 to 27.

The section as amended was adopted: 49 to 26.

The 3d section of the report was read as above.

Mr. KIRKLAND moved to insert in the 5th line, after "corporations," "hereafter to be created." He did this at the request of several gentlemen who had doubts as to the effect of the present language of the section.

Mr. PATTERSON objected to the latter clause—saying that if gentlemen supposed it placed individuals and corporations on the same footing they were mistaken. It, in fact, took away the right heretofore enjoyed of suing a corporation or bank in any part of the state.

This position was questioned by Mr. KIRKLAND and others.

The amendment of Mr. KIRKLAND was negatived.

Mr. WORDEN opposed the adoption of the section as unnecessary. It amounted to this, that a corporation was a corporation. He moved to strike out the section.

Messrs. BASCOM, TILDEN, STOW, RICHMOND, WORDEN, and WATERBURY continued the debate.

Mr. SWACKHAMER moved the previous question, and it was sustained.

Mr. WORDEN withdrew his motion to strike out.

The question was first taken upon the first clause of the section, which was adopted: ayes 56, noes 10.

The remainder of the section was also agreed to; ayes 57, noes 9.

The whole section was agreed to, in form.

Mr. SWACKHAMER moved a reconsideration of the vote upon his section offered this morning, in relation to attorney's fees. Laid over.

Mr. FORSYTH moved the following as an additional section of the report just passed through:—

The legislature may grant to corporations the right to take private property for purposes beneficial to the public upon making just compensation therefor. But such compensation shall not be reduced by any allowance for prospective benefits.

Lost, without a division.

Mr. WARD moved that the report be laid aside and printed. Agreed to.

The Convention then adjourned to 8½ o'clock to-morrow morning.

THURSDAY, OCTOBER 1.

No clergyman present.

Mr. O'CONOR presented a memorial from several members of the bar of the city of New-York, praying the continuance of the superior court. It was signed by Messrs. Theodore Sedgwick, Daniel Lord, Girard Cutting, and others.

Referred to the special committee of revision.

EQUALIZATION OF TAXATION.

Mr. TOWNSEND from the select committee on the subject of the equalization of state taxation, reported the following section:—

§ 1. The legislature shall at its next session after the adoption of this constitution, provide by law for equalizing the valuation of property for the purpose of taxation as made by the assessors and supervisors in the respective counties of this state: so that each county shall contribute its proportionate share to the support of government.

Laid on the table, and ordered to be printed.

VACANCIES IN OFFICE.

Mr. ANGEL from the 7th standing committee, to whom was referred the section yesterday offered by Mr. WORDEN, reported the following:

§ —. The legislature shall provide by law for filling vacancies in office, and in case of elective officers, no persons appointed to fill a vacancy shall hold his office by virtue of such appointment longer than until the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Referred to the committee of revision.

EDUCATION AND COMMON SCHOOLS.

Mr. BOWDISH offered the following:

Resolved, That the Convention will proceed to the consideration of the report of committee No. 12, on education, to-morrow morning at ten o'clock.

Mr. BOWDISH said he was well aware of the impatience of the Convention—but as he had not before trespassed upon their time, he had a claim to their indulgence while he offered some of the reasons that had influenced him in presenting this resolution. He, however, deemed it due to himself to say that he was unaccustomed to public speaking. For the first time in his life he now attempted to address a public body—nor when he came here, did he intend to take any part in the debates—but had determined rather to profit by the wisdom of others, than to undertake to enlighten them with any views of his own. He should not now depart from that determination, but from the conviction that he owed a duty to mankind, to posterity and his country. He availed himself therefore, of this opportunity to urge the establishment, by constitutional provision, of some principle which should be the basis of a system of free schools, similar to that proposed by the committee on education, which he proposed to make a special order. He trusted he need not impress upon the Convention the importance of the subject matter of his resolution—relating as it did, to the fundamental principle upon which rested our only hope for the perpetuity of free institutions—to our system of popular education—the system which was to mould our laws through the influence it would exert upon the morals, habits and intelligence of the masses.

The formation of those opinions which create our laws, is dependent on a judicious education; and as those laws form the morals and habits of the people, is it not proper that all questions touching so important a matter should be pub-

lively discussed, maturely deliberated on, and only settled when the public mind has fully satisfied itself of the intrinsic merits of the system that may be proposed? I utterly repudiate as unworthy of an American freeman, the idea that we should not open wide the field for the encouragement of science and literature, by establishing such a system of schools as will afford an opportunity for all classes to become educated, embracing the high and low, the rich and the poor. It is true sir, our present system has done much towards the consummation of this noble object, yet the system is very imperfect, and in my judgment, will never be complete until this most desirable end is attained. I hold that the welfare of a free government depends upon the virtue and intelligence of its subjects, the character and habits of its members. If this be true, we should make no distinctions, but the banner of education should be proudly unfurled;

"Like the wild winds free"—

allowing all alike to enjoy its advantages. The child of the woodland cottage, and that of the princely mansion, should, if possible, be educated together, that all might have an equal opportunity of rising to eminence and to fame.—It is a cardinal principle of republicanism that there is no royal road to distinction: it is held to be accessible to all. None are born to command or to obey. In the order of nature, God has made no distinctions; he has not provided for the poor a coarser earth, a thinner air, or a paler sky. The same glorious sun pours down its golden flood as cheerily upon the poor man's home as upon the rich man's palace. The cottager's children have as keen a sense of all the freshness, verdure, fragrance, melody and beauty of luxuriant nature, as the pale sons of the wealthy. Neither has he stamped the imprint of a baser birth upon the poor man's child, than that of the rich, by which it knows with a certainty that its lot is to crawl, not climb. Mind is immortal. It is imperial. It bears no mark of high or low, of rich or poor; it heeds no bounds of time or place, of rank or circumstances. It requires but light. It only needs that liberty to glide along in its undisturbed course, that the rill does to flow into the rivulet, and the rivulet into the sea. Should every little streamlet tarry at its fountain head, where would be the river and the ocean which is now bearing commerce and wealth upon its never ending tide? So will it be with the human mind. If properly cultivated, it will march on undisturbed until it reaches the summit of intellectual glory. Once establish the free school system, and knowledge, which may be well termed the "inclined plane" of power and "lever of liberty," will no longer be monopolized by the wealthy and favored few. Those who have heretofore been unable to struggle along, can then enter the arena of learning, bold aspirants to reach the temple of Pitho, and finally arrive at the goal of intellectual glory, acquiring an education that will add other nobler and more essential elements to the happiness, prosperity and welfare of our common country, than the renown consequent on military achievements and territorial acquisition, though it is true that such renown may add new splendor to the name of a republic, if justly and

equitably won. But intelligence, which is the consequent result of a good education, is that which alone will be found to be the true constituent of that auspicious power that will preserve and perpetuate the liberties which were solemnly declared to be ours by the declaration of freedom, to which is appended the names of the immortal Jefferson, Franklin, Hancock, and others, who formed a bright constellation of true hearted Americans, of a character almost beyond human perfection. Like these men, let us likewise make our vows at freedom's altar, and weigh well our relative duties to the millions of freemen who are to follow us.

I am well aware, sir, it may be urged by many that the legislature have full power to pass laws that would carry out all that has been proposed by the committee. This may all be very true. But from the experience of past legislation, it is quite evident that the fluctuating and vacillating notions of men are such, that those who fill our legislative halls are continually repealing modifying and altering all our laws.—Scarcely a legislature convenes but what our school law undergoes some sort of modification or revision; it has no kind of permanence or stability, consequently it will be continually liable to change. We may have free schools to day, but to-morrow's sun may usher in some new system or new theory. These continual changes are nearly as hostile to the spirit, genius and management of our school institutions, as the deadly simooms that sweep over the desert sands of Arabia are to those who traverse the regions of that country. Again, under the present system, the law has become so voluminous and so complex that it is a source of trouble and confusion, frequently ending in serious litigation and expense. It is instrumental of much mischief in almost every district in the state, growing out of the fact that the strict letter of the law has not been clearly understood or closely obeyed, from a want of knowledge or a clear understanding of its effects and operation by those who are called upon to execute or administer it. Sir, since my recollection, the school law, and the rules for its regulation, have swelled up from a small pamphlet to a large volume, and have now become so voluminous and so complex that it requires a good lawyer to understand them, and about as much reading as is necessary to admit an individual to practice at the bar in the higher courts. But if you would establish a well digested system of free schools upon some firm and inflexible basis, under suitable legislative regulation, stripped of many of the forms and much of the required paraphernalia that is necessary in carrying out our present system, much of which in my judgment is entirely superfluous and instead thereof, establish a permanent system, so organized and so arranged, that its existence may not be as liable to change as the winds of Heaven or the notions of men, you would obviate and remove many of the difficulties that now seem to exist, and the great object of education would not be so much misunderstood or be so grossly neglected. The great fundamental principles of American Liberty, of equal laws and equal rights, should be discussed and taught every child in our land. The first great prin-

ples imbibed by the youth of our country should be those of Liberty and Equality. All our literature should partake of a republican tone, instead of that of the enemies of freedom. Here might I not say that England performs the mighty labor, to a very great extent, of thinking and writing for this vast nation of freemen. To remedy as far as possible this startling defect, I deem it of vital importance to the rising generation that we establish a system of schools upon some firm, fixed and irrevocable basis, to be so regulated in their organization by legislative enactment as to make them good schools, because it is in these, our primary schools, that the child obtains first impressions, there laying the foundation for its future usefulness.

With us in part the responsibility rests. Shall we neglect to mature a plan to be submitted to the people for their approval that is to determine in a great measure, whether virtue and intelligence shall illumine every dwelling, or whether the clouds of ignorance shall enshroud the glory of our land, scattering from its wings destruction and desolation. The issue seems fairly made up. It is whether we are willing that ignorance shall fill our dwellings with violence and crime, or patriotism and peace shall become the stability of our times, and continue through all after generations. Let us not be blinded by our love of dollars and cents so far as to neglect the young and rising generation; leaving the bright intellect of many of those who are to come after us, and who must necessarily rise up and fill our places, to grope their way in darkness, without the means of Education being afforded them.

Mr. BAKER said he was as anxious as any man to consider all the matters before the Convention, but believing that we could better consider them by continuing at work, he moved to lay the resolution on the table.

Mr. NICOLL called for the yeas and noes on laying on the table, and there were yeas 34, noes 60.

Mr. NICOLL urged the vast importance of action on the report on education, and hoped the resolution would be adopted.

Mr. WORDEN said if this subject were taken up, there would not be time to dispose of it. Upon the first great principle that every child in this state should receive an education in our common schools, all were agreed. It was necessary, however, at this point that we should leave the details unsettled. For the purpose of disposing of this section, he moved to amend by striking out the resolution and inserting as follows:

Resolved That the committee on revision be instructed to incorporate the following section in the Constitution in such form that it may be submitted separately to the people:—

§ 6. The legislature shall, at its first session, after the adoption of this Constitution, and from time to time thereafter, as shall be necessary, provide by law for the free education and instruction of every child between the ages of four and sixteen years, whose parents, guardians or employers shall be residents of the state, in the common schools now established, or which shall hereafter be established therein; the expense of such education and instruction, after applying the public funds as provided by law, shall be defrayed by taxation, at the same time, and in the same manner, as may be provided by law for the liquidation of town and county charges.

Mr. PATTERSON said if this was to be a resolution of instruction it required some amendment. He saw no reason to educate children from the ages of four to sixteen free, and to limit it to that age. He thought the period should be extended so that all who had not had the opportunity to obtain an education early in life, might be able to obtain it.

Mr. KENNEDY objected that the provision of Mr. WORDEN was not a proper amendment to the resolution of Mr. BOWDISH.

Mr. NICOLL opposed the substitute.

Mr. VAN SCHOONHOVEN said there was no subject before the Convention of equal importance with this. If it were to be taken up, he hoped it would be in the regular form, as the report of a committee, and discussed in its order. We could take it up to-morrow, and dispose of it, and he hoped that course would be pursued.

Mr. HARRIS moved to amend the proposition of Mr. WORDEN by striking out all after the word "therein."

Mr. WORDEN assented.

Mr. RUSSELL contended that the poor should be educated, not at the expense of their localities, but of the entire state, every part of which was interested in their culture.

Mr. BRUCE moved the previous question, but he was induced to withdraw it, then.

Mr. WORDEN might make some explanations. On concluding he renewed the motion for the previous question, and there was a second, &c.

Mr. WORDEN's amendment was rejected—39 to 46—and the resolution of Mr. BOWDISH agreed to, 64 to 29.

FEUDAL TENURES, &c.

Mr. CLYDE offered the following, to lay on the table until to-morrow:—

Resolved, That the select committee to whom is referred the revision of the several articles adopted by the convention, be instructed to report the following as an additional article:—

§ 1 All feudal tenures of every description, with all their incidents are abolished.

§ 2 No lease or grant of a rural land for a longer period than ten years hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

§ 3 All covenants or conditions in any grant of land whereby the right of the grantee to alien is in any manner restrained, and all fines, quarter sales and other charge upon alienation reserved, in every grant of land hereafter to be made, shall be void.

LEGISLATIVE SALARIES.

Mr. MANN offered a resolution of instruction to the committee of revision, to report an article requiring the legislature to fix by law, the per diem allowance or compensation of all officers of the legislature. He wished to prevent the disgraceful provisions which he supplied bills had for some years exhibited.

Mr. WORDEN regarded this as small business, and not at all belonging to the convention. He also defended the legislature and its finance committees, against the imputations of the gentleman from New York.

Mr. TALLMADGE wished to express his dissent to all these motions, to refer articles and sections to the engrossing committee. He moved to lay the resolution on the table. Agreed to.

ELECTIVE FRANCHISE.

On motion of Mr. KENNEDY, the Convention

resumed the report of the committee on the elective franchise—the pending amendment being to strike out in the first section, the word 'white.'

Mr. KENNEDY said, the absence of the chairman of committee No. 4., (Mr. BOUCK,) and two others of its most intelligent members, had devolved on him, in part, the duty of explaining the views which influenced them in presenting the portion of the section under debate. This question had been very fully examined by the committee. Opportunity had been afforded to those who felt an interest on the subject, to lay their views and wishes before it. Among others a delegation from the colored population had appeared, and the same privilege was extended to them. After many meetings, and laborious application, the opinion prevailed in the committee, nearly unanimously, adverse to property qualification for an elector, in any case. The mere possession of property was deemed to be no test of political merit; that the colored man, whether possessed of property or not of a certain kind, and to a certain extent, was entitled to natural rights; and that if political privileges were extended to his race, they should not depend on his possessions, but on his manhood. The possession of property by the white man was no infallible evidence of either intelligence or patriotism. One dependent for his daily bread, on his daily toil, might surpass him in both. And there was no good reason for believing that color would make an essential difference in these particulars. This article therefore was designedly put in the form in which it was, for the purpose of excluding from our fundamental compact, the last vestige of an odious, cruel and unjust condition for holding office, and exercising suffrage. If the colored man was worthy of being admitted to these privileges, it should be on a principle of perfect equality. He should be either excluded altogether from a participation in government, on account of his race; or admitted into full connexion for the sake of his humanity. The honorable and learned gentlemen who occupied the floor yesterday, seemed determined to confound rights with privileges, in discussing this question; and boldly claimed the elective franchise as a right. In these views he could not concur. Rights were emanations from nature; born with him to whom they belonged, and alienable only for offences against society—and this, under all forms of government. But on the contrary, privileges were acquired,—conventionally, or by grant of the governing power. When long possessed, they were sometimes denominated civil rights, but they never became naturalized. In considering a question of this kind, full of abstractions, it was, to say the least, disingenuous to endeavor to confound natural rights with civil franchises. It would not be disputed that civil rights or privileges were the constant subject of mutation, while natural rights were inalienable. Should it be conceded that the elective suffrage is not a franchise, but a natural right, to whom would it belong? and who would be entitled to its exercise? Not male citizens of natural age and diverse colors only. No, sir; natural rights recognized no more distinctions in age or sex, than in color or condition. Nor did they stop with our women and children; but

fairly and honestly carried out, would extend the exercise to every human being who might happen to be on our soil on an election day, in the same manner in which they would be entitled to their personal liberty or the enjoyment of life. Gentlemen had made themselves merry in ridiculing the result to which their own arguments naturally conducted them; but declaim as they might against the results of their own reasoning, and ridicule as they must the extreme to which they were led by such perversion, if suffrage was a natural right, women and children were among your electors. But let gentlemen speculate as they might on false premises, their ingenious fallacies were transparent even to themselves. The elective suffrage was a privilege, a franchise, a civil right, and not a natural right; and the governing power might limit, restrict or extend the exercise of it in such manner as to it might seem wise and proper; and was in duty bound to confer it only on such as could in the exercise of it, best subserve the objects of good government. Those persons having the control and responsibilities of government resting upon them, had the sole right to determine, in their discretion, who should participate with them in its exercise.—Any deviation from this rule was revolutionary. Civilized society throughout the world had, with a few excepted cases, connected with the right of descent, limited political privilege to mature age and the male sex. By this restriction, the governing power in this state was in the possession of about one-fifth of the population. If this sovereignty was too much concentrated for the general welfare—if a necessity had arisen for its enlargement, let it not be by amalgamating with us a people who were foreigners in our midst. The females of mature age, of our own race, were entitled to a preference, when we were prepared to make such an extension. The gentleman from Orleans (Mr. PENNIMAN) in derogation of his own argument in favor of the natural right of suffrage, remarked that delicacy should prevent females from uniting in the exercise of political power. But what sort of delicacy was that which, refusing political privilege to the mothers of our being, the wives of our bosoms, the children of our love, and the sisters of our blood, would squander it upon those whom nature had marked as a distinct race; and who were merely an excrescence upon our society! In supporting this preference he did not design to be understood as advocating any farther extension of the elective franchise; but, in case an extension were made, he would consider it matter for gratulation, should it still remain in the possession of our own flesh and blood. But what was the gross proposal submitted by the gentleman from Madison (Mr. BAUCE) for our consideration? Nothing less than to permit all who bore the name and likeness of man to participate in our inestimable privileges! To permit the Ethiopian race to become an important portion of the governing power of the state! To allow that race, the farthest removed from us in sympathy and relationship of all into which the human family was divided, to become a participant in governing, not themselves, but us! Nature revolted at the proposal. We were in-

formed by physiologists, that the human family was divided into five races: all of which had distinctive characteristics. Those two which had the fewest points of resemblance were the Caucasian and Ethiopian. Indeed in their purity, they were almost antipodes to each other, as well in habits and manners, as in complexion and physical organization. These variations were not made by man, nor by human government. It was the work of nature, and was not without its object. Let not government dare to counteract and overthrow the distinctions and divisions that nature designed should exist; as was evident from the strong manner in which they had been marked. In supporting these views (said Mr. K.) I disclaim all hostility of feeling toward the African race. My earliest sympathies were awakened in their behalf, and my young blood prompted me to indiscretion for their sake. True, they had evidently been much improved in transportation from their native wilds, where they were but little superior to the mimic man, their co-inhabitant. But, sir, they surrounded me in bondage, and slavery seemed to me as too severe a penalty for ignorance and degradation. At a period when the real friends of these unfortunate people could fearlessly and effectively act in their behalf, although yet young, I was industriously employed in promoting, by my feeble efforts, their success. In a slave state, with slave owners, and slave drivers, and slaves surrounding us, year after year, we brought forward our candidate—our anti slavery candidate—for the legislature of the state; publicly avowing our purposes—on the hustings and in the market place. There was no concealment in our movements; no underground railroad in operation; but openly and frankly avowed our purpose to be, that no more slaves should be born in the state. Sir, we went on prosperously; all classes listened to us attentively; and our vote annually increased—but sir, at the very moment when the hearts of the slave holders were melting down in feelings of good will to the cause and they were counselling one with another on the best means of ridding themselves of that which they were convinced was a blight to their land—a pitiless ruffian forced his way into our midst, urged on by a fanaticism that was blind to all the means by which alone he could obtain success; and ruthlessly endeavored to compel the slaveholder to do that which he was about to do of his own free will. The menacing attitude, and boisterous tongue of this intruder into a domestic circle, had its usual effect. The slaveholder placed himself in a position for defence. Sir, the sequel is soon told; on that day anti slavery was left dead upon the field; and the loosened fetters of the slave were replaced with double rivets. The scenes which soon after occurred at Southampton, tell the rest. Allow me now to add, that the destruction of the active efforts of anti slavery in the south, is the only victory I have ever known abolitionism to gain. But, the spirit of anti-slavery is immortal, and awaits only the prostration of its adversary to arise in majesty and power. Anti slavery efforts, by a gradual process, will yet succeed; while abolitionism can only incite the owner to increased vigilance, and compel a more

vigorous discipline over the slave. To say that I am free from prejudice, would be to conceal my feelings. I confess myself under its operation; possibly equally as much as gentlemen appear to be under the domination of a fanaticism that would reverse the order of natural sympathies; that would take to their bed and board, the extreme link of humanity, simply because it is the extreme link of humanity. He would also confess that his feelings prompted him, when making concession of privilege, to begin by conferring it on those of his own race who had been exempt; and then to the next akin. On that principle the Ethiopian is the one which would receive his favor last, while providing for the mixture of races. The circumstance of these people having been born on our land, did not give them claims of country. They were brought here under compulsion; and remained from a necessity that is almost paramount;—uncontrollable either by themselves or others. But he did not feel inclined to join with those who took special pride in unflattering their mental capacity. Observation had convinced him, as it convinced Mr. Jefferson, that they were capable of being improved far above their ordinary standard. He could instance cases of great industry and close application, on the part of pure specimens of the race, in obtaining such literary improvement as accidentally came within their reach, and which would have been creditable to men of any color. Their aggregate moral character was a more fit subject for the painful consideration of the philanthropist. He said, it grieved him, when on coming to reside at the north, he found how much deeper in degradation the free colored man of New York stood, than the same class did any where in the south; that they had higher aspirations than their brethren in the south, with less merit to sustain them. He would not now allude to this point had not the colored delegation, in their ignorance of statistics, invited investigation and comparison.

It had been an ordinary observation that there was more vice among colored people than whites in proportion to the population of each respectively. And this was disputed by the delegation; admitting at the same time, that convictions for minor offences might be proportionately greater than with the whites. Which was accounted for thus: "When a colored man commits an offence, there are a thousand chances to one he is taken up, because he has not the opportunity of exercising political retaliation." He would lay before the Convention, statements obtained entirely from sources that might be deemed official, and on which reliance might be placed.—First of Blackwell's Island, where minor offences only are punished, but are of two classes. By the report of the prison association of May, 1846, p. 86, it would be seen that the visiting committee on Nov. 8th, 1845 found the following inmates:—

Court convicts, whites	348	
color d		96
Police convicts, whites	338	
colored		63
		1186 154

No persons were imprisoned at this penitentiary except for offences committed in the city of

New York. The population of which, by the census taken the preceding August, was as follows:—

Whites, 353,310
Colored, 12,913

Or one person colored to twenty-seven and three quarters white, [1 to 27.755.] From which the following deductions resulted: White penitentiary convicts were about as one to three hundred and two of the white population, [1 to 302.112.] Colored penitentiary convicts were about one to eighty-three and three quarters of the colored population, [1 to 83.827.] Or, the relative proportion of penitentiary convictions, was more than three and a half times greater in the colored than the white population of the county of New York, [3,603 to 1.] So that even in the class of minor offences, the summary convictions of the colored people were much less in proportion, than those by a court and jury, which were for offences of a higher degree. But the returns he had obtained from the several state prisons would show that these people had attained a greater eminence in the higher crimes, for which alone they were punishable in these institutions. He directed his enquiries to the condition of each prison, at the nearest possible period to the 1st August 1845, the date of the last census:—

<i>Sing-Sing Prison:</i>			
Sept. 30th, 1845—Convicts,	White.	Colored.	Indian.
	630	223	
<i>Auburn Prison:</i>			
Jan. 1st, 1846—Convicts,	603	80	
<i>Clinton Prison:</i>			
Aug. 1st, 1845—Convicts,	175	21	2
Totals	1408	329	2

The census of 1845 gave the following population of each race, in the state:—

Total white persons,	2,560,149
Do. colored persons,	41,446
Do. Indian (including Schoolcrafts enumeration),	5,179

These results, when reduced to an uniform produce the following proportions:—

There is one white state prison convict to about one thousand eight hundred and eighteen of the white population [1 to 1313.237].

There is one colored state prison convict to about one hundred and thirty-four and three-quarters of the colored population [1 to 134.739].

Or, the relative proportion of infamous crime is nearly thirteen and a half times as great in the colored population as in the white [13.439 to 1].

This result far exceeded any thing he had anticipated when he entered on the examination of it; and contained evidence of a criminal disposition in the race that he had never before rightly appreciated. And there was nothing to sustain the slightest suspicion that injustice had been done to any one of those incarcerated, notwithstanding the bold insinuation contained in the high reaching aspirations of one of the colored delegates before the committee, when he asked whether any colored man had ever been tried in this country by a colored jury? And answered, "No! they are tried by white jurors, and sentenced by white judges." He would say but a word or two more relative to those whom

he desired to treat with all kindness. It had been denied on the part of those who were the special advocates for extending to them our political privileges, that it was not intended to take them into social union. The delegates who appeared before the committee, did not so understand the matter. They freely discussed the means whereby existing prejudices could be overcome; and avowed that, should you "enfranchise the man of color, you will have no more prejudice against him," and in the strongest terms denounced their "exclusion from proper places in churches, in colleges," &c. And, not to be misunderstood on this point, one of them, a pure specimen of the race, asserted in the most emphatic manner, that "*God's design is to annihilate the distinctions of caste, by bringing them together in this country*" Their views on this subject could not be mistaken.

He would return to the motion under consideration, to strike out the word "white" in the first line, and protest against its adoption. The form in which the committee propose to submit the question to the people is plain and simple: one section providing for the continuance of the franchise to the "white male citizen" &c., and a separate one, to be voted on separately, for extending to "colored male citizens" the same privileges on the same conditions, and with the same advantage of eligibility for office, with the white citizen. If the judgment of the people of New York on this momentous subject, was in reality desired, why such objection from gentleman to this plain manner of putting the question? Did they fear that the people were not yet prepared for their visionary schemes?—or, after all their professions of love for the people;—of confidence in the dear people— which we had heard so much of within the last four months; were they not to be trusted with the decision of this question?

Mr. DANA replied to Mr. KENNEDY. In relation to the convictions for crime, he said it was not surprising that they were so numerous. The wonder was that all the colored people were not degraded so low by the treatment they met with, as to make the number of criminals greater. He contended that his colored brother was entitled to be placed on an elevation which would give him the privileges of citizenship.

Mr. BRUCE explained, and replied to Mr. RUSSELL, and made an impassioned appeal in behalf of equal rights. He called upon the Convention to decide whether the colored people were men or not. If they were men, he claimed for them the enjoyment of the common rights of men; otherwise make them slaves to yourselves and your children and trample them in the dust forever.

The previous question was now moved.

Mr. SIMMONS hoped it would be voted down.

After an exciting conversation, the demand for the previous question was withdrawn.

Mr. TOWNSEND renewed it

Mr. BAKER called for the ayes and noes on seconding the call, and there were ayes 31, noes 62.

Mr. HUNT went into the subject of negro suffrage at some length. His doctrine, and that of his constituents, in relation to the right of

suffrage, was briefly this. We (said he) want no masters, and least of all no negro masters, to reign over us. We contend for self government. We hold that no man who is not a part of the republic's self—who is not a bona fide citizen, shall have any voice in the state. We also concede to all other persons, and all other nations, in their respective spheres, the same rights we claim for ourselves. The fact that all men had a right to form themselves, or rather, are formed by the operation of circumstances and the law of necessity, into distinct nations or states—that every nation had the right of self government without the interference of aliens or of other states, so long as it will take the trouble to exercise that right with any tolerable degree of wisdom and justice: we are entirely left out of sight by the advocates of negro suffrage. They forgot that negroes were aliens—aliens, not by mere accident of foreign birth—not because they spoke a different language—not from any petty distinction that a few years consociation might obliterate, but by the broad distinction of race—a distinction that neither education, nor intercourse, nor time could remove—a distinction that must separate our children from their children for ever. He regretted as much as any one, that this class of irreclaimable aliens was fastened upon us. If any good could come of wishing, he could wish as heartily as any one, that the Ethiopian might change his skin, and become a part of our body politic. But all such wishes, and all efforts to realize them, were idle. They might indicate a good disposition, but they did not indicate a very good head. We might close our eyes in a fit of amiable enthusiasm, and try to dream their wool out of curl; but our dream did them no good. They knew and felt all the while, (that is, all sane negroes) that they were negroes and aliens by the act of God, and there was no remedy. The greatest injury that any man could inflict upon his fellow, was to place him in a false and unnatural position—to tempt him into a path which he could not travel, a sphere not his own; to seduce him into a war against his inevitable destiny, and thus destroy his powers of usefulness and his chances of happiness together. In his judgment, our negroes had thus been injured by their friends. They had been deluded with unreal hopes, and blinded to their true destiny, as he read it far ignoble. For as they progressed in knowledge, their pride would incite them to return to the home of their race, where they could hold the position of superiors and teachers. They had gained much by their intercourse with civilized men. They were no longer idolaters—no longer naked savages. They had made much progress in the arts and the learning of a superior race. They yet might—he believed they yet would—convey these arts and this learning to their uncivilized brethren. Such was the path he would point out to them—the destiny he would aid them to accomplish. As to the practical effect of negro suffrage in New York city, he predicted that it would be the exclusion of the race from Manhattan Island. Another consideration: The Jews were forbidden to yoke animals of different kinds together; and if it were wrong to unite the cow and the ass in the same yoke, would it be right to unite the

Caucasian and the negro race in the same government? To conclude: The reason why his constituents refused to enter into partnership with negroes in the business of government were, that they could perform all their political duties better without their help than with it.—They did not wish to debase themselves by any hypocritical professions of fellowship. They could not acknowledge as co-citizens a class of men more widely separated from them than any other race upon the globe, and who cannot be naturalized by any fiat of law or lapse of time. We know (said he) that we put ourselves upon a par with negroes whenever we put negroes upon a par with us. We cannot enter into any political amalgamation with blacks. We will not meddle with their government in St. Domingo nor in Africa, and, if we can prevent it, they shall not meddle with ours.

Mr. A. W. YOUNG in reply to Mr. HUNT quoted from the Declaration of Independence, in which the word color does not occur. A document which was written by a man whose followers many here professed to be—but he was satisfied that if Thomas Jefferson could only witness their conduct and hear their language, he would disown all such democrats. He proceeded to contend that colored people were as intelligent as immigrants from foreign countries, and was as much entitled to the elective franchise. He alluded to the statistics furnished by Mr. KENNEDY, and regretted that statistics of the good portion of that race had not been furnished also. He denied that the bad were more criminal than other races in like condition. He also denied that the slave owners were ever about to do what abolitionists require them to do. All they ever contemplated was expatriation.

Mr. RHOADES regretted that a delegate from New-York (Mr. HUNT), the commercial emporium—a city professing to have a purer democracy than any other parts of the world—should advocate the deprivation of rights, simply on the ground of a difference of complexion, or of the curl of the hair. He also expressed his disappointment on hearing the argument of the representative and mouth-piece of the committee (Mr. KENNEDY). The colored population in New-York were not even permitted to drive a cart. They were degraded to the lowest point, in that city; and yet one of its representatives had based his argument on the statistics of crime committed by a class of men whom that city degraded so low.

Mr. WATERBURY said the Convention was about to vote upon a proposition which, if adopted, would place us upon the same footing as Vermont, Massachusetts and Rhode Island.—He thought we might with safety assume the position which they occupy. The gentleman from New-York (Mr. KENNEDY) had brought in the women and children to sustain his argument. But the wives and children of all our white citizens were protected in their rights and privileges by husbands and brothers. Where do you find any one to stand up for the colored man?—Not one. The argument that because a race of men are marked by a peculiarity of color and crooked hair, they were not endowed with a mind equal to another class who had other pe-

culiarities, was unworthy of men of sense.—The negro race must always make a part of our population. Colonization would never transfer them all to their original country. As well might we attempt to drain out all the water of the ocean with a dipper. What position they would occupy, he was not prepared to say; but he would remind gentlemen that those who were once slaves in Rome became freemen. The argument of the gentleman from St. Lawrence (Mr. RUSSELL) reminded him of the Pharisee who went into the temple to pray, and forgetting his errand, went on to brag how much better he was than other people. [Laughter.]

Mr. STOW said in one single respect, he was entitled on this occasion to be heard over some other gentlemen who had addressed the Convention—he might say over almost all—for almost all who had spoken had said that they came here under pledges, and that they were bound to vote in a particular manner and that in fact they had no sort of right to listen to any argument on the subject. Now in all these respects he stood impartial. He was asked to express his convictions when he became a candidate for this Convention, but his answer was, that on no subject would he go pledged. His mind should be left open to the convictions of reason and good counsel, and on no other terms would he consent to stand on this floor. He claimed to be a free man, free to do what his understanding and his conscience dictated to be right. On the subject now before the Convention, he should perhaps differ from some of his political friends. It was one on which there was a diversity of opinion; indeed with him, the first inquiry was how to settle this question,—whether it was a question of absolute, abstract moral right. If it were true that there was no discretion—that they were bound by the rule of moral duty and religious obligation to pursue a particular course, there was an end of the argument—not only with respect to the amendment, but to the entire section and article. Because if they were really to adjudge what was a question of abstract right, and not to settle political relations and the true policy of the people of this state, it was their business to strike out the entire section. If that were true why have any qualifications? Wherefore the qualification of 21 years of age? Wherefore the qualification of male citizenship? Wherefore a residence of one year? Why not allow it to all of both sexes, and all condition and ages, whether alien or citizen, if it was a matter of absolute right?—The great, fundamental error was that it was not a right—it was a franchise. And what did franchise mean? A privilege, as they had heard argued, to be conceded by all the citizens of a country to those who will exercise it best, for the common interest of all. It was therefore a matter of policy and expediency and not of abstract right, by any manner of means. But some gentlemen had said in answer to such positions, in the language of the declaration of independence, “that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness”—and who was going to deny such an obvious proposition? Not he. But that did not help us. The ques-

tion was how are these great rights—life, liberty, and the pursuit of happiness—to be best protected? Not whether the rights now claimed are abstract rights, but whether we shall better protect our rights by limiting the franchise to a peculiar class of persons. If it should be shown that a portion would exercise the elective franchise best, and best secure life, liberty, and the pursuit of happiness, then he submitted that it was their solemn duty to make restrictions. The question was one of policy. Ought we then under the circumstances in which we are placed, to make this restriction? He was of opinion that some restriction should be made; but he would here remark that sound policy, prudence, and a species of justice too, required that they should restore the old clause of the constitution and allow colored persons to vote who had heretofore had that privilege; and hereafter he should submit an amendment to effect that object—but they ought not to go further. And why not? Because we had prejudices, as the gentleman from Onondaga had said; and if prejudices led to evil results, they must take some notice of them in this country. It was difficult to say how far this prejudice arose from our natural constitution; but arise as it might, we had got to take notice of prejudices, so far as they would influence the true organization of society. And here was a conclusive objection against this extension of the elective franchise. Why? Because when the franchise was given to all white citizens, they gave it to a class of men who were reached by the same common sympathies, who felt the same general influences, who participated in the same private, public and political relations, and who had all the same general object. Policy then must govern. For that reason they could permit aliens to become naturalized and electors. Why? Because when they became citizens their interests were the same in all the relations of life. The great error in the preventing foreigners to become voters was that it preserved amongst them a distinctive character, and so long as that was the case they stood towards us in a false relation; it therefore became our duty to break down the barrier and remove all prejudices that would serve to perpetuate elans. He was therefore in favor of giving the utmost liberty to foreigners, that we might act with common sympathies, for a common end and object. But was this so with regard to the colored man? Unfortunately it was not. He must always be governed by his social and not his political condition. When a measure of this character was proposed, we must ask ourselves whether it would tend to elevate him from his degraded condition. Great difficulties surrounded this question. Mr. S. here made a statement of a case which once occurred in the city from which he came, to show the influence of this question on the public mind. A question arose whether colored children were entitled to be received in the public schools on an equality with the whites, a question on which he should now say nothing. Afterwards the election of a mayor occurred and that question affected that election, for there were those who would give the right to the colored children, in opposition to those who would not; and he asked if it was not evident that the

vote of the colored man would be influenced by his social condition, and given to that man who was in favor of their social equality? By giving way on this subject to those who desired to extend the franchise to the blacks, we should raise a large number of electors amongst us who were not governed by the same common influences that govern others, and who would hold the balance of power between the parties in the state. That was one great, and to his mind, conclusive argument on this subject. But there were other reasons which must govern us. We must take notice both of our political and geographical relations. Slavery prevailed in this Union. We could not overlook that fact if we would. However desirous we might be to relieve ourselves of that curse and awful scourge of man—and no man would be more willing to render his aid to overthrow it, than himself—we must acknowledge that it existed—we could not avoid noticing it. Yet suppose Kentucky should abolish slavery, and should pass the same stringent law as had been passed in Ohio, forbidding a residence within the limits of that state to the free colored man, what would be the consequence to this state, particularly to that part from which he came? They would have an avalanche of men educated in slavery coming here to tell us how to govern. And would it be wise to invite the accession of such a population—altogether the worst that could come amongst us? It would be dangerous to the best interests of the people to do so. In his neighborhood, they had an impressive example of the danger of such a course. The British government had invited the accession of such a population to its colony, and it had thus brought into Canada a worthless population—a degraded class of men; and the inhabitants of that country suffered morally and socially from that circumstance. Would it then be prudent to adopt that system amongst ourselves, of which our neighbors under another government, so much complained? New England had been referred to as an example of the absence of danger in such circumstances; but to this he replied that there was a difference in geographical position. Extend it is right, and we become the reservoir for this population of southern states to be poured into. They would pass over us from the south and the west. We must be the recipients of men raised in bondage, who would become our Governors in freedom. To this we should carefully look, before we changed the existing relations between us. As to the right or wrong of this matter, he was not arguing; but feeling, as our people do, that the African was a degraded race, they would not consent to social equality, and it would be dangerous to our institutions to create political equality where no social equality existed. If we would not give them social relations, it was dangerous to give them political, and thereby put them in our jury boxes and our public offices. But it was said that this would tend to elevate the character of the colored population. He hoped it would; but yet he was satisfied it must be by slow degrees. If the feeling entertained against the colored people was mere prejudices, it was the growth of centuries, and it had become deeply fixed in

our habits and constitution; and we could only eradicate it by degrees. We must go step by step, if we would elevate this down-trodden people, and not by shocking even the prejudices of our own people. And again, who was to be affected by this? Men of high condition? The men of wealth, who were removed far from ordinary connection with labor, would feel it very little. It would extend mainly to those who labor day by day; it would reach that class of citizens and draw them down to give a doubtful elevation to another class. On this subject he should not be accused of demagoguism, for he had too frequently shown his independence; he therefore with propriety could appeal to this convention and ask them if they would pull down the working class of men by bringing them in contact with a degraded race? They might in their attempt to raise up mortals, draw down angels. He begged the convention to remember existing social relations, the proximity of other states, the condition of slavery there—and the long established habits of our people, before they attempted to make this sudden change. For these reasons, succinctly given, and not at length, as he could wish to give them, he should vote against striking out. He should however vote to put them on the footing on which they had been heretofore, which experience had shown to be beneficial. It connected them with the soil, and this tended to the elevation of their condition. No danger had or was likely to ensue, for their number was at best but small, and would not therefore be felt injuriously to affect society. He thought we ought not to take from these men the privileges we had heretofore given them, unless some public policy imperiously demanded it—and public policy must govern in this case. He should also vote in the end to allow the people to determine this matter for themselves, and if they were satisfied that this relation shall exist between them and the colored population, they had an undoubted right to decide, and he should acquiesce in the settled sentiment of society—but it must be remembered that social and political equality could not long be kept distinct.

Mr. W. TAYLOR explained his position, he having been misunderstood by his colleague (Mr. RHOADES).

Mr. R. CAMPBELL jr. moved the previous question on the amendment, and there was a second—45 to 33.

On the amendment of the gentleman from Madison (Mr. Bruce), to strike out the word "white," the result was, ayes 37, noes 63:—

AYES—Messrs. Archer, Ayrault, E. F. Backus, H. Backus, Baker, Bascom, Bruce, Burr, C. Deane, Crooker, Dana, Dodd, Dorlon, Hawley, Hotchkiss, Kirkland, McNeil, Marvin, Miller, Parish, Patterson, Pennington, Rhoades, Richmond, Shaver, Simmons, E. Spencer, W. H. Spencer, Stanton, Strong, Taggart, Tallmadge, Van Schoonhoven, Warren, Waterbury, W. order, Young.

NOES—Messrs. Allen, Angell, Bergen, Cowdiss, Brown, Brundage, Bull, D. D. Campbell, R. Campbell jr., Clark, Clyde, Conely, Cook, Cornell, Cuddack, Danforth, Dulois, Graham, Greene, Harrison, Hoffman, Hunt, A. Huntington, Hutchinson, Jones, Kemble, Kennedy, Kernan, Kingsley, Loomis, Maun, McVitt, Maxwell, Morris, Munro, Nellis, Nicholas, Scott, O'Connor, Perkins, Porter, Powers, President, Riker, Russell, St. John, Sanford, Shaw, Sheldon, Stephens, Stow, Swackhamer, Tait, J. J. Taylor, W. Taylor, Tilden, Townsend, Tutbill, Willard, Wood, A. Wright, Yawger, Young—13.

Mr. VAN SCHOONHOVEN then moved to amend, so as to secure to the colored citizen who now has the right to vote, the same right—as that appeared to be the settled sentiment of the Convention—by inserting after the word “vote” in the fifth line, the following:—

“And every colored male citizen so qualified, who, under the provisions of the existing constitution of this state, would be entitled to vote for all officers heretofore elective by the people thereof.”

Mr. BRUCE said the amendment would not answer the purpose of the gentleman, for every person “so qualified,” would have reference to the word “white,” and a negro could not be a “white colored citizen.”

Mr. DODD contended that the word white was descriptive of the person only; and formed no part of the qualification.

Mr. KIRKLAND, for the purpose of obviating all question as to the intention of the article, moved to amend the section as follows:

“But no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election shall be seized and possessed of a free hold estate of the value of two hundred and fifty dollars over and above all debts and incumbrances charged thereon, and shall have been actually taxed and paid a tax thereon, shall be entitled to a vote at any such election; and no person of color shall be subject to dir. of taxation unless he shall be seized and possessed of such real estate as aforesaid.”

This was an exact transcript of the provision in the present constitution. He proposed also the following as the last section, in lieu of that reported from the committee, to be submitted separately:

§.—After the year 1848, no property qualification shall be required to entitle any citizen of this state to the exercise of the right of suffrage.

Mr. SIMMONS spoke at some length in favor of sustaining the section as it stood. He spoke of color as an incident to degrees of latitude, and quoted De Witt Clinton in favor of amalgamation for the improvement of the human race.—He said the breed of all God’s creatures was improved by a mixture.

Mr. KIRKLAND denied that the gentleman from Essex was a competent judge. (Laughter.)

Mr. SIMMONS also spoke of deeds of heroism by colored men, and said what they were capable of being and doing was unknown until their condition was improved.

Mr. W. H. SPENCER moved to reduce the qualification of colored freeholders from \$250 to \$100.

On this amendment a brief discussion was continued by Messrs. KENNEDY, W. H. SPENCER, E. SPENCER, A. W. YOUNG, STOW, and KIRKLAND until 2 o’clock, when the Convention took a recess.

AFTERNOON SESSION.

Mr. PERKINS, after some remarks in opposition to the property qualification, as a test of capacity to vote, went on to say that this amendment provided in effect that these persons should not only be entitled to vote, but should also be entitled to sit on juries, on the bench, in the assembly, to do militia duty, &c. &c. Were the people of the state in favor of such a thing as that? Was there any thing in the Christian re-

ligion, or in humanity, that required it? As to the argument that had been adduced here, that we were all of one flesh and blood, Mr. P. said he would not enter into that controversy further than to say that if there was any verity in scripture, mankind were at Babel divided into separate classes—that it was the fiat of the Almighty that they should remain separate nations—that he put his mark on these creatures, that it might be known that it was a violation of the law of God to commingle our blood with them in marriage. That, he undertook to say.

Mr. DANA:—Does the gentleman find that in the Bible?

Mr. PERKINS:—Yes—not in those words, however. He did separate them, for purposes of his own, into distinct nations. These colored persons existed as early as we had any history of mankind, as a distinct and separate people, with every distinctive mark exhibited by the African to this day. Within a century of the confusion at Babel, history proved the direct fact that they existed separately, with all the physical marks that we saw about them now.

Mr. WATERBURY:—If they were thus separated at Babel, how came they to go through the ark with the rest. [Laughter.]

Mr. PERKINS said the gentleman was about as correct in his chronology as in some other things. The building of Babel was three or four centuries after the flood. His query was of a piece, in point of accuracy, with all that had been said in favor of negro suffrage. History showed that every attempt to amalgamate these races, had been attended with the curse of God. He denied the position of the gentleman from Essex, that the commingling of blood and breeds, improved a race, as it did cattle. He would not say that it was not better for a man to improve his breed by commingling his blood with theirs, than not to improve his breed at all. The gentleman had better try it, legitimately or illegitimately. [Laughter.] Better try the experiment on that race, than not at all. [Renewed laughter.] There was no such thing as their mingling with us on terms of equality, unless their blood was mingled with ours in marriage—and if there was any obstacle to that, in the prejudices, (if they were such,) of society, that would be a fatal obstacle to any peace. We should have nothing but the perpetual turmoil which always existed when there were two races in the same country, antagonist to each other. One or the other must govern, and the struggle for superiority had kept all countries, where two such races existed, in constant turmoil and revolution. Mr. P. was going on to allude to the history of the Jewish nation when his time expired. [Cries of “go on.”]

The PRESIDENT asked if there were any objections to the gentleman’s proceeding?

Mr. BRUCE objected.

Mr. DANA, in allusion to the bible argument of the gentleman from St. Lawrence, said he was not aware that any thing was to be found in the account of the building of Babel against the right of the colored man to vote. And before he could be convinced of that, he must have chapter and verse.

Mr. HARRISON said he could refer the gen-

tleman to a passage which had a strong bearing on this subject. He referred him and the gentleman from Delaware particularly, to Noah and his son Ham, and his grandson Canaan, and asked to whom, if not to that race, did the denunciation so emphatically made, apply, "cursed be Canaan; a servant of servants shall he be to his brethren?" Had there ever been any revocation of that sentence?

Mr. DANA said it was true, that after Noah came out of the Ark, he planted a vineyard and got drunk and cursed Canaan. But he found nothing about voting there—nothing that should prevent our colored brethren, born and brought up among us, from voting. Well might the colored man say, in this day of boasted reform, that all change was not reform.

Mr. PERKINS asked how often those who were advocating this measure were entitled to speak, and others denied the privilege of speaking at all?

Mr. DANA had not spoken on this amendment, nor should he trouble the committee much longer. [Cries of "go ahead," "go on."] Mr. D. went on to say that in '77, during the revolutionary struggle, the constitution made no distinction between the colored and the white man in regard to the right of suffrage; but in '21, a three years' residence and the possession of a freehold of the value of \$250 was required of the colored man, by which almost the entire colored population were deprived of that precious right. Only 1000 of them voted in 1845, when some 2000 of them were taxed. But now the proposition was to exclude them altogether. This was reforming backwards into the dark ages.

Mr. SWACKHAMER hoped we should have no more long speeches, but come directly to a vote. He would have the section stand as we had adopted it thus far, and that we should retain the provisions of the old constitution, striking out the sixty days' citizenship, and leaving out the property qualification; for he trusted the day had gone by when property was to be made a test of qualification. The colored race were either entitled to vote on the same terms with the whites, or not at all. His constituents were of the opinion that the colored man was not capable, and should not have the right to vote; and however strong his sympathies might be for the African race, he did not hesitate to express that opinion. He should, at the proper time, move to strike out the sixty days' citizenship, and otherwise to amend so as to restore the old constitution.

Mr. BURR hoped, in the position in which matters stood, that the question would be submitted nakedly to the people, whether colored men should have the right of suffrage on the same terms as white persons. He was opposed to all property qualification whatever, as anti-republican and preposterous. He should therefore vote against it, in the hope that the distinct question whether the colored man should vote on the same terms with others, would be submitted to the people.

Mr. KENNEDY moved the previous question on Mr. SPENCER's motion to insert \$100, instead of \$250, and there was a second, &c.

The amendment was negative, as follows:

AYES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bruce, Bull, Candee, Crooker, Dan, Danfor, Dodd, Greene, Hart, Hawley, Hoffman, Hotchkiss, Hutchinson, Kirkland, Loomis, McNeil, Marvin, Maxwell, Nicholas, Parish, Patterson, Penniman, Rhoades, Richmond, Sawyer, Simmons, W. H. Spencer, Stow, Strong, Taggart, Tallmaige, Van Schoonhoven, Warren, Waterbury, Willard, Worden, W. B. Wright—42.

NOES—Messrs. Allen, Bergen, Bowditch, Brown, Brundage, Burr, D. D., Campbell, Clark, Conely, Cook, Cornell, Cuddeback, Dorion, Dubois, Harrison, Hunt, A. Huntington, Jones, Kemble, Kennedy, Kernan, Kings ey, Mann, Morris, Munro, Nellis, Nicoll, O'Connor, Perkins, Porter, President, Kiker, Ruggles, St. John, Sanford, Shaw, Sheldon, E. Spencer, Stanton, Stephens, Swackhamer, Taft, J. J. Taylor, Tilden, Townsend, Tu-hill, Wood, A. Wright, Yawger, Youngs—50.

Mr. KENNEDY moved to amend the amendment of Mr. KIRKLAND by striking out the words "of color," where it last occurs, and insert "not entitled to the election franchise;" and to strike out all after "taxation."

Mr. KIRKLAND remarked that this, in effect would exempt from taxation all not entitled to vote—including all females, aliens, &c., no matter how much property they might have. His own amendment was an exact transcript of the existing constitution.

Mr. KENNEDY wished to show the injustice of giving special privileges to one class which were not enjoyed by another.

Mr. PATTERSON said there were certain corporations which were called "persons" that would be exempted from taxation by this amendment; as would also the property of deceased persons, whose heirs were minors.

Mr. KENNEDY modified his motion, by inserting the word "natural" before "persons."

Mr. SIMMONS spoke of the proposition of Mr. KIRKLAND as a test of the question whether we would politically enslave a portion of our citizens, by depriving them of the little shadow of political power they now had, or leave them with that small voice in the government. Political slavery was but one remove from civil slavery. He should regard all those who voted to deprive the colored man of the political rights he now had, as a friend of slavery; and if gentlemen were disposed to go that length, and this course should ultimately result in insurrection, he hoped they would not call on him or his county for aid—for they might find us (said he) on the wrong side of the question.

Mr. NICHOLAS said this great work of revision had been, in his opinion, in the main well done, and he was desirous to bring it to a close under such circumstances as would not jeopardize its adoption by the people. It was well known that there existed much diversity of opinion and great sensitiveness on the question of general suffrage as applied to the colored people. Knowing this to be the case in his section of the state, he deemed it his duty, whatever might be his individual views, to make a special submission of this question to the people, and at the same time he would reserve for this unfortunate class of people, who were certainly entitled to our commiseration, the qualified right of suffrage which they now possessed. It had been said here that the colored people themselves did not desire a continuance of this free-

hold qualification. He had reason to believe that those of them who enjoyed the right, fully appreciated its value; and although they wished it to be extended to their brethren, they would abhor the idea of their own disfranchisement. The aversion to extending this right of suffrage, arose from a common, and, as he believed, an erroneous impression, that these depressed people were not generally competent to become intelligent voters. He supposed this must have been a prevailing opinion in the Convention of 1821, and that the freehold qualification was adopted, so that the colored man who by his industry, frugality and good conduct became the owner of a comfortable tenement, might give evidence of his ability to become an intelligent judge of the wants of the country and of the qualifications of candidates for his suffrages.—He trusted the Convention would continue this small privilege to these unfortunate fellow creatures. It was true it had been enjoyed by a very small proportion of the aggregate number of colored people in the state, but it might hereafter, should the people decide against a general suffrage, be an incentive to their young men, by their good conduct and industrious habits, to emerge from their present abject condition, and become proprietors and voters, and their example might influence others to struggle with adversity and acquire all the rights of citizens.

Mr. WATERBURY thought the views of the colored people was misunderstood—as it seemed to be supposed that they desired to have the right of voting on the same footing as others, or not at all. Such was not the case, as he was advised; they preferred to vote under the property qualification rather than not at all; and hence, though opposed to this property qualification, altogether, he should vote to retain it, believing it to be the wish of the colored people.

Mr. E. SPENCER said he had misunderstood the agents of the colored people who appeared before the standing committee, if it was their wish that the property qualification should be retained; and from information he had obtained since, he was inclined to think he had misunderstood them. On further reflection, therefore, he felt disposed to vote for the amendment.

Mr. WORDEN hoped the latter part of the proposition, proposed to be amended by Mr. KENNEDY, would be withdrawn, as it recognized a wrong principle; and it was a poor salvo for the wrong you did to this race, to exempt a portion of them from taxation who were not benefitted by the very limited franchise you accorded to another portion. The withdrawal would obviate the lately discovered objections to the clause on the ground of principle, and we should then see who was for extending the "area of freedom."

Mr. KENNEDY's amendment was negatived, yeas 2, noes 85. (Ayes—Messrs. Hunt and Kennedy.)

The question recurring on Mr. KIRKLAND's amendment.

Mr. BURR said he had made up his mind to vote against this; but learning that the colored people would regard even this as a boon, he should vote for it.

Mr. HARRISON sustained it at some length.

He urged that the exemptions we allowed to the blacks were a full equivalent for the deprivation of the free right of suffrage—that all attempts by legislation to raise them to a social equality with us, would be utterly nugatory—that they were an inferior race to the whites, and would always remain so—that the experiment in St. Domingo had proved this beyond cavil—that the African in his original home, had never improved—that they were under the curse to which he had referred before; and would never recover from it. He believed that if we retained the present provisions of the constitution, we should do all that justice or policy required of us towards the black race.

Mr. JONES moved the previous question, and there was a second.

The amendment was agreed to, as follows:—

AYES—Messrs. Allen, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bowditch, Bruce, Bull, Burr, R. Campbell, Candee, Cook, Crooker, Dana, Dodd, Graham, Greene, Harrison, Hart, Hawley, Hoffman, Hotchkiss, E. Huntington, Hutchinson, Kemble, Keraan, Kinsley, Kirkland, Marvin, Maxwell, Miller, Munro, Nellis, Nicholas, Parish, Paterson, Penniman, Porter, Rhoades, Richmond, Ruggles, St. John, Shaver, Simmons, E. Spencer, W. H. Spencer, Stanton, Stow, Strong, Taggart, Talmadge, Tuthill, Ward, Warren, Waterbury, Worden, A. Wright, W. B. Wright, Young—63

NOES—Messrs. Brown, Brundage, Clark, Conely, Cornell, Cuddeback, D. North, Durion, Dubois, Hunt, A. Huntington, Jones, Kennedy, Mann, McNeil, Morris, Nicoll, O'Connor, Perkins, President, Riker, Russell, Sanford, Sheldon, Stephens, Swackhamer, J. J. Taylor, Tilden, Townsend, Wood, Yawger, Youngs—32

Mr. CLARK moved to amend the section by striking out the requirement for a six months residence in the county, and limiting the *sixty* days residence in the district, to *thirty* days.

Both these amendments were separately negatived.

Mr. CROOKER moved to strike out "six months" and insert "two months" residence in the county. He illustrated the harsh operation of this requisition by the case of his own county, where the county line run through a village, and where a removal from one side of a street to the other would disqualify a voter.

The amendment was negatived.

Mr. SWACKHAMER moved to amend by striking out the sixty days citizenship, and altering the phraseology of the section as follows:

"shall be entitled to vote at such election in the election district in which he shall actually reside, and not elsewhere," &c.

Mr. JONES said this would make the section read exactly like the present constitution, and he hoped the amendment would prevail. He could see no reason why a person who had become a citizen, after five years' probation, should be compelled to wait 60 days longer before he could vote. The clause was aimed at naturalized citizens, and them only, and he confessed to his surprise to see it there.

Mr. PERKINS also opposed the 60 days' residence in the district—saying that it would operate to disfranchise thousands of laboring men, who were compelled often to change their residence.

Mr. KENNEDY explained that he opposed this 60 days' citizenship in committee, as aimed at recently made citizens—and he hoped it would be struck out.

Mr. STRONG thought this clause one of the most wholesome provisions in the whole section, and he dwelt at some length on the struggle by both parties to get foreigners naturalized on the eve of an election, and on the bad effect which this struggle had upon the foreigner himself, in improperly influencing his first vote.

Mr. SHAVER said the attention of the committee on the Elective Franchise had been brought to this subject by a resolution which he had himself offered at an early stage of the session. And gentlemen were right when they supposed it was aimed against foreigners, and for the purpose of preventing such scenes as were witnessed just before every exciting election. Men who were poor, were taken by partizans on the day before the election, or even the same day, up to the courts where their papers were made out free of expense, and they hurried to the polls to deposit their votes. He had no objection that these persons should become citizens and should enjoy the right to vote; but there was abundant opportunity for them to become naturalized at other times than just at the eve of an election. It gave rise now to the charge which we hear so often iterated and reiterated, of corruption and bargaining. These charges were by no means flattering to the foreigner himself, and he wished to relieve them from it. They should not desire to become citizens merely for the purpose of voting, and that as a reward to those who from partizan motives, obtained their papers for them and then led them to the polls. He hoped the section would be allowed to remain.

Mr. STRONG followed in opposition to so much of the amendment as dispensed with the sixty day's residence in the district—urging that that was the only effectual mode of breaking up colonization.

Mr. VAN SCHOONHOVEN supported the amendment. He did not see why the legislature could not protect the ballot-boxes from the colonization frauds which were so loudly complained of. He believed they could do so; and with the coöperation of the guardians of the franchise, could do so effectually.

Mr. BROWN opposed the sixty days' citizenship, or one moment longer citizenship than the law of Congress required for naturalization. It was in restraint of the exercise of the franchise, and as such he protested against it. He opposed also the sixty days' residence in the district, as a provision which must result in disfranchising thousands of laboring men, who were obliged to change their residence often, to obtain employment. He trusted the provision of the old constitution in regard to residence in the county, and actual residence in the district, at the time of the election, would remain as it was.

Mr. PERKINS opposed the sixty days' residence in the district on the grounds taken by Mr. Brown, that it would deprive a large class of voters, laboring men, of their right to vote.

Mr. NICOLL said there were at least 15,000 removals in the city of New York, in a single year, exclusive of those whose names were not in the directory—and a large portion of the laboring masses must necessarily lose their votes under this sixty day rule of residence. He

hoped the proposition of Mr. SWACKHAMER would be adopted.

Mr. STOW took the ground that we could not in framing a constitution regard isolated cases of hardship. All we could do was to lay down such general rules as public policy and the general good seemed to require. General rules must be adopted, however stringently they might operate in individual cases that might be imagined. Even the rule requiring a voter to be 21, sometimes operates to exclude a man from the polls for nearly the entire year after he obtained his majority. And yet, all acquiesced in the rule. So with this requisition of sixty days' citizenship. If it was believed to be necessary to secure the purity of the franchise, and to protect the foreigner himself from the undue influences which otherwise would be brought to bear upon him, in giving his first vote, we ought not to hesitate in fixing the rule, though it might exclude a few persons from the immediate exercise of the right of voting. He also urged the other provision of a sixty or thirty days' residence in the district, as absolutely necessary to the protection of resident voters from being overborne by importations from abroad, and thus making the purity of our elections a by-word and reproach. Better deprive one legal voter of his right, than have twenty or thirty others deprived of theirs by imported votes.

Mr. BROWN urged in reply that it would be unjust to visit upon a voter, whose necessities, not his wishes, compelled him to change his residence, the penalty which we sought to impose on those who practiced frauds.

Mr. NICOLL remarked that the greater number of removals in New York took place in May. In June following, there was a school election, at which, under this provision, thousands might be disfranchised.

Mr. STOW said it would be an easy matter to obviate that by changing the time of the election.

Mr. NICOLL rejoined that it was as easy a matter to change the general election from November to June.

Mr. BAKER followed in support of the sixty days citizenship and residence.

Mr. MORRIS remarked that the wards in New York were divided into 5 or 6 election districts, in each of which, in the same ward, the electors voted for precisely the same persons, except inspectors; now under this 60 day rule, a man who moved from one district to another in the same ward, within these 60 days of an election would be disfranchised! Was that intended? Could there be any fraudulent design reached by such a prohibition, where the voter, after removal, actually voted for the same persons that he would have voted for, had he remained where he was before?

Mr. RUGGLES moved to amend the latter clause of the original section so that it would read thus:—

"Shall be entitled to vote at such election in the town or ward in which he shall have been a resident during the last sixty days, and in the election district where he shall reside at the time of the election, and not elsewhere," &c.

Mr. BROWN said this was an improvement on the section, as it required the sixty days residence to be in the town or ward, instead of

the district. Still he preferred the old rule, one year in the state, six months in the county, and actual residence in the district at the time of the election.

Mr. SWACKHAMER urged his amendment, and an adherence to the provisions of the present constitution in regard to suffrage—insisting that the public would frown down any attempt to restrict or hamper the exercise of that sacred right. He repelled also the idea that these restrictions were necessary in regard to naturalization, for he had no faith in the allegations, so frequently made, of fraud in the granting of naturalization papers.

Mr. RICHMOND had as much faith as the gentleman from Kings had in the honesty of these naturalized foreigners. But he regarded this sixty days citizenship as aimed not at them, but at the political rogues and rascals that deceived them, and often got them into difficulty.

Mr. RUGGLES said his impressions were in favor of retaining this sixty days' citizenship.—He supposed it would exclude very few naturalized persons; and it would put an end to the

frauds, if any, of which we always heard so much after a contested election, in the presses of both parties in the city of New York and elsewhere. But he was not so tenacious of that provision as of the sixty days' residence in the town or ward. If the half that was charged on one side, and not denied on the other, in regard to colonization frauds in the great cities, was true, some such provision as this was absolutely necessary to secure the purity of our elections. And if its effect would be to exclude one legal vote, it would, for every such vote, exclude perhaps ten illegal votes. Still, if gentlemen from the cities would say that there was no foundation for these charges of colonization and fraud, so often reiterated after an election, then certainly we ought to hesitate before we adopted it.

Mr. MARVIN followed in support of the sixty days' citizenship, at some length.

Mr. TILDEN then obtained the floor, but gave way for a motion to adjourn.

Adj. to half-past eight to-morrow morning.

FRIDAY, OCTOBER 2.

Prayer by the Rev. Dr. CAMPBELL.

The PRESIDENT laid before the Convention the remonstrance of the trustees of the Cannoharie Academy, against the diversion of the literature fund to other purposes.

Mr. FORSYTH presented a like remonstrance from the trustees of the Kingston Academy—Referred.

CHEN NGO AND CHEWUNG CANAL.

Mr. MAXWELL offered the following section, and moved its reference to the committee on revision, with instructions to incorporate it in the article on the debts of the state:—

§ 4. Whenever the North Branch Canal of the State of Pennsylvania shall be completed to the N. Y. State line, then a portion of the said remainder of the revenues of the said canals may, in each fiscal year, be applied in such manner as the legislature shall direct, to the extension of the Chenango and Chemung canals to the Pennsylvania State line, at the termination of said North branch canal.

Mr. J. J. TAYLOR advocated the accomplishment of the object contemplated. He said this resolution asked for no appropriation;—it left the whole subject to the legislature, and even then it depended on the contingency of the completion of a canal in Pennsylvania to the state line. He therefore thought there could be no objection to the passage of the resolution.

Mr. MORRIS hoped it would not pass. He thought they had taken sufficient care of the lateral canals in the provision already adopted.

Mr. MARVIN thought it should pass. It merely gave the legislature power, on the completion of the Pennsylvania canal, which could not take place for several years, to apply certain surplus funds to connect therewith our own canals.

Mr. COOK (the motion being withdrawn) thought the county of Saratoga was also entitled to some consideration. They had both coal and

iron, and yet had received no advantage from the canals in different parts of the state. He moved to add at the end an amendment to include the Sacanaga canal and the Slack Water navigation connected therewith. If there was to be a general scramble, he did not know why Saratoga county should not come in for a share. Mr. C. renewed the motion for the previous question, and it was seconded &c.

The amendment was rejected.

Mr. WHITE asked for the yeas and nays on the resolution, and there were yeas 23, nays 66.

So the resolution was rejected.

FUTURE AMENDMENTS OF THE CONSTITUTION.

Mr. MARVIN after a brief explanation of his reported article providing for future amendments of the constitution, which he said was the same as that in the present constitution, with some modification to adapt it to changed circumstances, moved its reference to the select committee of 7, with instructions to incorporate it with the new provisions.

Mr. O'CONNOR moved to amend by striking out two-thirds, and inserting "a majority," so that when an amendment received the assent of a majority of the second legislature acting upon it, it should be submitted to the people. If the two-third principle should be preserved, it should be in the first legislature—that taking the initiatory step—and not in the second, to which members would come directly instructed on the subject by the people.

Mr. BASCOM hoped that they should not place themselves in the power of a factious and interested minority, and therefore he hoped the amendment of the gentleman from New York would pass.

Mr. PATTERSON also advocated the amendment. He, however, desired to strike out a portion of the second section so as to omit the

20 years' provision, and leave it to the legislature to fix the time for revising the constitution.

Mr. MARVIN contended that without this two-third provision, amendments might be obtained of a purely political character. The section objected to by Mr. PATTERSON he said was simply to bring the constitution in review by the people once in twenty years, without the intervention of any other body; and if they were dissatisfied with the constitution, the people could say so and act accordingly, and if not, the existing constitution would be continued.

Mr. JONES thought this subject should not be discussed in this incidental way. It should be laid over until it came up in order, when it could be fully debated.

Mr. HOFFMAN hoped the amendment of the gentleman from New York, making it more easy for the legislature to overthrow the constitution, would not prevail. The second section he approved as proposed by the gentleman from Chattanooga (Mr. MARVIN).

Mr. MORRIS argued in favor of the amendment of his colleague (Mr. O'CONOR).

Mr. KIRKLAND said the gentleman from Herkimer had on this occasion uttered "the words of truth and soberness." He contended that facilities should not be afforded to the legislature to change the constitution; on the contrary, they should make provision to secure stability for the constitution. The great evil in our government was excessive legislation and excessive constitution making. He had confidence in the legislature, and believed that two-thirds would obey the wishes of the people.

Mr. O'CONOR asked for the yeas and nays on his amendment.

Mr. St. JOHN moved the previous question, and there was a second, &c.

Mr. O'CONOR's amendment was adopted, yeas 50, noes 43.

Mr. LOOMIS moved to amend by restoring the resolution to its printed form, except as follows:—Strike out the words "next chosen as aforesaid," in the 8th line, and insert "to be chosen at the next general election of senators."

Mr. SIMMONS approved of a two years' provision for an amendment of the constitution.—He thought amendments should be well matured. Two years consideration through the press and in the public mind, would be very valuable.

The amendment of Mr. Loomis was adopted yeas 75, noes 25.

Mr. CROOKER desired to see the second section struck out. He made that motion.

Mr. BASCOM hoped it would not be stricken out. It asserted a great principle that all power was inherent in the people and that once in 20 years they might take the matter into their own hands. Without this provision the legislature might be continually tormented with applications to amend.

Mr. CROOKER admitted that all power was inherent in the people and the people could exercise their power through their representatives; but changes should not be continually made.—Love of change was peculiar to man, but the public mind should be pervaded with the necessity for change, before it should be acceded to.

Mr. MARVIN said the section simply provided that the constitution should be brought in-

to review once in 20 years, and did not prevent a Convention at any other time. And once in 20 years, if the people were satisfied with the constitution, the state of things would continue. He thought this was a safe provision.

Mr. RUSSELL moved to amend by striking out the permission to the legislature to call a Convention within the twenty years, if they deemed it proper.

Mr. BERGEN moved the previous question, which was sustained.

Mr. RUSSELL called for the yeas and nays on his amendment to strike out, and there were yeas 22, noes 68.

Mr. CROOKER withdrew his motion to strike out.

Mr. BERGEN contended that the gentleman from Cattaraugus could not withdraw his motion after the previous question had been ordered.

Mr. VAN SCHOONHOVEN discussed that point, but as objection was made to the withdrawal of the motion, the Convention proceeded to vote upon it, and the result was yeas 5, noes 89.

Mr. RUGGLES submitted a provision to require the next Convention to consist of two distinct bodies of men, sitting in different chambers, without whose concurrent assent no amendment should be made. Their organization to be provided for by law.

Mr. BASCOM suggested that provision should be made to obtain the approval of the Governor. That would be in keeping with the rest of the resolution.

The provision was lost, yeas 29, noes 64.

Mr. YOUNGS moved the previous question and it was sustained on the original proposition.

The resolution was adopted.

RIGHTS OF MARRIED WOMEN.

Mr. HARRIS said there was one section in the report on rights and privileges (on which probably they should not act again) which he desired to see passed, as it would be productive of domestic happiness. He therefore offered the following with instructions to committee No. 7 to report it as a section of Mr. TALLMADGE's report:

§ 14. All property of the wife owned by her at the time of her marriage and that acquired by her afterwards by gift, devise or descent or otherwise than from her husband, shall be her separate property. Laws shall be passed providing for the registry of the wife's separate property and more clearly defining her rights thereto; as well as to property held by her with her husband.

Mr. O'CONOR hoped they would devote a little to the rights of men as well as the rights of women. He differed from the gentlemen from Albany on this subject. He believed it would be productive of domestic unhappiness. He moved to lay the resolution on the table.

The motion was lost—yeas 35, noes 60.

The previous question was moved by Mr. HUTCHINSON on the section, and on seconding there were yeas 21, noes 59. So the Convention refused to grant the motion.

Mr. BASCOM moved to amend by substituting the following for the section proposed by Mr. HARRIS:

§ 4. The contract of marriage shall not be held to vest in either of the contracting parties, the property of the other or to create a liability upon either to discharge the debts or obligations of the other.

Mr. BASCOM said that the wrongs which the proposition of the gentleman from Albany sought to cure, arose from a violent construction that the law put upon the marriage contract, making it entirely different and more comprehensive than the contract itself. The laws, not the marriage contract, vested the property of the wife in the husband, and all that was required was that the marriage contract should be what the parties agreed it should be. If a man now wants a wife he has to bargain for her; adopt this amendment, and if he wants her property he will have to bargain for that too. The reason for the violent construction that the law puts upon the marriage contract, by which the property of the wife is vested in the husband, is founded upon the liability of the husband to pay her debts contracted before marriage, because in one case in a thousand a man incurs liability to pay the debts of his wife. Nine hundred and ninety-nine men, more fortunate in their marriage, shall have the whole property of their wives. The amendment aims to secure the rights of men too, by relieving them from this constructive liability.

Mr. SWACKHAMER advocated the rights of women.

Mr. BRUNDAGE moved to substitute the following in place of Mr. Bascom's:—

"The property of married women, real and personal, which belonged to her at the time of her marriage, or acquired afterwards by gift, devise, or descent, other than from her husband, and the avails thereof shall not be liable in any wise for the debts of the husband."

Mr. TOWNSEND wished to amend by striking out the last clause of Mr. HARRIS's section and insert the following:—

§—No *ex post facto* law, either civil or criminal, shall be passed; nor any law impairing the obligation of contract, or the statutory remedy existing at the time such contract shall be made.

Mr. SIMMONS read the following substitute for the information of the House:—

"The legislature shall provide by law for a competent livelihood to be secured to married women and to her infant children out of the property owned by her, and out of the use of one-third of her husband's real property, owned during coverture."

Mr. PATTERSON said this subject had been before the legislature for many years, and if there was any desire among the people for such a provision, they should have known it. He also contended that this separation of interest and division of property between man and wife, would produce domestic trouble. They should jointly own all, instead of having separate possessions; but if a young woman, when about to be married, was apprehensive that her property would not be safe in the keeping of her husband, she might vest it in trustees for her own use. This however should all be left to the legislature.

Mr. SIMMONS desired to have some provision which should secure the interests of the wife where the husband was civilly dead, as well as in case of his physical death. It was however better to leave it to the legislature.

Mr. KIRKLAND was in favor of Mr. HARRIS's proposition. He enumerated many enormities which had been inflicted on females by worthless husbands, and appealed to the Convention to secure her safety.

Mr. LOOMIS said this was a subject of too much difficulty and delicacy to be put in so permanent a form as a constitutional provision.

Mr. HARRISON appealed to the good sense and intelligence of the Convention whether at this late hour, they could dispose of this subject properly. He moved to postpone it to the 1st December next.

Mr. STOW begged of gentlemen not to dispose of this important question with so much haste, especially not to make it a constitutional provision, with less consideration than a village corporation would give to a bye law. He moved to lay the whole subject on the table.

Mr. MORRIS called for the yeas and nays, and there were yeas 44, noes 43.

Mr. DODD moved the previous question, and there was a second.

Mr. VAN SCHOONHOVEN called for the yeas and noes on the question, "shall the main question be now put?" and there were yeas 51, noes 40.

The question recurred on the amendment of Mr. BRUNDAGE, which was agreed to, yeas 50, noes 48.

Mr. BASCOM gave notice of a motion to reconsider.

The question then recurred on striking out and inserting the amendment of Mr. Bascom, as amended, which was negatived, yeas 37, noes 59.

The question was then taken on the original provision, which was carried, yeas 58, noes 44, as follows:—

AYE—Messrs. Allen, Archer, F. F. Backus, H. Backus, Baker, Bascom, Bowdish, Burr, R. Campbell, jr., Candee, Chamberlain, Clark, Clyde, Conely, Cook, Crooker, Dana, Dodd, Dubois, Greene, Harris, Hart, Hotchkiss, Hutchinson, Kernan, Kirkland, Mann, McNitt, Maxwell, Miller, Morris, Nellis, Nicoll, Parich, Perkins, Porter, President, Riker, St. John, Salisbury, Stanton, Stephens, Swackhamer, Tallmadge, Tilden, Townsend, Van Schoonhoven, Ward, Warren, Waterbury, White, Willard, Wood, Worden, A. Wright, W. B. Wright, Yawger, Young.—48

NOES—Messrs. Angel, Aysault, Bergen, Brown, Bruce, Brundage, Bull, Cornell, Cuddeback, Danforth, Dorton, Graham, Harrison, Hawley, Hunt, A. Huntington, E. Huntington, Jones, Kenble, Kennedy, Kingsley, Loomis, McNeil, Marvin, Munro, Nicholas, O'Connor, Patterson, Penniman, Rhoades, Richmond, Russell, Shaver, Shaw, Simmons, E. Spencer, Stow, Strong, Taggart, J. J. Taylor, Tuthill, Witbeck, Youngs.—44

ELECTIVE FRANCHISE.

The Convention proceeded to the consideration of the report of committee number four.

The pending amendment was on Mr. SWACKHAMER's motion to strike out "a citizen for sixty days and"—being the clause in the 13th section requiring sixty days' citizenship, as one of the qualifications of the naturalized elector.

Messrs. O'CONOR, TILDEN, RHOADES, HARRIS, WATERBURY, and JONES, discussed the amendment.

Mr. BERGEN moved the previous question, and it was seconded.

The motion to strike out the words "a citizen for sixty days and," was lost, yeas 43 noes 48, as follows:—

AYE—Messrs. Allen, Bergen, Bowdish, Brown, R. Campbell, jr., Clark, Clyde, Conely, Cornell, Cuddeback, Danforth, Hart, Hotchkiss, Hunt, A. Huntington, Hutchinson, Jones, Kennedy, Kingsley, Mann, McNeil, Maxwell, Morris, Munro, Nellis, Nicoll, O'Connor, Per-

k'ns, President, Riker, Russell, St. John, Sanford, Shaw, Stephens, Swackhamer, Taft, J. J. Taylor, W. Taylor, Tilden, Townsend, Tu-hill, Van Schoonhoven, Ward White, Willard, Wood, Youngs—45.
N-E—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bull, Burr Cander, Cook, Crooker, Dana, Dodd, Dorlon, Dubois, Forsyth, Graham, Greene, Harrs, Harris, Hawley, F. Huntington, Kirkland, LeVitt, Marvin, Miller, Nicholas, Parish, later on, Peasimin, Rhodes, Richmond, Salisbury, Shaver, Simmons, Spencer, Stanton, Stow, Strong, Taggart, Tallmadge, Warren, Waterbury, W. C. Wren, A. Wright, W. B. Wright, Yawger, Young—45.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. PERKINS ridiculed what he called the extreme apprehension in certain quarters lest a class of white voters, who were obliged often to change their residence, should commit frauds upon the ballot boxes, and might be bought and sold—and the great anxiety in the same quarters to let in a class of colored persons whose degradation and vices decreased their numbers annually, notwithstanding the large accessions from other states. It was the destiny of the black race ever to occupy an inferior social position to the white. It was the latent decree of the Almighty, and nothing could change it.—Mr. P. laid it down as the economy of Providence that there should be separate races and grades of beings on the earth. He asserted that the great offence which brought the flood on the earth was the intercourse between the sons of God and the daughters of men—the intercourse of one race with another that God had separated. When they commingled, he separated them again. A century after the dispersion at Babel profane history showed that this black race existed, with all the characteristics that now marked them. That climate should have done this was impossible. This mark was put on them as a warning that other nations should not commingle with them.

Mr. WATERBURY here called to order.—The word white had been struck out. It had nothing to do with it. [Laughter.]

Mr. STOW understood that Babel was disposed of yesterday. [Laughter.]

Mr. PERKINS said if Babel was disposed of yesterday, this question of negro suffrage, in all its bearings, was involved in this section.

The PRESIDENT: The gentleman will proceed.

Mr. PERKINS went on to say that subsequently, when the Jews intermingled with other nations, it was called whoredom, and was denounced by God. You could not admit the blacks to a participation in the government of the country, unless you put them on terms of social equality with us—and that could only be done by degrading our own race to a level with them. He adverted to Asia Minor, the garden of the world, and the three nations that were attempting to live there—the Jew, the Mahomedan and the Christian—to the constant warfare going on between these nations, to the decrease in population which was the consequence. He adverted also to Mexico, where there were three races; with something like an equality of right, and yet nothing but a standing army could govern them. So in the English Indies, where different races existed, and slavery had been abolished, nothing but the British bayonet kept the peace. He

predicted that in the city of New York, negroes would never be permitted to come up to the ballot boxes—or if they did come, it would be only to be bought and sold like cattle in the market. Riots and violence would be the order of the day. Mr. P. closed by warning the Convention against adopting a provision which must disfranchise a large class of white voters—saying that they would hear from it at the polls of the election, as well as from the proposition to bring in the whole negro race at the polls.

Mr. DANA said he did not think it worth while to answer the gentleman's Bible arguments. He could not see the bearing of them on this question as to the right of the colored man to vote. He would say, however, that it was a disputed point whether Cain was a negro—nor was it known whether Canaan was a black man; but if so, he was at work with the rest at Babel. Nor was it certain what color or language was assigned to Canaan.

Mr. SIMMONS understood Madison was a bible county. If the black shins came from the mark on Cain, he asked the gentleman whether it was put on for their protection or to make slaves of them.

Mr. DANA said God put a mark on him lest any man, finding him, should do him any injury. But it seemed now the same mark on a man tended to his destruction.

Mr. CROOKER: How does the gentleman know it is the same mark?

Mr. DANA replied that he said it was a mark. He was following the position of the gentleman from St. Lawrence who called it the mark.

Mr. PERKINS said his remark was this that when God separated Cain from the rest, and drove him out, it became offensive in his sight that the other children of Adam should intermarry with the descendants of Cain. He supposed the female descendants of Cain were the "daughters of men," spoken of in the chapter preceding the account of the flood—which was brought on the earth because the sons of God intermarried with them.

Mr. PATTERSON: Would it not be well to refer this question to a select committee?—[Laughter.]

Mr. CROOKER: Better refer it to a conciliation court. [Renewed laughter.]

Mr. DANA said we had no account of Cain's descendants marrying the sons of God. There was no account of any other son or daughter of Adam, at the time when Cain received this mark. [A voice—"You're wrong there."] Mr. D. said he was not wrong. [Laughter.]

Mr. SIMMONS:—What was the cause of the flood? Was it not slavery?

Mr. DANA:—The wickedness of man.

Mr. SIMMONS:—The violence of man.—[Laughter.] My bible says so. [A voice—"Your's is a whig bible."]

Mr. DANA said the subject was not pursued in a manner that was profitable, and he would desist from any further remark now.

Mr. SHAVER understood the gentleman from Dutchess was willing to modify his amendment so as to change the 60 to 30 days.

Mr. RUGGLES was willing to put it at that.

Mr. SHAVER went on to say that this constitution, as had been remarked, was to be a

work of compromise. As far as it had been perfect, it was not perhaps in conformity, in all respects, to the wishes of any member of that body. He trusted the effort would be to harmonize as far as possible on this question by united concessions. In the resolution which he submitted at an early stage of this session, calling attention to this subject, he suggested 30 days. That would effect the object of the friends of the measure, and would probably obviate objections.

Mr. TILDEN said that those opposed to the provision, would as soon have it 60 as 30 days—as either would operate harshly upon a large class of citizens.

Mr. SHAVER replied that the objections urged by gentlemen from the city applied with much force to the six months residence in the country—for county lines were much longer than ward lines, and were imaginary, whereas in cities the wards were divided by streets. There must be some general rule of residence, however harshly it might operate in individual cases. The purity of the franchise must be preserved—colonization must be prevented, or the people would lose all confidence in the decision of the ballot box.

Mr. TILDEN insisted that the remedy was much more than coextensive with the evil intended to be reached—that colonization could not be the object of a removal from one district to another where the same class of officers were to be voted for—and that in the cases where colonization might be the object of a removal, the remedy went to the length of disfranchisement for local or state officers.

Mr. BROWN replied that the six months residence in the county had been heretofore required, because counties were the smallest subdivisions within which the important class of officers were elected—such as sheriffs, clerks, &c. By the same rule now, residence in the assembly district should be required rather than in the town or wards, and then the elector should not be disfranchised from voting for county or district or state officers. And after all, what object was to be gained by this that might not be attained by legislation? Why make an inflexible rule here which might be found to work harshly? He trusted the friends of an unrestricted suffrage, as it was now enjoyed, would not yield an inch of the present constitution; but stand by it firmly. If there were evils to be remedied in the large cities, he begged gentlemen not to adopt a rule which would affect injuriously the rights of the country.

Mr. STOW moved to amend Mr. RUGGLES' proposition so as to require this residence in the town or ward to be in the same "assembly district" also. This, he explained, was necessary, as we had provided in another article that wards might be divided in forming assembly districts.

Mr. LOOMIS, to avoid the difficulty suggested by gentlemen from New-York had an amendment which he should offer if he had the opportunity, providing that a removal from one place to another, within the 60 or 30 days, should not prevent an elector from voting for officers of the judicial or other district comprising the two localities.

Mr. MORRIS gave it as his honest conviction that the provision sought to be engrafted on the constitution, would disfranchise thousands of honest electors in the city of New-York.—He said this, fully appreciating the importance of securing to every voter the full power of his ballot. He believed that the greatest political crime that could be committed, was fraudulent voting. On that conviction he had always acted. But to exclude a legal voter from the ballot box, was to be guilty of the very fraud which all desired to prevent. This provision would exclude a large number of poor but honest voters, and exclude them only. And why punish them for the offences committed by others—by the men who brought voters from Philadelphia, from along the river, from Massachusetts and Connecticut, to vote in New-York—men whom you would not punish when you caught them, but for catching whom you punished some of your judicial officers. The true remedy for these election frauds, he insisted, was with the legislature. Reconstruct your penal laws. Make these men infamous, and hereafter incapable of holding office or of voting, who should be thus engaged in corrupting the franchise, and you would then reach the head and point of the evil. He dwelt at some length, upon the injustice of disfranchising a large class of men in the city, whose necessities, and whom sometimes a desolating fire, compelled them too often to change their residences.

Mr. RUGGLES, to obviate objections, read an amendment which he would offer, to the effect that an elector who by reason of a removal should be prevented from voting in the place to which he had removed, might return to his former place of residence and vote there.

Mr. LOOMIS urged a shorter period of residence also—say ten or twenty days.

Mr. HARRIS offered the following as a substitute for Mr. RUGGLES's:—

"Shall be entitled to vote at such election in the election district where he shall reside at the time of the election, provided he shall for the last preceding thirty days have been an actual resident of the town or ward, or assembly district, in which he offers his vote, for all officers which now are or hereafter may be elective by the people."

Mr. RUGGLES accepted this substitute, upon the condition that he should be allowed to add to it as follows:—

"An elector who by reason of the removal of his residence from one town, ward or assembly district to another, in the same county, is not entitled to vote in the town or ward in which he shall reside at the time of the election may vote in the town or ward from which he shall have just removed, provided such elector shall have been a duly qualified voter in the place from which he shall have removed at the time of his removal."

Mr. LOOMIS called for a division of the question, so that it should first be taken upon the clause first offered.

Mr. SWACKHAMER said an inspector must be a judge 40 years to understand the section. Not a man here, he ventured to say, understood these amendments fully.

Mr. O'CONOR hoped all friends of the extension of the elective franchise would vote against every motion which amended the section as it stood in the original constitution. This was an attempt to complicate the matter and make

it a more intricate question than 123 of the wisest men in the state would be able to unravel in the time which was left for the sitting of this Convention.

The CHAIR (Mr. PATTERSON) now decided the amendment originally proposed by Mr. SWACKHAMER to be first in order.

Mr. WORDEN moved the previous question and it was seconded.

The amendment of Mr. SWACKHAMER, which restored the section to the form of the old constitution, was negatived, as follows:—

AYES—Messrs. Allen, Bergen, Bowditch, Brown, Brundage, R. Campbell, jr., Clark, Clyde, Cornell, Hart, Hunt, A. Huntington, Hutchinson, Jones, Kernan, Kingsley, M. M. Maxwell, Morris, Munro, Nicoll, O'Connor, Perkins, Powers, Riker, Russell, St. John, Sanford, Shaw, Stephens, Taft, W. Taylor, Tilden, Tutthill, Vache, Ward, White, Willard, Wood, Yawger, Youngs—41.

NAVS—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Brayton, Bruce, Bull, Burr, D. D. Campbell, Candee, Conely, Cook, Dana, Danforth, Dodd, Dorton, Dubois, Forsyth, Gebhard, Graham, Greene, Harris, Harrison, Hawley, Hotchkiss, Jordan, Kemble, Kirkland, Loomis, McNeil, Marvin, Miller, Nellis, Nicholas, Parish, Patterson, Penniman, Porter, Rhoades, Richmond, Ruggles, Salisbury, Shaver, Simmons, E. Spencer, Stanton, Stow, Strong, Taggart, Tallmadge, J. J. Taylor, Townsend, Van Schoonhoven, Warren, Waterbury, Witbeck, Worden, A. Wright, W. B. Wright, Young—62.

The first part of Mr. RUGGLES' amendment (that proposed by Mr. HARRIS) was agreed to as follows:—

AYES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Brayton, Bruce, Bull, Burr, D. D. Campbell, Candee, Conely, Cook, Dana, Dodd, Dorton, Dubois, Forsyth, Gebhard, Graham, Greene, Harris, Harrison, Hawley, Jordan, Kemble, Kirkland, Loomis, McNeil, M. M. Maxwell, Miller, Nellis, Nicholas, Parish, Patterson, Penniman, Porter, Powers, President, Rhoades, Richmond, Ruggles, St. John, Salisbury, Shaver, Simmons, E. Spencer, Stow, Strong, Taggart, Tallmadge, Townsend, Van Schoonhoven, Warren, Waterbury, Witbeck, Worden, A. Wright, W. B. Wright, Young—64.

NAVS—Messrs. Bergen, Brown, Brundage, R. Campbell, jr., Clyde, Cornell, Cuddeback, Danforth, Hart, Hotchkiss, A. Huntington, Hutchinson, Jones, Kennedy, Kernan, Kingsley, Mann, McNeil, Morris, Munro, Murphy, Nicoll, O'Connor, Perkins, Riker, Russell, Sanford, Shaw, Stephens, Swackhamer, Taft, W. Taylor, Tilden, Tutthill, Vache, Ward, White, Willard, Wood—39.

The latter clause was adopted by the following vote:—

AYES—Messrs. Allen, Archer, Bascom, Bergen, Bowditch, D. D. Campbell, R. Campbell, jr., Clyde, Conely, Cook, Cuddeback, Dana, Dorton, Dubois, Harrison, Hunt, A. Huntington, Hutchinson, Jones, Kernan, Kingsley, Mann, McNeil, Maxwell, Miller, Morris, Munro, Murphy, Nellis, Nicoll, O'Connor, Perkins, Powers, President, Rhoades, Riker, Ruggles, Russell, St. John, Salisbury, Sanford, Shaver, Shaw, E. Spencer, Stephens, Swackhamer, Taft, W. Taylor, Tilden, Townsend, Vache, Van Schoonhoven, Ward, Waterbury, White, Willard, Witbeck, Wood—65.

NAVS—Messrs. Ayrault, F. F. Backus, H. Backus, Baker, Brayton, Brown, Bruce, Burr, Candee, Cornell, Danforth, Dodd, Forsyth, Gebhard, Graham, Greene, Harris, Hart, Hawley, Hotchkiss, Jordan, Kemble, Kirkland, Loomis, McNeil, Marvin, Nicholas, Parish, Patterson, Penniman, Porter, Richmond, Simmons, Stow, Strong, Taggart, Tallmadge, Tutthill, Warren, Worden, A. Wright, W. B. Wright, Young—43.

Mr. KENNEDY moved a reconsideration of the vote upon the first clause. He did not think that a thirty days residence would effect the object desired.

Mr. STOW made the same motion with regard to the last vote.

Mr. JONES moved the section of the old constitution as a substitute for the amended section of the report, omitting the clause in regard to persons of color.

Propositions to amend the matter proposed to be struck out being first in order—

Mr. BROWN moved to amend so as to require ten instead of sixty days' citizenship, and three instead of six weeks' residence in the county.

Both these propositions were adopted, 49 to 45, and 65 to 35.

Mr. JONES' substitute was next in order.

Mr. HARRIS moved to amend the substitute, so that it would read as follows:

"Every male citizen of the age of 21 years, who shall have been an inhabitant of this state one year next preceding any election, and for the last three months a resident of the county where he may offer his vote, and shall have been a citizen for 30 days, shall be entitled to vote in the election district in which he shall actually reside, for all officers that now are or hereafter may be elected by the people, provided he shall for 30 days next preceding have been an actual resident of the town or ward and assembly district in which he offers to vote."

Mr. JONES withdrew his proposed substitute.

Mr. CORNELL moved to add to the section, as follows:

"But the privilege of the elective franchise herein conferred shall not be construed to apply to any person of color, except such as shall be seized and possessed of a freehold estate as required in this section, on the day when this constitution shall go into effect. And no person of color shall be subject to direct taxation, unless he shall possess the privilege of the elective franchise."

Mr. CORNELL explained that the Convention had determined that the property qualification should be retained in regard to colored persons, and mainly on the ground that those possessing that qualification had an equitable claim for its continuance, they having acquired property with a view to acquire the right to vote. His amendment secured that right to them, but did not permit others to acquire it hereafter—relieving however these from taxation, whether possessing a small or a large amount of property—and having this to stand in lieu of the franchise, as an incentive to the acquisition of property.

Mr. A. W. YOUNG opposed the amendment, and it was lost—yeas 15, noes 74.

Mr. WORDEN moved to substitute the section proposed by Mr. JONES as modified by Mr. HARRIS, with the exception that he changed the 30 days in the last place mentioned to 20 days.

Explanations passed between Messrs. RUGGLES, STOW, WORDEN and TILDEN, who moved to amend the amendment of Mr. WORDEN, by adding as follows:

"But the removal of any citizen from one election district to another within twenty days next preceding an election shall not prevent such citizen from voting in the district from which he removed, if he had been a resident thereof for twenty days next preceding his removal."

The motion to adjourn was negatived.

The previous question was then seconded.

The amendment of Mr. TILDEN was lost—46 to 46.

The amendment of Mr. WORDEN was negatived, as follows:—

AYES—Messrs. Archer, Ayrault, F. F. Backus, Baker, Bascom, Brayton, Bull, Burr, D. D. Campbell, Candee, Cook, Dana, Dodd, Dorton, Forsyth, Graham,

Harris, Harrison, Hawley, Jordan, Kirkland, Marvin, Miller, Nicholas, Parish, Patterson, Penniman, Porter, Rhoades, Richmond, Salisbury, Shaver, Simmons, Snow, Strong, Taggart, Tallmadge, Warren, Wetherburn, Warden, A. Wright, W. H. Wright, Young—43.
 NOL—Mc srs. Allen, Bergen, Bowditch, Brown, Brundage, H. Campbell, J., Clyde, Conely, Cornell, Cuddihick, Danforth, Dubois, Greene, Hotchkiss, Hunt, A. Huntington, Hutchinson, Jones, Kennedy, Kernan, Kingsley, Mann, McNeil, McNitt, Maxwell, Morris, Murphy, Nellis, Nicoll, O'Connor, Perkins, President,

Riker, Ruggles, Russell, St John, Sanford, Shaw, Stephens, Swackhumer, Taft, J. J. Taylor, W. Taylor, Tilden, Tutbill, Ward, White, Willard, Wood, Youngs,—50

Mr. BRAYTON had leave to record his vote in the affirmative on the question of striking out the word *white* in the 1st section.

The Convention then adjourned to 8 1/2 o'clock to-morrow morning.

SATURDAY, OCTOBER 3.

Prayer by the Rev. Dr. W. H. CAMPBELL.

Mr. KIRKLAND presented the petition of Allen Stewart and other citizens of Oneida county, relative to the elective franchise. Laid on the table.

Mr. JORDAN presented the petition of Samuel S. Staples and others of New York, asking the abolition of the superior court and an increase of supreme court judges. Referred to the committee of revision of the constitution.

Mr. W. B. WRIGHT presented the petition of F. W. Burke and others, on the same subject. Referred.

THE NEW CONSTITUTION.

Mr. JORDAN, from the committee on the revision of the articles of the constitution, made a report. The articles, as far as acted upon, the committee had arranged; some of the phraseology they had changed, and subjects not touched by the Convention they had provided for by adopting the provisions of the present constitution. The order in which the committee had placed the articles was as follows.

1. The Bill of Rights.
2. The Elective Franchise.
3. The Powers and Duties of the Legislature.
4. The Executive Department.
5. The Administrative Department.
6. The Judiciary.
7. Finances—both articles.
8. Corporations—Messrs. Loomis's and CAMPBELL's reports.
9. Education.
10. Local Officers.
11. The Militia (and constitution)
12. Oaths and Affirmations.
13. Future Amendments.
14. A Schedule which provides the time when the term of offices abolished shall expire, and the new Government go into full effect.

To these the committee had prefixed the following preamble:

We, the People of the State of New York, grateful to Almighty God for our freedom: in order to secure its blessings, do establish this Constitution."

There were various provisions which the committee had introduced, under instruction of the Convention. Mr. J. went into a minute explanation of the effect of changes and modifications made by the committee, and concluded by moving that the report be laid on the table and printed.

Mr. RUSSELL moved to amend so as to have the printing done under the supervision of the gentleman who had made the report, who had given his best attention to the subject day and night for sometime.

Mr. KIRKLAND offered a substitute providing that the report be laid on the table and

printed by 8 1/2 o'clock on Monday morning, and made the special order for that day. Agreed to.

THE MILITIA.

Mr. WARD moved the reference of the report of Committee No. Eight on the militia, to the committee on revision, with instructions to incorporate it in the constitution. He explained the purport of its provisions. He said the only difference in that report and the article reported by the select committee, was the provision relating to the appointment of Commissary General, for which there was no provision made in any part of the constitution. There was another question, that of changing the mode of appointing the Brigade Inspector. In the report, his election was given to the brigade officers.

Mr. JONES thought it would be better not to occupy the time of the Convention with a discussion of this report. Nearly all—the exception being that in relation to the Commissary General—was matter for legislation, and it should so remain. He moved to lay it on the table, waiving it, however, that the chairman might reply.

Mr. WARD said it was important this should be acted upon at once; he therefore hoped it would not be laid on the table. He desired that it should be taken up by sections.

Mr. BASCOM said that a section was reported giving all power to the legislature over this subject, and he thought a simple section would be sufficient, especially as there was not time to act upon this entire report at this late period.

The first section was read and agreed to.

Mr. JONES moved to strike out all that related to the Commissary General in the second section, and insert a provision for his election by the people, and called for the yeas and nays.

The amendment was discussed by Messrs. JONES, WARD and DANFORTH.

Mr. NICHOLAS moved to add to the end of the second section the words—"He (the Commissary General) shall give security for the faithful execution of the duty of his office, in such manner and amount as shall be prescribed by law." Agreed to.

Mr. JONES explained the purport of his amendment to be to have the Commissary-General elected as other officers of the state were.

Mr. RUGGLES doubted the propriety of the amendment. This officer it was of great consequence should be in the confidence of the commander-in-chief in time of war. In the last war there was great strife between the political parties, and if a difficulty should exist between

these officers their efficiency might be destroyed. Mr. TALLMADGE objected to putting these things in the constitution — He would leave them to the legislature.

Mr. SIMMONS said, to have this officer elected by the people would destroy that subordination which was necessary in military affairs. After what this Convention had done it was not necessary to make this an elective office to show their esteem for "the people."

Mr. BRUCE hoped the amendment would not pass. The nature of military service was arbitrary necessarily; and the Governor should have power to appoint this officer that his views might be carried out.

Mr. RUSSELL explained, and was followed by Messrs. NICHOLAS and PERKINS.

Mr. WHITE said it would impair the efficiency of the military service to pass the amendment of his colleague.

Mr. JONES said no one could doubt that the Governor would have control of the Commissary General in time of war even if he were elected by the people.

Mr. ST. JOHN moved the previous question, and under its operation, the amendment of Mr. JONES was negatived, ayes 23, noes 73.

The second section was adopted, ayes 62, noes 29.

The 3d, 4th and 5th sections were also agreed to, and the resolution referring the article was adopted.

CANALS.

Mr. HART offered the following:

Resolved, That the committee on the revision of the articles of the constitution be instructed to amend article 8, section 3, by inserting after the words "Black River canal," the words "and the improvement of the other state canals."

Mr. HART said:—I have prepared this amendment in the full conviction that it ought not to meet with opposition from any quarter. This Convention have already made ample provision for the completion of the Erie canal enlargement and for finishing the Black river and Genesee Valley canals; but it must necessarily require for the completion of these works a period of perhaps twelve or fifteen years, more or less; and it appears to me unwise to place in this constitution a provision which seems little less than an absolute veto upon all improvements upon the other canals of the state during that period, however important or necessary for the interests of the state such improvements may be, and which improvements may require no very large sums of money for their accomplishment; and will it be contended that in such cases no power should reside in the legislature, to direct such improvements, without resorting to extraordinary means to procure the necessary funds? I confess myself unable to see either the justice or good policy of such a course. While we provide with a liberal hand for part of the public works, we will not allow the merest pittance for others. Such action as this does not commend itself to my judgment as in any sense that even-handed justice which should be dispensed to all. I have no expectation that by the adoption of this amendment any essential interference with the progress or completion of the works already authorized by this Conven-

tion would result; and such interference is no part of my design; but I deem it wise and proper that some discretion should be left to the legislature that will permit them to provide for cases which may and must arise in the lapse of ten or fifteen years, which no human wisdom can now foresee; and also to provide for cases which it is easy to foresee must and will arise. These cases I desire to place it in the power of the legislature to provide for, without compelling them to resort to extraordinary means to secure the requisite funds, for instance, (for I wish to state my objects frankly,) whenever it may be necessary to rebuild locks, aqueducts, or other structures on the canals, during the progress of the works for which appropriations have been made, I wish to put it in the power of the legislature, if in their judgment the interests of the state and the necessities of commerce require it, to order such works to be enlarged. Such a course would be manifestly required by true economy, if I am right in the belief that several of the canals not named in this article, will eventually be enlarged. I mention the Oswego canal, the Cayuga and Seneca, and perhaps others. I have not the remotest idea that these canals will remain for any considerable time after the enlargement of the Erie canal of their present capacity only. This would involve the necessity of a transshipment of all property on arriving at or leaving The Erie canal, or what would probably be still still worse, that canal must be navigated by a class of boats having only one-third or one-half the tonnage which that canal would permit. It is well known that the Oswego canal is one of the great channels of western commerce, and that its existence creates an active competition highly beneficial to commerce in forwarding property to and from New York to the great West. It enjoys also a large trade with Canada West. About twenty-five millions of lumber has this season already arrived at Oswego; a large proportion coming from Canada, the tolls at the Oswego office amounting annually to about one hundred and seventy thousand dollars. But perhaps it may not be exactly in order on this amendment to discuss the question of the enlargement of that work, or the extent to which it should be carried; permit me, however, to say that I have no shadow of doubt that its enlargement is a mere question of time, and although that time may be somewhat delayed by unjust and partial legislation, the event is certain. All I expect or ask to accomplish by this amendment is to leave the discretion of which I have spoken in the hands of the legislature, where, in my judgment, it most properly belongs, to make such improvements on any of the state canals, as in their wisdom may be deemed advisable. Under this amendment provision might also be made for completing the unfinished improvement on the Oneida river, and I appeal to the friends of the canals, who have so strongly and so successfully claimed the plighted faith of the state to complete their favorite works, and who refused to do justice to this work on the Oneida river, to tell me whether if the faith of the state was solemnly pledged to them, it was less so in regard to this little work? I have only to add that in my judgment a fair and con-

sistent course on the part of this Convention requires the adoption of this amendment, by doing which we would at least recognize the principle that it is not hereafter to be held unconstitutional to make necessary improvements upon the canals, not provided for in this constitution.

Mr. WHITE, as they had made ample provision in the constitution for the canals, moved to lay the resolution on the table, and called for the ayes and noes thereon, and the motion was negatived, ayes 45, noes 48.

Mr. SMITH moved to amend by adding the words "and extension" after "improvement" so as to provide for the extension of the Chenango, and Chemung canals to the state line.

Mr. PATTERSON said the article agreed to amply provided for certain canals, and left it to the legislature to say what should be done with the surplus. This was sufficient without further provision.

Mr. LOOMIS said this provision was so eminently just and proper that he could not withhold his approval from it. He thought the provision already made, which limited the improvements to certain works, was too contracted. The Oswego canal might require enlargement, in consequence of an increase of business which might be produced by the public works of Canada affording facilities to trade; but now nothing could be expended thereon. He hoped the resolution would be adopted.

Mr. CHAMBERLAIN said the gentleman from Herkimer was no more surprised than he was; but his surprise was created by the sudden turn which some gentlemen took on this subject. The proposition now was to apply the surplus to all the lateral canals. The provision heretofore adopted confined it to certain works first and to all others after their completion, and he hoped that would be adhered to.

Mr. SMITH asked the gentleman from Allegany if he would be satisfied if this amendment should be made applicable only at the end of eight years.

Mr. ANGEL expressed his surprise that this attempt to revive this canal controversy should be made at this late period of the Convention.

Mr. COOK moved to add to the amendment of Mr. SMITH, "and for the construction of such canals whose routes have been absolutely surveyed by the authority and at the expense of the state." He said, if we were to resume the policy of internal improvement, those sections of the state which have received no benefit from the works constructed by the state, should have an equal chance with those now benefitted by the present works of internal improvement.—He meant by this amendment to include a canal which had been surveyed through his county, reaching the upper branches of the Hudson.—The route was practicable, and it would bring into market a large amount of public lands. At this time strenuous efforts were making to construct a railroad, and if this succeeded, it would supply the place; but it might fail, and it was no more than common justice to allow the opportunity, if necessary, for the inhabitants of that section to participate in the benefits arising from the construction of public works. He also stated that large beds of iron ore existed in that section of the state, which even under the

present difficulty in reaching market, were attracting attention, and works were now being erected for the purpose of working the ore.

Mr. MARVIN hoped this question would not again be opened. He explained what had been done and reiterated his opposition to a revival of this controversy.

Mr. RUGGLES moved to substitute for Mr. HART's amendment as follows—which Mr. HART accepted—add after the word "completed," "or may in the discretion of the Legislature, be applied to the improvement or enlargement of the other state canals."

Mr. HART accepted the substitute.

Mr. CONELY moved to add as follows to Mr. RUGGLES' amendment,

"Provided such enlargement and improvement of any public work shall be in proportion to the amount of its net income."

Mr. JONES moved the previous question.

Mr. MARVIN moved to lay the whole subject on the table.

Mr. SMITH called for the yeas and nays, and there were yeas 69, nays 26.

BILL OF RIGHTS.

Mr. AYRAULT moved instructions to the committee on revision to incorporate the 9th, 11th, 12th, 15th and 16th sections in the bill of rights, as reported by Mr. TALLMADGE, which provides, 1st, that a presentment by the grand jury shall be necessary to place a criminal upon trial—that no person shall be subjected to a penalty or loss of life without trial, nor twice put in jeopardy—that private property shall not be taken for public use without compensation—that witnesses shall not be imprisoned for want of bail—that no divorce shall be granted by the legislature—and that no lotteries shall be authorized in this state.

This was debated by Messrs. TALLMADGE, BROWN, TAGGART, PERKINS, KIRKLAND, O'CONOR, and SIMMONS.

Mr. BROWN moved to amend the motion of Mr. AYRAULT, by inserting in one of the sections a provision by which persons might be put upon trial for petit larceny without the intervention of the grand jury.

Mr. O'CONOR presented a set of sections, amended in several respects from those first proposed, and providing that the party accused of crime should have the right of last appeal to the jury, in reply to the counsel for prosecution. He moved a reference to a select committee with instructions to insert, by way of amending the resolution of Mr. AYRAULT.

Mr. KINGSLEY moved to amend Mr. AYRAULT's motion by adding a section providing that no person should be hindered from pursuing any lawful business.

Mr. AYRAULT appealed to gentlemen who had proposed amendments to allow the simple propositions which were contained in the sections which he had offered to be referred and disposed of, without embarrassment. We had not time to discuss the matters embraced in the abstract propositions which were presented in the motions to amend.

Mr. STOW moved to amend the 9th section so as to provide that no person shall be tried without benefit of counsel. In military trials of

pecially should the accused have the benefit of counsel, and in such cases he never had it.

Mr. KIRKLAND moved to refer the original proposition and the amendments to a select committee, to report complete on Monday morning next. Agreed to.

FEUDAL TENURES.

Mr. CLYDE called up his resolution offered yesterday, referring the report of the committee on the division of estates in land to the select committee with instructions.

Mr. NICOLL demanded the ayes and noes, and the Convention agreed to consider, ayes 66, noes 15.

Mr. CLYDE took the floor, but gave way to

Mr. JORDAN, from the select committee, reported resolutions declaring that in the opinion of the Convention, the amendments of the constitution could not be prepared so as to be submitted separately; also prescribing the form of the ballots to be "No," and "Yes," providing for the distribution of 20,000 copies of the amendments by the county clerks; and also for their publication weekly in the state paper until the day of election.

Laid on the table and ordered printed.

Mr. RUSSELL offered a resolution for the binding and distribution of the journals. Agreed to.

Mr. CHATFIELD had leave of absence for the remainder of the session.

The Convention then took a recess.

AFTERNOON SESSION.

ESTATES IN LAND.

The Convention resumed the consideration of the article in relation to estates in land, the question being on the first section, as follows:

§ 1 All feudal tenures of every description, with all their incidents are abolished

§ 2 No lease or grant of agricultural land for a longer period than ten years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

§ 3. All covenants or conditions in any grant of land whereby the right of the grantee to alien is in any manner restrained, and all fines, quarter sales, and other charges upon alienation reserved, in every grant of land hereafter to be made, shall be void.

Mr. CLYDE addressed the house at length in support of the section. [A sketch hereafter.]

Mr. SIMMONS moved to add to the section, as follows:

"Saving, however, all rents and services certain, which at any time heretofore have been lawfully created or reserved."

Mr. S. moved also as a second section, the following:

"All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners according to the nature of their respective estates."

Mr. S. remarked that what he proposed to add was already in the revised statutes, and should be in the constitution as declaratory of the true character of the tenure of estates in land.

Mr. HARRIS had no objection to the amendments. They did not change the effect of the section, in any way. It would divest the landlord of no vested rights, if he had any. It would, however, strip these tenures of certain incidents—such as fealty, and the right of distress, which were derogatory to freemen.

Mr. SIMMONS said the revisors thought it necessary to make these reservations, after the broad language of the section as it stood.

Mr. HUNT asked if this right of distress was not just as much a vested right as the rents themselves?

Mr. SIMMONS said the supreme court had decided that a certain number of these incidents that used to be matter of right by common law, had become obsolete—such as fealty. One of these rights was that a man might beat his wife with a rod not bigger than the judge's thumb. As to the right of distress Mr. S. said this would not abolish it as a remedy. But that was a matter which did not come up here.

Mr. HARRIS said he must set the gentleman right on this point. Distress was the incident under the feudal system, by which and rent fealty were extorted. So far, he desired to abolish this incident of the tenure. The statutory remedy by distress had been already abolished.

Mr. SIMMONS said the gentleman and he did not differ at all. All of us desired to abolish this tomfoolery.

Mr. SIMMONS' amendment to the first section was adopted.

The question recurred on the section as amended.

Mr. RUGGLES said he should like to hear of what possible use these provisions could be to those who complained of the present state of things? We had here, in the revised statutes, the very thing which it was proposed to put into the constitution. It was a subject purely of legislation. There was no danger that the legislature would even interfere to give landlords any broader rights than they now had. He doubted the propriety, at this late stage of the session, of bringing forward these propositions, the effect of which it was difficult to understand—especially if they changed the law in any respect—and if not, there was no occasion for them.

Mr. SIMMONS replied that there was something in the very name of feudal tenures, and just in proportion as it meant everything or nothing, and was understood by nobody. Certainly there could be no harm in changing the name—in abolishing feudal tenures in the constitution—as had been already done, he granted, by statute. If, however, he thought it would make any real, substantial difference in pre-existing property, he would go as far as the gentleman from Dutchess to protect them. It would put an end to even the name of a thing that had its influence on the character of a people. He could tell a man from a feudal region by the very expression of his countenance. If this system of tenancy, moderate as it was, and well vested as he granted the rights of the landlord were, was general all over the state, he predicted there would be a revolution as quick as that which took place under Charles II. Surely there could be no harm, he repeated, in declaring the tenures of all land in this state, to be allodial not feudal, saving all rights.

Mr. JORDAN said the amendment could do no harm, and it might do good. The abolition of feudal tenures, and the impossibility of creating them hereafter, was desirable. And as they were abolished by statute, so ought they to be abolished by constitution—that could not be al-

ered as a statute could every year. When the subsequent sections came up, the friends of them would endeavor to defend them, if opposed.

Mr. RUGGLES said if feudal tenures were not already abolished by statute, and if they had not been for the last sixteen years, without the slightest possibility of their ever being restored, he should not object to putting this clause in the constitution, so as to prevent their restoration. But he had no more fears of a restoration of feudal tenures in this state, than of an attempt on the part of the legislature to establish a monarchy here. And if it led these occupants under leases to believe that their condition was changed from what it had been heretofore, it would be an injury to them to put it in the constitution. He confessed he made no objection to this first section, partly because he thought he saw in the other section very serious grounds of objection, and that the same reasoning would apply to all. If it was proper to make such legal provisions as these, it was proper that it should not be done by a constitutional provision, but in such a way that, if found inconvenient, as it would be, and if all parties should exclaim against it, as they would—it might be changed. But the great objection to the first section was that it changed no right, altered no law, secured no privilege and no immunity, and only made that irrevocable, which was now nominally revocable, but which the legislature probably never would revoke. One of the modes by which the evils complained of would be gradually worn away and removed, was in the abolition of primogeniture, and in the nature of our law of descents. It would be much more conducive to the interests of these tenants to make that a part of the constitution—for there was more probability of a change there than in other respects. He repeated that his objection to this provision was that it was useless, and that if it would have any effect, it was not perceived or seen by any body. If it could operate to reconcile the complainants to the present state of things, he would vote for it; but it could not, unless they misconceived its operation. But they would not care any thing about it. It was utterly and positively useless. And hence, he would not vote for it.

Mr. VAN SCHOONHOVEN wished to have this question fixed beyond the power of the legislature to alter it. It was a principle which should be as distinctly asserted in our fundamental law as any other which had been placed there. The people interested looked for some relief in regard to these tenures—for though they had been abolished by law, they might be revived by law. And gentlemen were mistaken if they supposed that feudalism had no advocates among us. It had been openly advocated by a writer (he would not say a popular writer) of great eminence and reputation. He trusted the section would receive the unanimous vote of this body.

Mr. NICOLL thought it would be more seemly that this proposition should be in a negative form. To say that "all feudal tenures are abolished," when it is known that they had been abolished for fifteen years, appeared to him but a little short of stultification. Better

say "no feudal tenure shall hereafter be established."

Mr. HARRIS did not suppose the adoption of this section would affect any man's rights, nor, if it was not adopted, that the statute would be repealed, and the feudal system re-established. His only object in desiring its adoption was to obtain for this body and the people a formal prohibition of this system, and to secure against it the moral influence of such a declaration, that the system was not congenial with our institutions, and ought to be utterly eradicated from among us.

Mr. SIMMONS moved to insert "hereby declared to be" before "abolished."

Mr. JORDAN confessed that he participated in the feeling which prevailed this whole region, and he might say in the feeling that pervaded the whole state, that it was inconsistent with the spirit and genius of our institutions, that men should hold their farms on which they were to sweat and toil, subject to the superior dominion of a lord, who for the mere pride of being their lord, and not for any pecuniary interest growing out of this relation, had determined to hold on to his dominion over this property. So far as these tenures could be brought into disrepute and yet preserve the faith of the state, and individual and private rights, it should be done. And the tenants under these leases—than whom a more honest and respectable body of men existed no where—neither desired nor expected any violation of private rights. This should be done, and done now, by a fixed rule in the constitution. The principle that these tenures should be abolished, beyond the possibility of being revived again, ought to be insisted on here; and we ought not to turn this tenantry away with the declaration that they never would be revived again. If it would have no other effect than to gratify the tenantry, who, in the true spirit of freemen desired to see these tenures discountenanced, with all their incidents, and if we could do that without doing harm to any body, or interfering with any man's rights, we ought to do it. So if it should induce the landlord, under this expression of the Convention and the people, to part with the fee of the land, on just and equitable terms, we should have done much to alleviate the condition of those who felt degraded and oppressed by these tenures. Mr. J. alluded to the terms of some of these leases—among them these—"you shall not entertain a stranger in your house over 24 hours without giving notice to the landlord in writing." "You shall build a barn on the premises within one year, shingled with straw, and floored in a particular manner." "You shall set out 200 apple trees, and when one of them is destroyed you shall immediately replace it," be it in summer or winter. "You shall pay so much towards supporting such minister of the gospel as the landlord shall provide to cure the souls of his tenantry." "You shall go to my mill," &c., &c., and "for any violation of these conditions you shall forfeit your title."

Mr. SIMMONS said these conditions were obsolete in effect.

Mr. JORDAN: No, sir.

Mr. SIMMONS:—They are void.

Mr. JORDAN: No, not void. He could turn

to a case in Johnson where Gov. Lewis recovered back a farm for a violation of one of these conditions. But he admitted that they could not be enforced here, for public opinion would frown down the attempt. He trusted there would be found enough of the spirit of freedom here to put this clause in the constitution.

Mr. BERGEN moved the previous question and there was a second.

The first section as amended was agreed to, as follows—ayes 84, nays 12.

AYES—Messrs. Allen, Angel, Archer, Baker, Bascom, Bowdish, Brayton, Bruce, Bull, Burr, R. Campbell, Jr., Candee, Chamberlain, Clarke, Clyde, Conely, Cook, Cornell, Crooker, Cuddeback, Dana, Danforth, Dodd, Dorlon, Dubois, Flanders, Forsyth, Gebhard, Graham, Greene, Harris, Harrison, Hart, Hawley, Hotchkiss, A. Huntington, Hutchinson, Jones, Jordan, Kennedy, Kernan, Kingsley, Kirkland, Loomis, Mann, McNitt, Marvin, Maxwell, Miller, Morris, Munro, Murphy, Nellis, Nicholas, Nicoll, Parish, Patterson, Peniman, Perkins, President, Richmond, Russell, St. John, Salisbury, Sanford, Shaver, Shaw, Simmons, E. Spencer, Stanton, Taft, Tilden, Townsend, Van Schoonhoven, Ward, Warren, Waterbury, Willard, Witbeck, Wood, Worden, W. B. Wright, Young, Youngs—84.

NOES—Messrs. Bergen, Brown, D. D. Campbell, Hoffman, Hunt, O'Connor, Aiker, Ruggles, W. H. Spencer, Tallmadge, Tuthill, White—12.

The second section proposed by Mr. SIMMONS came up next.

Mr. KIRKLAND said there might be no danger in this; but he asked whether there would be the slightest use in it?

Mr. SIMMONS said it made the whole thing harmonious—and there could be no harm in declaring what the tenures of property should be. Indeed, there was a propriety in it, independent of any of the *isms* of the day.

Mr. RUGGLES said he should vote for this section to show that the intention in adopting the former section and this was to transfer them from the statute to the constitution, and nothing else.

The section was adopted.

The second section (now the 3rd) was read. [It forbids the leasing of agricultural lands for a longer period than 10 years.]

Mr. WHITE moved to strike out "for a longer period than ten years." Lost.

Mr. NICHOLAS moved to strike out the section.

Mr. STOW moved to amend it by striking out "ten" and inserting "twenty-one," so that infants' estates may be leased during their entire minority. Agreed to.

Mr. VAN SCHOONHOVEN moved a reconsideration.

Mr. SIMMONS thought we had better be content with the two sections already adopted.—The rest was all legislation, and should not be in the constitution.

Mr. HARRIS said he should feel obliged to vote against the section, because of the amendment adopted with so much haste upon the motion of the gentleman from Erie. If the proprietors of the lands, whose leases are about falling in, should be allowed to release for the term of twenty-one years, it would answer their purpose about as well as the present system.—He should have preferred five years.

Mr. RUSSELL voted against the amendment, but he should vote for the section, hoping, upon a reconsideration on Monday, to restore it to its original form.

Mr. HARRIS thought the argument of the gentleman from Erie should have no influence upon this question, which affected the interests of thousands of the people in this vicinity, while there would be few instances where infants would be injured by the provision.

Mr. BRUNDAGE moved to insert after "years" the words, "or natural life of the grantee." The right to dispose of one's property during one's own life, was a right which was inalienable, and which he would not divest himself of or others.

Mr. BROWN said he voted against the first section, because it abolished what had been abolished for sixteen years, and of which there was no more prospect of a revival than there was of the revival of a belief in witchcraft.

Mr. VAN SCHOONHOVEN:—That may revive.

Mr. BROWN said it might in that section of the state where these questions originated; but not in any intelligent section of the country.—Now he voted against the first section, not because he was unfriendly to the principle, but because he regarded it as a perfect piece of humbug throughout. The second section he voted for, because they belonged together. But we were now called upon to abridge an important right, to deprive him (Mr. B.) from leasing his property beyond ten years, if he had an opportunity. It was in direct opposition to the great principle which had animated all the people of this country, that of the free right of alienation of property. It was a project which no man in his senses, but for the complaints in this Anti-rent, would for a moment think of. It could do no benefit to any person, and might work the greatest injury to every part of the state. He admitted that these people had great ground of complaint. He should be willing that the state should contribute to relieve them, but it was a mockery to tell them you had done them good, when you prohibited people in all other sections of the state from leasing their property beyond ten years. No such provision could get his vote.

Mr. CLYDE thought the term "humbug," which the gentleman applied to the proposition which had been adopted, would belong to himself when he asserted, after his remarks upon this proposition, that he was in favor of granting any kind of relief to the tenants on these manors, and that he was strongly enlisted in their favor. He went on to show that these twenty-one year leases were much worse than leases for life; for after the tenant had spent years in its improvement, he would be subject to an ejectment.

Mr. WATERBURY continued the debate, in opposition to any law which recognized two classes in society.

Mr. NICOLL said there were lands in the vicinity of New-York and other large cities, which were rented for agricultural purposes for a long term, and in view of their being wanted hereafter for city purposes. These lands must remain unproductive under such a restriction as this. He would amend the section as it stood, by limiting its provisions to a certain quantity, say twenty-five acres, to meet these particular cases.

Mr. WORDEN attributed the superior agri-

cultural condition of Western New York in a great degree to the fact that that section was free from the curse of any of the incidents of feudal tenure, and that the western farmer was lord of the soil he cultivated. As a question of political economy, it was well worth consideration not only that these terms should exist, but that the free alienation of property should be encouraged, by prohibitions of long leases. Even in England, it had been proposed to parliament, by a commission, to prohibit leases beyond 21 years. He went on at some length, to urge also the propriety of making these rent charges redeemable after a certain period.

Mr. LCOMIS sustained the section, as in harmony with the true policy of our government, which was to favor the free alienation of property, and to discourage the accumulation and perpetuation of large estates in particular families. He was in favor also of a shorter term than 21 years, and of an extension of the principle to city property as well as agricultural lands.

Mr. HARRIS said in reply to Mr. BROWN, that this was not the first time that it had been his fortune to have his motives impugned in the manner in which the gentleman from Orange had seen fit to do so to-day. Demagoguism had been imputed to him before—

Mr. BROWN did not accuse the gentleman of that.

Mr. HARRIS said he was the author of this proposition, and if the gentleman's remarks had any point, they referred to him.

Mr. BROWN said if the gentleman would take it be it so. He disclaimed it however.

Mr. HARRIS left the matter to those who heard the gentleman, and went on to contend for the principle of the section, as involving a great principle of political economy, that was founded in right itself, and worthy of a place in the constitution. He contended that there should be no more restrictions placed upon the alienation of real estate than upon personal estate. Property was improved by passing from hand to hand. When a man owned the land he cultivated, he would find it to his interest to add to its wealth. This inducement was not found where these long leases existed, and the lands were consequently indifferently improved.

Mr. KIRKLAND followed on the same side of the question. He believed that these tenures were disastrous to agriculture and the best interests of the State. They also tended to degrade the character of the tenants. This was an opinion which he had formed long before anti-rentism was thought of. He would not for

any human inducement violate the rights of a single individual; but he believed that the interests of the state would be advanced, and the character of humanity elevated in the instance of hundreds, without the slightest injury to any one, by the adoption of some principle which should induce the landlords to part with their lands to those who occupied and tilled them. He proposed to amend by inserting "ten" in place of "twenty-one," and inserting a clause providing for the case of infant's estates.

Mr. HOFFMAN opposed the section, at some length.

Mr. BROWN in reply to Mr. HARRIS, said that in characterizing this proposition as humbug, and as unworthy of any man, he alluded not to the gentleman from Albany, but to the action of this Convention. He went on to say, that there were no people in any portion of the state who felt more acutely the hardships of these tenants upon the manors, than his own constituents; and if there was any mode, short of the abrogation of the great principles upon which the government was founded, by which they might be believed, they would be ready to adopt it. But in his opinion there was no such mode.

Mr. BASCOM moved to adjourn. Lost, 28 to 51.

Mr. SWACKHAMER moved the previous question, and there was a second.

The amendment of Mr. BRUNDAGE was negatived.

AYES—Messrs. Brundage, Hoffman, W. H. Spencer, Taggart NOES—76

Mr. HARRIS moved to strike out "twenty-one" and insert "twelve." Agreed to, ayes 46, nays 35.

The section, as amended, was agreed to. Ayes 46, nays 33, as follows:—

AYES—Messrs. Angel, Archer, Baker, Bascom, Bowditch, Bull, Burr, R. Campbell, jr., Clark, Clyde, Conely, Cook, Dana, Danforth, Dodd, Flanders, Forsyth, Gebhard, Harris, Harrison, Hawley, Hotchkiss, Hunt, Jones, Jordan, Kirkland, Mann, McNitt, Morris, Nellis, Patterson, Russell, St. John, Salisbury, Sanford, Shaw, Stanton, Swackhamer, Taggart, Townsend, Warren, Waterbury, Willard, Witbeck, Worden, W. B. Wright—46.

NOES—Messrs. Ayrault, Brown, D. D. Campbell, Dubois, Greene, Hoffman, A. Huntington, Kemble, Kingsley, Loomis, Maxwell, Miller, Munro, Nicholas, Nicoll, O'Connor, Penniman, President, Riker, Ruggles, Simmons, E. Spencer, W. H. Spencer, Stephens, Stow, Taft, Tallmadge, Tutthill, Ward, White, Wood, A. Wright, Young—33

Mr. SWACKHAMER moved to adjourn.—Agreed to, 41 to 33.

Adj. to half-past 8 o'clock to-morrow morning.

MONDAY, OCTOBER 5.

Prayer by the Rev. Mr. CLAPP.
BILL OF RIGHTS.

Mr. AYRAULT made a report from the special committee appointed on Saturday on rights and privileges, and moved its reference to the committee on revision, with instructions to incorporate its sections into the constitution.

Mr. MURPHY moved to postpone the consi-

deration of this report until that of the committee of revision should be taken up, at half-past nine o'clock.

Messrs. O'CONOR and AYRAULT concurred, and it was postponed accordingly.

MUNICIPAL CORPORATIONS.

Mr. MURPHY moved that the committee on revision be instructed to incorporate in the con-

stitution the report of the majority of the committee on municipal corporations.

Mr. STOW urged that the question of the elective franchise ought to have preference over all others, and he therefore moved to lay the present order of business on the table.

The question was then taken on Mr. Stow's motion, and it was negative—ayes 42, nays 54.

The first section was then read, as follows :

§ 1. Private property shall not be taken for improvements in cities and villages, unless the compensation therefor shall be first determined before a judicial tribunal by a jury of twelve freeholders of the city or village where the same shall be situated, who shall be chosen and qualified as jurors in civil cases.

Mr. STOW briefly discussed this subject, and moved that it be passed over for the present.

Mr. MURPHY regretted that the gentleman had not the magnanimity to oppose this section by fair means. He went on to speak in defence of the section.

The motion to pass over this section was lost.

Mr. SIMMONS desired to see the provision on this subject uniform through the state.

Mr. VAN SCHOONHOVEN moved to amend by striking out "cities and villages" in the 2d line, and "of the cities or villages" in the 4th line.

Mr. SIMMONS:—That will make it uniform throughout the state.

The amendment was agreed to, and the section was adopted.

ENGROSSMENT OF THE CONSTITUTION.

Mr. NICOLL obtained unanimous consent to offer a resolution directing the appointment of a select committee of two to cause the Constitution to be engrossed on parchment, and to superintend its preparation for the signatures of the members of the Convention. Agreed to.

REPOSE OF THE DEAD.

Mr. SWACKHAMER desired unanimous consent to offer a resolutions to the committee of revision to incorporate in the constitution a provision against the disinterment of the dead.

Objections being made it was not received.

REVISED CONSTITUTION.

The Convention then took up the report of the committee of revision, made by Mr. JORDAN on Saturday.

Mr. O'CONOR moved that the report of Mr. AYRAULT, made this morning be first considered.

Mr. PATTERSON objected. This report had been thrown upon us this morning, and we had had no opportunity to examine it. The report of the committee on revision had been before us several days.

Mr. HOFFMAN agreed with Mr. P. The only safety was in adhering to what had been done, without taking up galvanized matter at the close of the session.

Mr. O'CONOR said the report embraced in it several propositions which had been passed upon by the Convention. As to some new matter which it contained, he probably should agree with the gentleman from Herkimer in striking it out. The article brought in by the committee on revision contained only the provisions of the old Constitution, together with married women matter, in regard to which they were instructed.

Mr. SIMMONS concurred in this opinion.

The PRESIDENT decided that the subjects

upon which the Convention had heretofore finally acted, were now open to amendment, in considering the report of the committee of revision, without a reconsideration of the several votes. The amendments proposed by the select committee on rights and privileges were in order, but none other.

The preamble to the revised articles was then first considered. It was as follows :—

"WE THE PEOPLE of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, Do ESTABLISH this Constitution"

Mr. SIMMONS said the preamble was too much restricted. We establish a constitution for something else than to secure freedom. Freedom was only one of the rights we sought to secure. There were also the rights of property, of the domestic relations, and of contracts.

Mr. TALLMADGE preferred the old form, and he moved to amend so as to substitute the preamble of the constitution of 1821 thus:

"We the People of the State of New York, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our form of government, do establish this Constitution."

Mr. MARVIN took the same view.

Mr. SWACKHAMER also preferred this preamble.

Mr. HOFFMAN thought the criticism of the gentleman from Essex was not correct. There was in this preamble, a religious recognition of the blessings of freedom and an expression of gratitude to Almighty God for them. And to secure them after such expression of gratitude, it was said, this constitution was adopted. He thought it was correct and sufficiently comprehensive as it stood.

Mr. CROOKER thought the difference between the gentlemen from Essex and Herkimer was not so great as might at first appear. If the word "freedom" were changed to "free institutions" and the word "its" to "these" the objection would be removed.

After a brief conversation the preamble was agreed to unanimously—111 being present, the amendment of Mr. TALLMADGE having been first rejected under the operation of the previous question.

The first section was then read as follows :

§ 1. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Mr. WORDEN moved to strike out the words "or judgment of his peers." We were all peers here.

Mr. SIMMONS was sorry to see a disposition to speculate upon terms like these, which had stood so long, and been settled by the courts to have a good deal of meaning, in securing private rights. He hoped no one would attempt to loosen a stone in the foundation of those rights. It was an old and sacred term which had existed in Magna Charta.

Mr. HOFFMAN took the same side.

Mr. RUSSELL explained the action of the committee on this subject; in the absence of the gentleman who had performed the labor of revising the article (Mr. JORDAN) who had exhausted himself by his labors and was not able to be present.

Mr. WORDEN said that it was intended in

Magna Charta to secure to the Peers in England a trial by their own class, and was of no use here where we were all of one order of nobility. He withdrew his motion however.

Mr. HUNT renewed the motion to strike out.

Under the operation of the previous question it was lost, and the section was agreed to.

Mr. RICHMOND offered a new section.

§ 2. All political power is inherent in the people.

A VOICE :—"that's involved in the preamble."

Mr. TOWNSEND moved the previous question and it was sustained, and the section was rejected.

The 2nd section was read, as follows :

§ 2. The trial by jury in all cases in which it has been heretofore used, shall remain inviolate forever.

Mr. O'CONOR thought the amendment agreed to in committee had been overlooked ; and that to provide that the trial by jury, as heretofore used, shall remain inviolate was insufficient. He desired to add to this section the 2nd section reported by the special committee appointed on Saturday as follows :

And shall be secured in like cases arising in any new court or proceeding hereafter instituted or authorized. But a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law.

Mr. MARVIN concurred in opinion with Mr. O'CONOR.

Mr. MURPHY, Mr. RUSSELL, Mr. SIMMONS, Mr. STOW and Mr. PATTERSON explained, and under the operation of the previous question, the first part of the amendment (a division having been called) was negatived, 42 to 55.

Mr. KENNEDY called for the yeas and nays and they were ordered on the second division thus "But a jury trial may be waived" &c. This division was agreed to—ayes 85, noes 24, and the section as amended was adopted, ayes 107, noes 2.

Mr. STOW moved a reconsideration. Table.

Mr. PATTERSON desired to amend by striking out the section and inserting: "The right of trial by jury shall remain inviolate."

Mr. O'CONOR desired to amend by striking out the words "in which it has been heretofore used."

Objection was made, and these motions were not received.

The third section was read thus :

§ 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state, to all mankind. But the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Mr. HARRIS moved to amend by adding after the word "mankind" the words—"And the legislature shall provide by law for the effectual protection of the rights of conscience, so that in the exercise thereof no person shall suffer in person or estate."

Mr. STOW objected to the amendment. He could not consent to this change from the courts to the legislature. He understood the object of the gentleman from Albany was to reach the case of the Seventh Day Baptists ; but that would be imprudent, for they could not reach every isolated case of sects. Men might arise

holding that every day was sacred, and if this amendment were to be adopted we should not be able to enforce the laws—for by no possibility could they frame a law that would not conflict with some men's views.

Mr. SIMMONS held that every member of the community ought to contribute the ways and means for its support ; and he had no idea of exonerating Shakers, Quakers, or others, from their proper share. They were protected by the government as well as others, and should therefore not be exempted from its burdens. If they had conscientious scruples about bearing arms let them commute. We would yield all that it was fair to yield. But, besides the argument of the gentleman from Erie, if they were to pass laws to protect every man's conscience, they would have to ascertain what conscience was. The best way was to make a public law, and not a special one. He was willing to allow Quakers and others to commute who had conscientious scruples, but he would not consent to exemptions, for that was the creation of an aristocracy.

Mr. PERKINS said if a sect were to arise that had conscientious scruples about commuting, and they were to be tolerated in that, they would soon have sects arising with conscientious scruples against paying the tax for the support of wars, and laws would have to be passed to exempt them from such taxation. If the Seventh Day Baptists were to have a special provision to meet their case, other sects would require the same provision to meet their case, and every day in the week would become a sabbath, and the laws could not be enforced until they ascertained what church a man belonged to.

Mr. HARRIS said it would be labor in vain to attempt to enlighten the gentleman from St. Lawrence as to the rights of conscience, for that gentleman's views were of a peculiar character, in which few gentlemen there would agree with him. The right of conscience was sacred to the Shaker, the Quaker, and every body else. He hoped the amendment would be adopted. It was not liable to the criticism that had been made upon it. He enumerated many hardships which had been endured for conscience sake, and asked for the yeas and nays on his amendment.

Mr. ANGEL thought they could not do anything more mischievous than to give power to the legislature to legislate on the subject of religion. All should be protected and contribute alike, and he thought the article as it stood would answer every purpose.

Mr. VAN SCHOONHOVEN thought there was no danger to be apprehended if they should pass this amendment. The consciences of all should be protected alike. He alluded to the sacrifices which Quakers made, suffering their property to be taken to preserve their consciences, and this afforded evidence of their sincerity, and entitled them to consideration.

Mr. TAGGART moved the previous question, and their was a second, &c., and the amendment of Mr. HARRIS was negatived—ayes 32, noes 68.

Mr. TAGGART then offered his amendment to add after the word "mankind" the words—"and no man shall be deprived of any rights or

rendered incompetent to be a witness on account of his opinions or religious belief."

Mr. T. spoke briefly in favor of his amendment.

Mr. SIMMONS did not mean to impeach the motives of the gentleman from Genesee; but a more dangerous idea could not be spread through the state, than that a witness was to be tolerated who was a disbeliever in the existence of a Supreme Being, and in his moral government to punish false swearing. It was unsafe to have the rights of persons, their liberty and their property, depend on the testimony of an individual who avowed himself to have no faith or belief in a Supreme moral Governor of the Universe. All intelligent and civilized nations had adopted this rule, and must toleration be carried farther than it had been? But he had another objection which had been stated by the learned professor Whewell. It was that if we were to have oaths abolished, and oaths were of two classes, official oaths, such as those taken by public officers, and oaths that are not official, but might be called judicial—there was as much propriety in abolishing those which were official as any other. He was opposed to all this kind of doctrine. It was a subject which should be left to the legislature, and then if there ever should come a time when the intellectual, moral and spiritual improvement of mankind shall have arrived at that stage of perfection that the public sentiment demands a dispensation from oaths, the legislature can provide for it. But now they had better leave it as it stands.

Mr. LOOMIS regarded all such practices as had been alluded to, as hostile to that entire liberty of conscience and freedom to worship in that manner which every man's conscience might dictate. And it was not the right of individuals merely who may be called as witnesses that was involved—but the rights of the parties contesting suits. Doubtless the gentleman from Essex had seen, as he had, what he believed to be gross wrongs done in courts of justice by the exclusion of men of good character and respectable standing in all the walks of society, because some individual testified that he had heard the witness express certain opinions as to a Supreme Being. It was analogous to a custom in certain parts of this country, where testimony was excluded because the witness was a man of color, or a slave, however true it might be. A murder may be committed, or other crime perpetrated, but if the witness were a colored person, or a slave, however pure his character, the vilest of the vile might escape; for such testimony would be excluded, while the notoriously bad could give evidence if he had a paler complexion. He asked not for favor for any peculiar opinions, but he asked for those equal rights which we all profess to be willing to have every man enjoy, leaving his religion as a matter to be settled with his conscience and his God.

Mr. SIMMONS:—Why not abolish official oaths then?

Mr. LOOMIS was prepared to say that he would abolish them.

Mr. SIMMONS:—I dare say the people are not prepared to do so.

Mr. LOOMIS continued. He said it was the opinion of the present chief justice of the

Queen's bench, in England, that official oaths ought to be abolished. He hoped the amendment would be agreed to.

Mr. TAGGART amended his amendment by substituting "person" for "man."

Mr. STOW did not acknowledge the capacity of any earthly tribunal to determine this question. He was afraid to trust any thing human with determining so important a question as one affecting man's conception of the Deity. With some, it might be that his belief would not be satisfactory unless he believed in a Trinity.—With another, it would not amount to a satisfactory acknowledgment, if it was not a belief in Deity as a unit. With another it must be Hindoo; and with others Mahomedan. What would convince one man would fail to be a recognition of the Deity in the judgment of another. It was therefore dangerous—

Mr. SIMMONS: Has any great danger resulted from it heretofore?

Mr. STOW had seen conflicting opinions in court on this subject. In his own neighborhood a circuit judge decided one way and the supreme court holding the circuit, another way, in respect to the testimony of the same witness. It was therefore unsafe to the rights of society and to liberty of conscience to leave this question to any earthly tribunal; and though a man who may have avowed opinions that were infamous and degrading to human nature, ought to be excluded, yet as a general rule, it was not safe to leave it to human tribunals to decide. He did not admit that this was a good test of the credibility of a witness. The general, moral deportment of a man may be better evidence of his belief in a Deity than any expression of his religious opinions. The gentleman from Essex feared that if this amendment were adopted we should overthrow all oaths. In this he did not agree. Who ever heard a man about to fill an official station asked if he believed in a Deity.

Mr. SIMMONS: To make a man swear by a being that he does not believe in, is a farce.

Mr. STOW said there was no human intelligence competent to decide the question. But again it would cause the same impression that it caused on the mind of Red Jacket when asked by a councillor if he believed in a Deity, "yes," was the reply, "much more than the man that asks that question." He did not wish it agitated in our courts that there was any question about that at all. He did not wish it recognized that there was any doubt of the existence of Deity. He would have it rest on men's character for truth and on their standing in society, as to the credit to be given to them. But by putting the question, we imply a doubt of the existence of Deity, and to this he was opposed.

Mr. TAGGART replied to the gentleman from Essex, and asked how much less was a man to be believed that honestly avowed his disbelief than a hypocrite who assumed this belief to gain credibility? He also referred to the U. S. constitution which provided that there should be no test of religious belief. He said the chief judge on the bench may have no religious belief—he may be a perfect infidel, and he is not disqualified; but let him be called as a witness to give testimony in a court, and his unbelief would exclude him. He believed that neither

religion nor the religious community longer desired this test. He had never know the question raised during his practice but once, and he trusted he should never see it raised again, whether the witness believed in a Supreme Being or had any belief on that subject. If there was anything in thus affecting his credibility let it go to the jury. Let it go to his credit and not to his competency.

Mr. MURPHY moved to amend the amendment by adding as follows:—

But evidence may be given as to the belief or disbelief of the witness in the obligation of an oath, and of the ground of such belief or disbelief, in order to enable the jury to judge of his credibility.

Mr. NICOLL briefly called the attention of the Convention to the fact that in England a man may be a witness who has been convicted of crime.

Mr. JONES moved the previous question, and under its operation.

Mr. MURPHY'S amendment was negatived, ayes 12, noes 92.

Mr. TAGGART'S amendment was adopted, ayes 63, noes 46.

The section as amended was adopted.

The fourth section was read as follows:

§ 4. And *Whereas*, the ministers of the gospel are by their profession, dedicated to the service of God, and the care of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of, holding any civil or military office or place within this state.

Mr. RUSSELL moved to strike out this section. He said it was put in by the committee of revision because it was in the old constitution. He also moved the previous question, under the operation of which the motion to strike out was carried, ayes 77, noes 33.

AYES—Messrs. Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bowditch, Brayton, Brown, Bruce, Bull, Burr, Cambreleng, Caudee, Clark, Conely, Cook, Dana, Flanders, Forsyth, Greene, Harris, Hart, Hoffman, Hotchkiss, Hunt, A. Huntington, E. Huntington, Hyde, Jones, Kernan, Kingsley, Loomis, Mann, McNitt, Marvin, Maxwell, Munro, Murphy, Nellis, Nicholas, Nicoll, O'Connor, Parish, Patterson, Perkins, Rhoades, Richmond, Ruggles, Russell, Salisbury, Sanford, Sears, Shaver, Simmons, Smith, E. Spencer, Stephens, Stetson, Swackhamer, Taft, Taggart, J. J. Taylor, Townsend, Tutthill, Vanschoonhoven, Waterbury, White, Willard, Worden, A. Wright, W. B. Wright, Yawger, Young, Youngs—77.

NOES—Messrs. Allen, Angel, Brundage, Clyde, Cornell, Crooker, Cuddeback, Danforth, Dorlon, Dubois, Graham, Harrison, Hutchinson, Kemble, Kennedy, Kirkland, McNeil, Miller, Morris, Penniman, Powers, President, Riker, St. John, Shaw, W. H. Spencer, Stanton, Stow, Tallmadge, Ward, Warren, Wood, Chamberlain—33.

Mr. STOW moved a reconsideration, and desired to have it taken up now. He wished to say that he would give this privilege to the clergy if they desired it, but in his neighborhood they did not.

After a brief conversation he withdrew his motion.

Mr. RICHMOND offered a section providing that no law shall be passed exempting ministers of the Gospel from taxation. He would give them these offices if the people thought proper to elect them (which he hoped they would not) but he saw no reason why they should be exempt from taxation as they now were.

After a conversation, and the previous question had been moved,

Mr. RICHMOND withdrew his motion.

Mr. SWACKHAMER offered the following as a separate section:—

Every qualified elector, not excluded by virtue of holding any other office, shall be eligible to any elective office in this state.

Mr. BAKER moved the previous question.

Mr. KENNEDY said this would be reached at the proper time, when they took up the article on the elective franchise. He therefore moved to lay it on the table. Carried.

The 5th section was read and adopted, as follows:—

§ 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

The 6th section was read thus:—

§ 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases arising in the militia when in actual service, and in the land and naval forces, in time of war, or which this state may keep, with the consent of congress, in time of peace; and in cases of petit larceny under the discretion of the legislature), unless on presentment or indictment of a grand jury, and in every trial on impeachment or indictment, the party accused shall be allowed to appear and defend in person, and with counsel. No person shall be subject to be twice put in jeopardy for the same offence; nor shall he be compelled in a criminal case to be a witness against himself in any case, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Mr. KIRKLAND moved to add the following:—

When private property shall be taken for any public use, other than that of the state, the compensation to be made therefor, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case, the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

Mr. MURPHY moved to amend the amendment by striking out all after the words "by a jury," and adding instead—

Of twelve freeholders where the same shall be situated, who shall be chosen and qualified as jurors in civil cases.

Mr. HOFFMAN was in favor of the amendment. He thought it impossible to assess damages as contemplated by a jury. It must be done by a view of the land to be taken, and not on the naked testimony of witnesses.

Messrs. STETSON, BROWN, SIMMONS, KIRKLAND, COOK, RUSSELL, MURPHY and LOOMIS entered into a discussion on the subject of private roads.

Mr. FORSYTH moved the previous question on the amendments, and it was seconded.

The amendment of Mr. MURPHY was negatived—ayes 20, noes 84.

Mr. KIRKLAND'S amendment was divided.

The first clause (all except that which relates to private roads) was adopted—59 to 34.

The remainder was also adopted—89 to 21.

Mr. COOK moved to insert after the word "law" the following—"but in such roads, when opened, the public shall have the right of way." Lost.

Mr. FORSYTH moved to add as follows:—"But such compensation shall in no case be reduced by any allowance for prospective benefits." Mr. F. explained and defended his amendment.

Mr. MURPHY supported the amendment of the gentleman from Ulster, (Mr. FORSYTH). He believed the practice of assessing in any form for special benefit for any public improvement, was unsound in principle, because it substitutes an arbitrary instead of a fixed rule of taxation. It submits to the judgment of commissioners or assessors to say how much a man shall pay for benefit to his property in consequence of the improvement; and thus leaves him at the mercy of mere opinion. It is taxation; and taxation, to be just, should be equal. It should bear equally upon the whole community interested in the object of the tax. It must be established by an uniform rule. The moment a departure from the principle of equality is allowed, and assessors are permitted to say how much or how little the person assessed is to pay, or how much shall be deducted from the compensation allowed him for land, his property is taken from him and put at the disposal of the assessors. It is a tyranny of the most odious character. He therefore looked to this amendment as asserting a principle important in regard to our system of assessments, on which he would now offer a few remarks. That system is founded on the idea that there is a special local benefit resulting from a public improvement; and therefore that the burden should be thrown off of the public upon the private individuals benefitted. The premises are true, but the conclusion is false. No public improvement can be made without being of special advantage to some locality. The public buildings in this city,—the capitol and state house, being located here, for the convenience of the whole state, contribute much to the benefit of Albany. The particular location of those buildings at this spot is a benefit to the lots in their vicinity; yet no one thinks of taxing Albany, much less those lots, for the expense of erecting these buildings. And why?—because the object of erecting them is to accommodate the public; and the benefit to the city and to the vicinity of the buildings is altogether accidental. It is a piece of good fortune, perhaps, and may well deserve a contribution from the parties benefitted; but there is no reason to compel such a contribution. If made, it should be voluntary.

Much of the difficulty in relation to this subject arises from a confusion of ideas in regard to what are public improvements; upon which distinction is to be observed in order to act safely. One kind of public improvements is, where the wants of the public require them to be made, and where the benefit to individuals is incidental. Such as the erection of buildings for public purposes; or supposing a city to be shut off from all access to a particular point, or to have no outlet into the country, the opening of a street or road effecting these objects would be a public benefit, and the advantage to individuals whose lands had a front on the new thoroughfare would be subordinate and purely incidental. Another species of public improvements so called, is where the principal object is to accommodate the interests of private individuals, and the

public benefit is consequential. Thus an individual owning a farm near a city, and wishing to bring his land into market as city lots, may open streets which will effect that object. The public of course will use them, and thus derive a benefit from them; though they were not opened for any other purpose than to advance the interests of the land-owner, and were not required for the public accommodation.

This distinction presents itself when we look at the right of property. When the public authorities undertake to make an improvement, which either requires the appropriation of private property or taxation to pay for it, they exercise the right of eminent domain. They are taking private property for public use. So the converse of this proposition is true; that is, if it be not for a public use they have no right to appropriate it. Private property is sacred. It is a law of society paramount to the constitution of every civilized country, that the fruits of a man's labor belong to him to be disposed of as he may deem proper. Napoleon with all his power could not divest the poor man of his freehold which he desired to have for his own pleasure and convenience: and that regard for natural right by that powerful monarch is a monument of the sacredness of private property. If all the members of this Convention should require for their interests or accommodation the house and lot on the opposite side of the street, there is no power in this government to give it to them without the consent of the owner if they would pay him ten times the value. But if the public require it for its use, they may take it upon just compensation, but not otherwise.

It follows from this position that the state has no right to delegate the power of taking private property for private purposes without the owner's consent; and that the improvements which our corporations are continually making, involving the taking of property and taxation, for the purpose of advancing the interests of a few individuals, are not public improvements, and should not enter into the consideration of this question. The cases which we are to regard are those in which the public are primarily interested. The sure test of an improvement being public is, that it may be paid for out of the public treasury; that the necessity for it is such that the whole public is willing to bear the expense of it. And to determine this, the decision of the community from whose treasury it is to be paid for, through its organized agents, whether a common council or a board of trustees, is sufficient.

Under the operation of this test the number of opening of streets by the corporate authorities would be very much reduced, perhaps there would not be one out of twenty of those now taking place under the practice of special assessments. The actual number of streets opened would perhaps be as large as it is now; but the greater part of them would be opened as all private roads should be, by arrangements among the parties benefitted. Private enterprise will always secure its objects; and will do so in a much cheaper and more expeditious way than can be done by the public. It will happen undoubtedly occasionally that the consent of the owner of land cannot be obtained. If so, he

has the right to hold on to his lot made sacred to him as his patrimony, or by associations and ties of a still more holy character. And if so, why should he be disturbed for purposes of mere private emolument? But it is not likely that such cases will often arise. Few men are so attached to land that they will not part with it especially for an extra compensation not so great as the additional expense beyond a just compensation incurred by legal proceedings by the public authorities. In the case of infants power might be granted to the courts to give their consent upon such compensation as made it to their interest or advantage.

He had felt it his duty to say this much on the subject in view, as he had already observed, of a kindred proposition of his own in regard to cities, upon which it was now evident there would not be time for the Convention to act.

Mr. NICHOLAS moved the previous question, and the amendment was negatived—ayes 37, noes 82.

Mr. LOOMIS moved to insert after the words "private roads" the following—"with right of way to the public over the same"—and also to strike out the words at the end "by the person to be benefitted" and insert "as shall be prescribed by law."

The first amendment was rejected—ayes 16, noes 84.

Mr. LOOMIS withdrew the remaining amendment.

Mr. MORRIS moved to strike out the words "other than that of the whole state."

Mr. CHAMBERLAIN moved a recess. Agreed to.

AFTERNOON SESSION.

The amendment of Mr. MORRIS, to strike out the words "other than that of the state," after some conversation, was lost.

Mr. STOW proposed to amend so that the second clause would read "when private property shall be taken for any public use, the compensation therefor, if not to be made by the state, shall be ascertained by a jury," &c. Agreed to.

Mr. TAGGART moved to strike out "of freeholders," after jurors. He wished no qualifications of jurors in the constitution.

Mr. JONES moved the previous question on the section and the amendment, and it was seconded.

By unanimous consent, Mr. STOW offered an amendment striking out the words "unless on presentment of the grand jury," and altering the phraseology so that it would read: "In any trial, in any court whatsoever, the party accused shall be allowed to appear and defend in person and with counsel as in civil actions." Agreed to.

The amendment of Mr. TAGGART was lost.

The 6th section, as amended, was agreed to, 86 to 20.

RIGHTS OF MARRIED WOMEN.

The 7th section was read as follows.—

§ 7. All property of the wife, owned by her at the time of her marriage, and that acquired by her afterwards, by gift, devise, or descent, or otherwise than from her husband, shall be her separate property.—Laws shall be passed providing for the registry of the

wife's separate property, and more clearly defining her rights thereto, as well as to property held by her with her husband.

Mr. O'CONOR called up the question on reconsidering this section—and went on to remark upon the suddenness with which this question was brought up the other day, and the short time allowed for its discussion. He regarded this as the most important section we had adopted—as one fraught with consequences more serious and important than any other—perhaps than the whole constitution together. If there was any thing that ought not to be touched, if it could be avoided, it was the sacred ordinance of marriage, and the relations that grew out of it. The difference, he said between the laws of Great Britain and those of most other nations, consisted in this, that the laws of that country, were founded on the gospel precept, that they twain should be one flesh—recognizing the husband as the head of the household, and merging the existence of the wife so thoroughly, as that in contemplation of law, she could hardly be said to exist. Regarding the condition of those countries where the wife had a separate estate from the husband—where she might be a trader in partnership with other persons in business—where she was in fact a sort of partner with her husband, having interest often in collision with his—regarding all this in contrast with the condition of marriage where it existed according to the principles of the gospel, and he was no true American who desired to see our condition, in this respect, changed. Diverse interests must necessarily grow out of such a relation, controversies would arise, and husband and wife would be armed against each other, to the utter debasement of that sentiment which they should entertain towards each other, and to the subversion of the felicity of the married state. Mr. O'Conor went at some length into the effect of the laws of the land upon the habits and morals of society—illustrating it by the effect of the English rule of primogeniture upon the sense of right and wrong, as regarded the claims of children upon the provident care of the parent—and contrasting it with the pervading morals of our people under the opposite rule, as to the equal claims of all the children upon the property of the parent. He adverted also to the probable state of things that would grow up among us were the principle of a separate interest of the wife in the avails of her own property, under the marriage settlements that were sometimes made, to become the general law of the land. He read from a case in Johnson, where the trustees of a wife's property brought a suit to make her husband chargeable for having rode in his wife's carriage, or having gone to the theatre, &c. &c., and he quoted from the opinions of the learned judges in that case, in support of his view of the pernicious tendency of such a general rule as was proposed to be established here.

Mr. MORRIS said he was not surprised that this doctrine of the identity of man and wife was to be sustained only by the laws of England—laws under which men once sold their wives—under which a husband could flog his wife with a stick as large as the judge's thumb—a law which was well said to unite men and women for better or for worse—which literally

construed, gave the men all the benefit and the women all the evil—or rather which proceeded on the assumption that the harmony of a family consisted in the man's pocketing all the cash.—Mr. M. adverted to the fact that by our law, property could be settled on the wife and her children beyond the reach of the husband and his creditors—and that this precaution against the profligacy of the husband had not only been acquiesced in by the public, but that it had been found to be a most wise provision. Thousands and thousands of cases probably existed now, where it had been the means of keeping a family together in comfort, the wife enabled to live as she was reared, and the children properly educated, and where, but for such a provision, she and they would have been beggared. Why could not this provision which every prudent man made for his children, be made general—so that the children of the ignorant or the careless may have the benefit of it? Mr. M. related some cases that had come to his knowledge officially and otherwise during his service as mayor and recorder of New-York—where females who had brought property to their husbands, had been made beggars by the profligacy of the men whose duty it was to have sustained and comforted them—of wives who had worked night and day with the needle, and had not only supported husband and family, but had laid up something against a wet day—but whose earnings had been seized and squandered by a dissolute husband—where friends and relatives, under his promises of reformation had come forward and furnished a house for the family; but when promises were broken, and the house stripped of every thing by the creditors of the debauchee of a husband, and his family turned into the street. This was the sort of domestic harmony that resulted from this delectable rule of the unity of husband and wife in matters of property. He alluded also to facts that were known to many connected with the police of the city, that proved the existence of an organized system of fortune hunting in Europe, under which heiresses here were made the victims of a partition among “nice young men” having in view solely the property to be acquired by marriage under our law—and he related a case, as a sample of this kind of matrimonial speculation, which was carried on under the sanction of our laws, and which he vouched for as fact, and not fancy. There were cases no doubt within the knowledge of every man who heard him—cases which we did not love to talk of, and the knowledge of which, therefore, had not become general, which, he ventured to say had determined every one of us that had property to leave to female children, to see to it, that by will, it should be secured beyond contingency, from the grasp of a dissolute husband. This was a precaution which as none of us would omit, he urged we should not hesitate to take for the benefit of the thousands, for whom no such special provision had been made, either because there was not property enough to make this machinery of trusts advisable, or because the parent had been struck down suddenly by death, and without the opportunity to make a will. He insisted that such a provision as this engrafted in our constitution, instead of distur-

bing the married relation, or introducing dissatisfaction and heart-burning in families, would do more to alleviate human suffering, and bind families together in the bond of peace, than any provision it was in our power to adopt. He urged that the proud vote by which it had been adopted, would not be reversed.

Mr. R. CAMPBELL moved the previous question, but there was no second.

Mr. MURPHY urged that so far as the real estate of the wife was concerned, this provision would make no essential change in the law as it stood. It would only affect the personal property, and that, if the wife had confidence in her husband, would be just as much within the reach of the husband, under this provision, as now. But his main objection to it was that we should be under the curse of the married relation as it existed under the civil law. He should therefore vote to reconsider, and reject the section.

Mr. BROWN characterized the section as embodying the most radical and important principle that had been introduced during the session—and he had no hesitation in saying that if it was incorporated in the constitution, the whole instrument should be, and he trusted would be, rejected. He argued that it was not to be tolerated that the social relations of this whole people should be changed, and for the worse—that the married state should be disturbed, as it existed under the benign principles of the common law—in order to reach the individual cases that had been mentioned—such as these foreign fortune-hunters, or any of these isolated cases. He urged also the impolicy of thus tying up, not merely the real but the personal property of the wife, with all its accumulations, during coverture. This might be well enough for a legislature to adopt as an experiment, but to make it the inflexible constitutional law of the land was out of the question.

Mr. HARRIS urged that the elevated condition of the female sex in England and in the United States was not owing, as had been contended, to the influence of the common law, as applicable to the marriage relation, but to the benign principles of Christianity which pervaded both countries, and so eminently distinguished them from other countries of Europe—that woman, in fact had under this holy influence attained her proper rank in the social scale in despite of the principles of the common law, which originated in a dark and barbarous age. He urged further, that the proposition contemplated only doing that directly, which by our laws, could now be done indirectly—and which was always done when there was any considerable amount of property belonging to the woman before marriage. The proposition made that a general rule, and gave to the poor also, where the greatest amount of suffering was, under the present state of things, the benefit of the same provision. He urged it also as a father, anxious to secure to his own the benefit of the little that he might leave to them.

Mr. WORDEN, though he voted for this section, was not sure that it did not go too far, and that a middle course between the extremes of opinion here might be most safe and advisable. He read a substitute which he should propose

for the section, if it were reconsidered, as follows:—

"Every married woman shall be entitled to an equitable support out of the property, real or personal, owned by her at her marriage or acquired by her at any time afterwards. Such property shall be held in her own name, and provisions shall be made by law for carrying this section into effect."

Mr. STETSON denounced the section as a phantasy and as the offspring of delusion—saying that it was urged and was calculated only to reach foreign adventurers and fortune hunters, and to protect the daughters of the millionaires rather than those of the million. Its effect, he urged, would be pernicious in the extreme on the social condition of the state, being at war with the very essence of the marriage relation as it existed in this country. He concurred in the view taken by Mr. O'CONOR of this question—and in the course of his remarks read from the constitution of Texas to show its origin, and the sinister connection in which it stood in that constitution.

Mr. SIMMONS said the section would not bear a breath of discussion—and after a remark on the propensity of gentlemen to make themselves merry over his "solitary and alone" condition, whenever he undertook to talk about the domestic relations—went on to quote from various authors in commendation of the institution of marriage, as it existed under the common law; and to say that to distrust the relations as proposed by this trumpet provision, would justly alarm the country. He quoted Mr. Jefferson also in opposition to the principle of the section, and dwelt upon that great man's declaration, that it was owing to the separate interest of wife and husband in France that about half the annual increase of the population of Paris was illegitimate. He trusted, if we did any thing, we should go no further than adopt Mr. WORDEN's proposition.

Mr. MARVIN moved the previous question, and the motion to reconsider prevailed, ayes 59, noes 43.

Mr. HARRIS moved to amend by striking out all after the word "husband," in the third line, and inserting:—

Shall not be liable for the debts of the husband, and the legislature shall provide by law for more effectually securing to married women the benefit of such property.

Mr. RUSSELL moved the previous question on the amendment, and it was seconded.

The amendment of Mr. HARRIS was negatived, ayes 48, noes 61.

The whole section was then rejected, ayes 50, noes 59, as follows:—

AYES—Messrs. Allen, F. E. Backus, H. Backus, Bascom, Bowditch, Burr, Cambreling, R. Campbell, Cade, Clyde, Conely, Cook, Dana, Dodd, Flanders, Forsyth, Gebhard, Harris, Hotchkiss, Hutchinson, Hyde, Kernan, Mann, McNitt, Maxwell, Morris, Nellis, Parish, Perkins, Riker, St. John, Salisbury, Smith, Stanton, Stephens, Swackhamer, Tallmadge, Tilden, Townsend, Van Schoonhoven, Ward, Warren, Waterbury, White, Willard, Wood, A. Wright, W. B. Wright, Yawger, Young—60.

NOES—Messrs. Angel, Ayrault, Bergen, Brayton, Brown, Bruce, Brundage, Kull, D. D. Campbell, Cornell, Cuddeback, Danforth, Dorlon, Dubois, Graham, Harrison, Hart, Hoffman, Hunt, A. Huntington, E. Huntington, Jones, Kemble, Kennedy, Kingsley, Loomis, McNeil, Marvin, Miller, Munro, Murphy, Nicholas,

Nicoll, O'Conor, Patterson, Penniman, Powers, Rhoades, Richmond, Ruggles, Russell, Sanford, Shaver, Shaw, Simmons, E. Spencer, W. H. Spencer, Stetson, Stow, Strong, Taft, Taggart, J. J. Taylor, Tuthill, Vache, Witbeck, Worden, Youngs—59.

Mr. BASCOM offered the following as a new section:—

§ —. The contract of marriage shall not be held to vest in either of the contracting parties the property of the other, or to create a liability upon either to discharge the debts or the obligations of the other, unless by virtue of special legal enactment.

Mr. BASCOM urged that the country was full of wrongs growing out of the constructions put upon the marriage contract by the English courts. He desired, if the husband was to have the sole control of his wife's property, if he was to be master and she the slave, that the legislature should be obliged to frame the law accordingly, and let the people look at it and pronounce their judgment on it.

Mr. MARVIN moved the previous question and the section was rejected, ayes 5, noes 89.

Mr. NELLIS offered the following section:—

§ —. All property, real and personal, owned by a female at the time of her marriage or acquired by her afterwards, by gift from any person or persons other than her husband, or by devise, bequest or descent, shall be her separate property and under her control, subject, however, to such restrictions, limitations and regulations as may from time to time be prescribed by law.

Mr. LOOMIS offered the following substitute for this section:—

"Provision shall be made by law for securing to every married woman an equitable support out of the real or personal property owned by her at her marriage, or acquired by her at any time afterwards, but the power of alienation, by consent of the wife, shall not be destroyed by any such laws."

Mr. BRUNDAGE opposed the original section, as one that would produce incalculable mischief, in its disturbing effects upon the domestic circle—at the same time avowing himself in favor of exempting the property of the wife, from liability for the debts of the husband. He concurred with Mr. BROWN, that if this section was incorporated into the constitution, the whole thing ought to be rejected.

Mr. LOOMIS urged that this was a subject that should be approached with great caution, and went on to say that some of the propositions offered here, would change the whole face of society, independent of their moral effect directly on the parties—for it would result in all real property descending in the female line, and being tied up in families, secure from the reach of creditors, and from alienation.

After some further debate in which Messrs. SWACKHAMER and HARRIS took part.

Mr. SANFORD moved to lay the section and amendment on the table. Carried, 52 to 49.

The 8th section was read as follows:—

§ 8 Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments, and in civil actions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.

Mr. BROWN moved to strike out the words

"and in civil actions." He would leave the constitution as it always had stood.

Mr. HOFFMAN hoped this motion would prevail.

Mr. SIMMONS thought there would be no objection to this. The words had evidently got in by mistake.

Mr. TALLMADGE explained that this was one of the sections reported by the committee on rights and privileges—whose report had been most unceremoniously taken out of their hands and turned over to another committee, who had reported it precisely in its original shape. He had objected strenuously to the insertion of these words in committee, but was over-ruled by the majority of the committee. The words should be struck out—for they were clearly out of place there—and would be found to be most mischievous in tendency. He explained their effect, at some length, and commented with much severity upon the course which had been taken with the article reported by the committee of which he was chairman—particularly upon its postponement to this late day of the session, and until matters of comparatively trivial importance had been discussed for weeks together.

Mr. WORDEN said if these words should be retained, it would make the law of libel still more stringent than it was at present.

Mr. BERGEN moved the previous question, and it was seconded.

The words were stricken out, and the section adopted.

Mr. WORDEN, after a few explanatory remarks, offered the following additional section:

§ —. No person shall be prejudiced in any civil or criminal prosecution for libel, by reason of any false pleading.

Laid on the table.

The 9th section was read as follows:

§ 9. The assent of two-thirds of the members elected to each branch of the legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

Mr. CORNELL moved to add "or creating,

renewing, altering or continuing any municipal corporation or body politic."

This was debated by Messrs. PATTERSON, CORNELL, SWACKHAMER, TALLMADGE, HOFFMAN and SIMMONS, and rejected.

The section was adopted.

The 10th section was then read:—

§ 10. No lottery shall hereafter be authorized in this state, and the legislature shall pass laws to prevent the sale of all lottery tickets within this state.

Mr. STOW moved to substitute for this the following:—

§ 10. No law shall be passed abridging the right of the people peaceably to assemble, and to petition the government, or any department thereof; nor shall any divorce be granted, otherwise than by due judicial proceedings; nor shall any lottery hereafter be authorized, or any sale of lottery tickets allowed, within this state.

The motion was agreed to.

Mr. BROWN moved also to add the 9th section of the report of the select committee, in relation to inspectors, &c., as follows:—

§ 10. No law shall be passed requiring the inspection, measuring, gauging, weighing or culling of any commodity as a condition of individual dealings therein; nor shall any office be created or continued for any such purpose.

Several gentlemen suggested that section 8, of article 5, provided for all this.

Mr. BROWN thought not, and insisted upon his motion.

Mr. STOW explained the section.

Mr. F. F. BACKUS moved to lay the section on the table. This was not the proper place to offer it.

The motion was lost.

The section was debated by Mr. MORRIS.

Mr. O'CONOR moved to strike out the word "requiring" and insert "for."

Mr. BROWN accepted the amendment.

The debate was continued by Messrs TOWNSEND and RUSSELL.

Mr. BERGEN moved to adjourn. Agreed to. Adj. to 8½ o'clock to-morrow morning.

TUESDAY, OCTOBER 6.

[No clergyman present.]

POSTPONEMENT OF THE ADJOURNMENT.

Mr. RUSSELL moved a reconsideration of the resolution fixing the adjournment of the Convention at 12 o'clock to-day. Agreed to, and it was laid on the table.

REVISED CONSTITUTION.

The Convention resumed the consideration of the report of the committee of revision.

The pending question was the section on the subject of inspection of merchandize, which was offered last night by Mr. BROWN.

Mr. J. J. TAYLOR moved to insert the words—"and all existing laws for such purpose are abolished," to obviate some objections that were urged.

Mr. HOFFMAN thought the section would be surrounded with difficulty if it were adopted.

The public health might require an inspection of certain articles to prevent unsound articles being sold.

Mr. MORRIS had the same views; but he thought this matter should be delayed until we arrived at a similar provision in the 5th article. He moved to lay the section on the table. Carried.

Mr. SWACKHAMER offered the following as an additional section:

§ 12. Witnesses in criminal cases shall not be imprisoned for the want of bail to secure their attendance at the trial of the cause; but laws shall be passed to secure, if necessary, the temporary detention of witnesses in criminal cases; and for their prompt examination, de bene esse; which examination shall be evidence in all subsequent proceedings upon the subject matters; and shall have the same effect as the oral testimony of the witness would have, were he present and examined in person.

Mr. KIRKLAND thought the section liable to very serious objection, and explained why the select committee had omitted to report it. There were two reasons for this:—1st. That this was purely a legislative matter; and, 2d. That its adoption might lead to serious inconveniences. Mr. K. showed the practical operation of the section, and hoped it would not be adopted.

Mr. RICHMOND enquired what the gentleman from Kings meant by *de mense eshy*?—Laughter.]

Mr. SWACKHAMER said he translated it to be "constitutionally."

Mr. RICHMOND: Why not say so then?

Mr. TILDEN was not prepared to vote for this section. He gave some reasons against its adoption.

Mr. MORRIS advocated the section. It was not a new matter, but the same principle was now recognized in various cases in the city of New York, where the practice of the "drop game," &c., had before its passage given the rogue an opportunity to find bail in the money stolen, while the injured person was locked up to secure his testimony. The law applied to the city had been declared constitutional, and he believed its general application would be beneficial to the country.

Mr. NICOLL said as we had given the state a legislature, which would attend to these matters, he hoped we should be spared further debate. He therefore moved to lay this matter on the table.

Mr. JONES called for the yeas and nays and there were yeas 59, noes 43, as follows:—

AYES—Messrs Allen, Angel, Archer, Bascom, Bergen, Brayton, Brown, Bruce, Brundage, Cambreleng, D. D. Campbell, R. Campbell, jr. Cook, Crooker, Cuddeback, Danforth, Dodd, Dorlon, Dubois, Gebhard, Graham, Greene, Hawley, Hoffman, A. Huntington, Hutchinson, Hyde, Kemble, Kingsley, Kirkland, Loomis, Mc Vitt, Maxwell, Miller, Munro, Nellis, Nicholas, Nicoli, O'Connor, Patterson, Penniman, Perkins, Porter, President, Rhoades, Riker, Russell, St. John, Sanford, Sears, Shaw, Sheldon, W. H. Spencer, Stow, J. J. Taylor, W. Taylor, Tilden, Tuthill, W. B. Wright—59.

NOES—Messrs. Ayrault, F. F. Backus, Baker, Bowditch, Bull, Burr, Candee, Chamberlain, Clark, Conely, Dana, Harrison, Hotchkiss, Hunt, Jones, Kennedy, Kernan, Mann, McNeil, Morris, Murphy, Parish, Richmond, Salisbury, Shaver, Shepard, Smith, E. Spencer, Stephens, Swackhamer, Taft, Tallmadge, Townsend, Vache, Van Schoonhoven, Warren, White, Willard, Witbeck, Wood, Yawger, Young, Youngs—43.

Mr. PERKINS moved to insert as a separate section the seventh section of the report of the select committee made yesterday by Mr. Ayrault, as follows:—

§ — Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted.

Mr. MURPHY moved to amend by adding the words "nor shall witnesses be unreasonably detained." On this he called for the yeas and nays and they were ordered.

Mr. TALLMADGE said he wished to give information to the Convention of a few cases, in order that they should vote understandingly. The "fancy" in depredations, acted in concert, aided and bailed each other, as occasion required, and thus encouraged villany. A brother of a member of this house, (Mr. CONELY,) last season, on his way to New Orleans, had his

trunk stolen at Baltimore, where they had laws like our own. He made complaint, and had the thief arrested, who was immediately bailed by the "fancy." Mr. Conely was imprisoned as a witness, being a traveller and stranger in the place. After two weeks imprisonment as a witness, he gave a premium to the jailor, who obtained bail for him. He then left the state on a promise not to come into it again. Mr. T. said he had ample proof now in his possession, if the house had time to hear him read it, showing an organized conspiracy of "black legs," formed to cheat and swindle, in various ways, the poor, and especially the emigrants and Germans going on west, by fraudulent sales of sham articles, and by false tickets for their passage west in canal boats, railroads, stages or steamboats. In all cases where complaint was made, the swindler was bailed by his comrades, while the injured person was imprisoned as a witness for a future trial. The emigrant was thus taken from his family and all stopped in the street. Such companies of rogues were known to be in full operation in this city, in New York and elsewhere. It was now known as the law, that if an injured person complained, he would be imprisoned as a witness, and the rogue be discharged on straw bail. In this city two females, who had complained of violence to their persons, were imprisoned in the common jail as witnesses; the one detained nine or ten months, the other one month. Like cases were numerous in New York. The papers state that a female was now there in prison the third month, for such complaint. These were only a sample of numerous cases. He was prepared to show proof of repeated instances of the same character. But the Convention had not time to hear this business. We must go the Legislature for relief, we were told—and motions to lay the business on the table, and for the "previous question," to stop debate, and shut out all information, were made and sustained by the House. The report of the committee on this subject was made on the 21st June last, and since that time, this Convention had refused to act on the subject, for want of time. It was the case generally in the Legislature. That body, engrossed in private applications, on local or political objects, had very little time to give to every public measure. It showed the tone and the feeling of the day—they were too much engaged in parties and politics. Mr. T. insisted that the Convention should act deliberately on these and other public matters before the adjournment, if it were detained till winter.

Mr. JONES moved the previous question, on the amendment and the section; under the operation of which Mr. MURPHY's amendment was adopted, yeas 103, noes 0. The section as amended was agreed to.

Mr. HOFFMAN asked that this section just adopted be arranged as section 5. Agreed to.

LAND TENURES.

Mr. HARRIS moved four new sections on land tenures, as follows:—

§ 1. All feudal tenures, of every description, with all their incidents, are declared to be abolished; saying, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

§ 2. All lands within this state are declared to be al-

lodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners according to the nature of their respective estates.

§ 3. No lease or grant of agricultural land for a longer period than seven years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

§ 4. All fines, quarter sales, or other charges upon alienation reserved, in any grant of land hereafter to be made, shall be void.

The first section was agreed to.

The second section next came up in order.

Mr. MORRIS asked what came up to be accomplished by voting on these sections—the two first having heretofore been adopted by the Convention, and were now parts of the constitution?

Mr. HARRIS explained. The proceedings alluded to were had on a resolution of instruction to the committee of revision, and the whole had not been gone through with when the business was interrupted by the adjournment. The resolution was therefore not adopted, and he felt called upon again to offer this provision, which he briefly advocated.

Mr. SHEPARD inquired if these sections would not conflict with the section giving the state power to take private property for public uses?

Mr. RUGGLES submitted that the better form would be to adopt the 1st, 3d and 4th sections of the revised statutes, which he explained.

Mr. NICHOLAS said he did not deem any constitutional expression on the subject of feudal tenures necessary, as they had been so long since abolished that even the term had become obsolete; but the section being merely declaratory would be harmless, and he should now vote for the second section which declared all lands to be allodial. This was now proper, to show what was our tenure, as the previous section declared what it was not. This declaration should follow the other.

Mr. PATTERSON had hoped that something like these sections would be adopted. A great question of public policy was involved. An end should be put to these vexed questions, so far as they could do it constitutionally. He did not agree with gentlemen who said the state had no interest in this matter. The state had at least had a large bill to foot. He would not interfere with contracts in existence, but he thought it was high time the state should step in and prohibit for all time to come, the making of long leases, with such provisions as had been mentioned on this floor. Mr. P. pointed out the objections to such contracts, and contended that the true policy of the state was to prohibit the making of such leases in future.

Mr. SIMMONS said if they had no authority to kick Mr. Van Rensselaer off his land, directly, they had no right to do it indirectly by legislating or constitutionalizing him out of his mode of user. He examined the arguments of some gentlemen on this subject, made on preceding days. One gentleman had based his opposition to long leases on the ground of political economy; but Mr. S. thought it a kind of "Mormon political economy," and not the old fashioned political economy of Adam Smith and others.—The proposition now offered, to prevent leases of more than seven years' duration, made no prohibition of covenants for renewals, and hence

amounted to nothing. He hoped gentlemen would drop this horse race for Governor making.

Mr. BERGEN, to prevent any more Governor-making, moved the previous question, under the operation of which the 2d section was adopted.

The 3rd section was next read.

Mr. PERKINS explained why he could not vote for this section. He would provide that these leaseholds should not be the subject of wills, but should descend subject to the law of descents.

Mr. NICOLL moved to strike out seven and insert twelve, and moved the previous question.

There was a second, &c., and the amendment was adopted, ayes 71, noes 31.

The section, as amended, was agreed to, ayes 58, noes 49.

The 4th section was then read.

Mr. NICOLL moved to strike out the words, "or other charge," and insert "or" between "fines" and "quarters."

Mr. HARRIS explained the object of these words, and opposed the motion. It was the policy of these large estates to throw every possible obstacle in the way of alienation. This was intended to prevent these obstacles in future. He showed the necessity of this, from considerations of public policy.

Mr. SIMMONS opposed the section, and Mr. WATERBURY replied in support of it.

Mr. RUGGLES had long been of the opinion that these quarter sales and other restraints upon alienation, in these long leases, were not only unfavorable to the interests of the tenant, but also of the landlord. Whether that was so or not, he was of the opinion that they should be abolished, and he had been surprised that some law had not long since been passed doing them away. But he objected to this section as extending too far and reaching conditions in short leases, for village lots, &c., necessary for the protection of the owner of the land. He should offer for the section the following substitute:—

"All fines, quarter sales, or other like restraints upon alienation, reserved in any lease of agricultural lands for life or for a longer term than five years hereafter to be made, shall be void."

Mr. NICHOLAS said this section was unnecessary even for the intended object. The previous section restricted leases to a period of twelve years. Fines and quarter sales were so much at variance with the spirit of the age that they would never in this country, without this restriction, be a condition of a lease hereafter to be made, and they certainly would never be found in a short lease. But he thought this section admitted of a more general construction, which would improperly interfere with the common business relations of citizens, and permit a tenant to subrent without the consent of the owner. Suppose a farmer left his family, at his death, in possession of a farm which they were unable to cultivate—that they leased to a person well recommended, expecting him to continue their tenant for the specified term, and confiding in him to pay his rent punctually, and to use the farm without abusing it. They were bound by their contract to continue him in the occupancy of the farm, and should he be required to use the premises according to the contract, or would

you permit him at once to sell his bargain to a third person without the consent of the owner, and perhaps to a person who would be unacceptable to the owner? This provision was now restricted to agricultural land. It was equally applicable to property in cities and towns; and if adopted at all, should be thus applied. When extended to cities, he thought it would not have as many advocates. The owners of rented premises in cities very properly took good care to know who were to be their tenants when they made leases; and they should not be deprived of the right to do so. This, at any rate, was mere legislation, and should not appear in a constitution, and he hoped the section would be rejected.

Mr. MANN wanted the word "agricultural" added before "land," if the section was to be adopted.

Mr. MORRIS hoped this section would not be adopted. We had gone as far as we should when we had limited these leases, whether in city or county, to 12 years.

The debate was further continued by Messrs. WORDEN and HARRIS.

Mr. BERGEN moved the previous question, and under its operation the amendment of Mr. NICOLL was adopted, ayes 49, noes 48.

Mr. RUGGLES' substitute was rejected, ayes 34, noes 61.

The section as amended was lost, ayes 37, noes 66.

Mr. RUGGLES again offered the first of the sections of the Revised Statutes, which he read before, and said he should move a reconsideration of the sections adopted, that the succeeding sections of the Revised Statutes might be substituted.

§ — The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands, the title to which shall fail, from a defect of heirs, shall revert or escheat to the people.

Mr. HARRIS assented to the adoption of this first section. It should precede those already adopted; but he was opposed to the reconsideration of whatever had been adopted. The substitute was agreed to.

Mr. RUGGLES now moved the reconsideration of the other sections as before indicated.—The motion lies on the table.

Mr. HARRIS offered the following additional section:

§ — All fines, quarter sales, or other like restraints, upon alienation reserved in any grant of land, hereafter to be made, shall be void.

Mr. NICOLL raised the question whether this was in order? This section substantially had been rejected.

The PRESIDENT (Mr. CAMBRELING, pro tem.) said though substantially the same, there was a difference, and therefore he did not feel at liberty to rule it out.

Mr. VAN SCHOONHOVEN defended the section in its present form, and continued the general debate.

Mr. NICOLL withdrew his objection.

Mr. BAKER moved the previous question, and under its operation the section was adopted, ayes 62, noes 39.

ARTICLE ONE—RIGHTS, PRIVILEGES, &c.

The Convention then proceeded to consider

the 11th section of the first article of the report of the committee of revision, which was agreed to as follows:—

§ 11. No purchase or contract for the sale of lands in this state, since the fourteenth day of October one thousand seven hundred and seventy-five: or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority, and with the consent of the legislature

The 12th section was read as follows:—

§ 12. Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April one thousand seven hundred and seventy-five, add the resolutions of the Congress of the said colony, and of the Convention of the state of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of the state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated.

CODIFICATION OF THE LAWS.

Mr. NICOLL moved to add at the end of the article the following:

And the legislature, at its first session after the adoption of this constitution, shall appoint five commissioners, whose duty it shall be to reduce into a written and systematic code the whole body of the law of this state, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient. And the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the legislature, when called upon to do so; and the legislature shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of the said commissioners; and shall also provide for the publication of the said code, prior to its being presented to the legislature for adoption.

Mr. NICOLL said that at this late hour he would not detain the Convention with any extended remarks on the amendment which he had just offered. There had been a time when the subject of codification—one of the greatest reforms called for by the people—ought to have been discussed. He alluded to the period when the Convention were considering the subject of the judiciary. The friends of a written system of law had then endeavored to be heard, but gentlemen would remember that after the proposition to provide for a commissioner had been introduced, and when scarcely anything had been said in its favor, an honorable gentleman had demanded the previous question. In the evident impatience which then existed in the house, it would have clearly been imprudent to have pressed the measure at that time. Mr. N. said he hardly dared hope even now that it would command a sufficient attention on the part of the Convention. Still, as this was evidently the last chance that would present itself, he was determined to bring the house to a vote upon it. The subject had early engaged their attention; it had been referred to a select committee, and their report had several months since been laid upon our tables. The proposition now submitted was in substance similar to the article reported by the committee. Gentlemen would perceive that this measure was not obnoxious to the charge that it was a subject simply of legislation. All that was sought was

to declare in the constitution that an attempt should be made to reduce into a written system the body of your laws. How that was to be done, or in what manner, and to what extent, was left wholly in the discretion of those who were to come after us. The Convention would hazard nothing in going thus far. It was simply declaring that something ought to be done, and should be done, towards ameliorating a great and admitted evil. He earnestly hoped that in this charter of reform which we were adopting, we should make such a provision.—He would detain the Convention no longer—except to ask the ayes and noes on the amendment.

Mr. RICHMOND moved to strike out five and insert three as the number of commissioners.

Mr. JONES moved the previous question, and under its operation Mr. RICHMOND's amendment was adopted—51 to 42.

Mr. NICOLL's amendment, as amended, was adopted—ayes 65, noes 37.

Mr. NICHOLAS and Mr. BASCOM gave notice of a reconsideration.

Mr. BAKER called for a division of the question, so as to take the vote first on the old matter, and then on the new of the section as it now stands.

The motion for a division was now decided to be out of order, as the Convention was acting under the operation of the previous question.

Mr. RUGGLES said if any matter should have a separate submission to the people, it should be that relating to the codification of the laws, which had no necessary connection with the first part of the section.

The section, as amended, was carried—ayes 60, noes 45.

Mr. VAN SCHOONHOVEN moved a reconsideration, and it was laid on the table.

The thirteenth section was read as follows:—

§ 13. All grants of land within this State, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall effect any grants of land within this state, made by the authority of the said king or his predecessors, or shall amend any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority, or shall impair the obligation of any debts contracted by the State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Mr. MURPHY moved to add at the end of the section as follows:—

"But such charters to bodies politic or corporate, made by the King of England, shall have no other or greater effect by virtue of this section, than similar charters granted by law in this State."

Mr. ALLEN opposed the amendment. He feared it would have some effect on bodies in New York. In the first place the city of New York had certain privileges that might be abrogated by the passage of this amendment. Then again there were Columbia College and the New York Hospital, that were in the possession of privileges derived from such charters. He thought it would be highly improper to pass the amendment.

The debate was continued by Messrs. SIM-

MONS, O'CONOR, STETSON, WORDEN and RUSSELL.

Mr. WORDEN moved the previous question, but withdrew it at the solicitation of Mr. MURPHY.

Mr. RUSSELL however claimed the floor not having spoken, and moved the previous question.

Mr. MURPHY called for the yeas and nays on seconding, and there were yeas 49, nays 40.

Mr. MURPHY's amendment was rejected, ayes 30, noes 68.

Mr. MURPHY called for the yeas and nays on the section, and there were yeas 69, nays 23; so the section was agreed to.

The Convention then took a recess.

AFTERNOON SESSION.

Mr. CONELY had leave to record his vote against the last section adopted.

Mr. ST. JOHN offered the following additional section to the first article:

§ —. The rents and profits of all real estate owned by the wife at the time of her marriage, and the rents and profits of all real estate acquired by her afterwards, by gift, devise, descent or otherwise than from her husband, shall be her separate property; and such property shall in no case be taken, without the consent of the wife, to pay the debts of the husband.

Mr. NICHOLAS moved to lay it on the table. Agreed to, 53 to 39.

Mr. TOWNSEND offered the following section:—

§ —. The home of every family shall be held sacred from civil process—to an amount not exceeding \$600—for debts created after the adoption of this constitution; and the legislature shall provide for an appraisal by a jury of the value of any real or personal estate so held.

Mr. TOWNSEND briefly urged the proposition upon the attention of those who were in favor of securing to married women protection in point of property, as a proposition which would perhaps supply the place of the provision they desired, but could not obtain. He concluded by moving the previous question.

The call was sustained, and the proposition negatived, ayes 11, noes 76.

Mr. SIMMIONS moved a reconsideration of Mr. TAGGART's proposition in regard to the competency of witnesses on account of their religious belief.

Mr. BRUCE advocated the motion. He remarked, that in the preamble to this constitution, we proposed to recognize the existence of a Supreme Being—and the only standard of truth, was derived from the revealed will of that being. There seemed to be so manifest a propriety in requiring, on the part of witnesses, who were to give evidence between man and man, which might determine questions of life, liberty and property, at least a belief in their accountability to the Deity. He believed this amendment was adopted hastily, and would, upon reflection, be struck out.

Mr. WORDEN said the amendment was one totally repugnant to his feelings, to every sense of propriety in the administration of the law—and one which he was fearful would be regarded as derogatory to the character of the state. But he did not intend to go into a discussion of the question; and believing gentlemen were ready to vote, he moved the previous question.

There was a second, &c., and the motion to reconsider was put and lost—ayes 47, noes 64, as follows:—

AYES—Messrs. Allen, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Brayton, Bruce, Bull, Burr, D. D. Campbell, Candee, Cook, Dana, Dodd, Dorlon, Graham, Harris, Harrison, Hawley, Hotchkiss, E. Huntington, Kirkland, McNeil, McNitt, Marvin, Maxwell, Miller, Murphy, Nicholas, Parish, Patterson, Powers, Rhoades, Riker, Shaver, Simmons, Strong, Tallmadge, J. J. Taylor, W. Taylor, Tuthill, Waterbury, Worden, Young—47.

NAYS—Messrs. Bowdish, Brown, Brundage, Cambreleng, Chamberlain, Chatfield, Clark, Conely, Cornell, Crooker, Cuddeback, Danforth, Dubois, Flanders, Gebhard, Hart, Hoffman, Hunt, A. Huntington, Hutchinson, Hyde, Jones, Kennedy, Kernan, Kingsley, Loomis, Mann, Morris, Munro, Nellis, Nicoll, O'Connor, Penniman, Perkins, Porter, President, Richmond, Rugles, Russell, T. John, Sears, Sheldon, Shepard, Smith, E. Spencer, W. H. Spencer, Stanton, Stetson, Stow, Swackhamer, Taft, Taggart, Townsend, Vache, Van Schoonhoven, Ward, Warren, White, Willard, Witbeck, Wood, A. Wright, Yawger, Youngs—64.

Mr. **WORDEN** moved that the 1st article be adopted and ordered to be engrossed. Agreed to—68 to 38.

ARTICLE II—ELECTIVE FRANCHISE.

Mr. **O'CONOR** proposed the following as the 1st section of the 2d article:—

§ 1. Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state for one year next preceding any election, and for the last three months a resident of the county where he might offer his vote, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people. But no man of color, unless he shall have been for three years a resident of this state, and for one year next preceding any election, shall be seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation, unless he shall be seized and possessed of such real estate as aforesaid.

Mr. **STOW** moved the following as a substitute:—

§ 1. Every male citizen of the age of 21 years, who shall have been a citizen for ten days, and an inhabitant of this state for one year next preceding any election, and for the last five months a resident of the county where he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are, or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of color, &c., (as above.)

Mr. **STOW** said this substitute had been drawn with great care. It had been examined by gentlemen who held a contrariety of opinion on the subject, and he believed it met with their entire concurrence. It required one year's residence in the state, ten days citizenship, five months in the county, and actual residence in the district. This applied to all electors. It went further and provided that a voter must have been a resident for a certain period in the district from which the officer is to be chosen for whom he offers his vote. There was the greater necessity for this, as we now had assembly districts. Heretofore, the smallest districts were counties.

Mr. **KIRKLAND** pointed out the difference between this and the original section of the

standing committee. Among other things, the substitute required thirty days residence to vote for members of the assembly, but a person could vote for county officers five months after in the county.

Mr. **STOW** changed the five months to four months.

Mr. **JONES** moved to strike out the ten days' citizenship.

Mr. **STOW** moved the previous question, and it was seconded.

The amendment of Mr. **JONES** was lost, 51 to 59, as follows:

AYES—Messrs. Allen, Bergen, Brown, Brundage, Cambreleng, Clyde, Cornell, Cuddeback, Danforth, Flanders, Hotchkiss, Hunt, A. Huntington, Hutchinson, Hyde, Jones, Kennedy, Kernan, Kingsley, Mann, McNeil, Maxwell, Morris, Munro, Murphy, Nellis, Nicoll, O'Connor, Powers, Riker, Russell, T. John, Sanford, Sears, Shaw, Sheldon, Shepard, Stetson, Swackhamer, Taft, J. J. Taylor, W. Taylor, Townsend, Tuthill, Vache, Ward, White, Witbeck, Wood, Youngs—51.

NOES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Brayton, Bruce, Bull, Burr, D. D. Campbell, Candee, Chamberlain, Conely, Cook, Crooker, Dana, Dodd, Dorlon, Dubois, Forsyth, Gebhard, Graham, Greene, Harris, Harrison, Hawley, Hoffman, E. Huntington, Kirkland, Loomis, McNitt, Marvin, Miller, Parish, Patterson, Penniman, Perkins, Porter, Rhoades, Richmond, Salisbury, Shaver, Simmons, Smith, E. Spencer, W. H. Spencer, Stanton, Stow, Strong, Taggart, Tallmadge, Warren, Waterbury, Willard, Worden, A. Wright, Yawger, Young—59.

Mr. **RUSSELL** moved to reduce the 30 days' residence in the district to ten days.

Mr. **HOFFMAN** hoped not. The six months residence in the county, provided in the old constitution, was intended as a safeguard against colonization. Counties were heretofore the smallest election districts we had. We had now provided for smaller districts than counties. The provision was therefore necessary. He alluded also to the fact that under the law of Congress we were compelled to divide counties to form single Congress districts, and said that could he have induced a majority of the legislature to have gone with him, he would have resisted the mandate of Congress to open the door to colonization in the great city. But he was obliged to yield; and single Congress districts were found in New York, without any thing requiring a man to reside in the Congress district in order to vote. It would be so in regard to your assembly districts. And though it might be inconvenient to be obliged to reside 30 days in a district, this was as nothing in view of this vile practice of colonization—which must be stopped if not by this provision, then by the terms of criminal justice.

Mr. **O'CONOR** stated that there was a large portion of the moving population of New York, who changed their residence on the 1st November—and that this provision would disfranchise many hundreds of them. He moved to strike out 30 and insert 10.

Mr. **MURPHY** remarked that if they moved on the 1st November, this ten days would not help the matter.

The motion to strike out 30, &c. was lost, ayes 27, noes 80, as follows:

AYES—Messrs. Allen, Bergen, Bowdish, Brundage, R. Campbell, Jr., Cornell, Cuddeback, Danforth, Flanders, Hutchinson, Jones, Kernan, Mann, McNeil, Morris, Munro, Nicoll, O'Connor, Russell, Sanford, Shep-

ard, Swackhamer, Taft, Vache, White, Wood, Youngs—27

NOES—Messrs. Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Brayton, Bruce, Bull, Burr, Cambreleng, D. D. Campbell, Candee, Chamberlain, Clyde, Conely, Cook, Crooker, Dana, Dodd, Dorlon, Dubois, Forsyth, Gehlhard, Graham, Greene, Harris, Harrison, Hawley, Hoffman, Hotchkiss, Hunt, A. Huntington, E. Huntington, Hyde, King-ley, Kirkland, Loomis, McNitt, Marvin, Maxwell, Miller, Nellis, Parish, Patterson, Penniman, Porter, Powers, Rhoades, Richmond, Riker, St. John, Salisbury, Sears, Shaver, Shaw, Simmons, E. Spencer, W. H. Spencer, Stanton, Stetson, Stow, Strong, Taggart, Talmadge, J. J. Taylor, W. Taylor, Townsend, Tuthill, Vanschoonhoven, Warren, Waterbury, Willard, Witbeck, Worden, A. Wright, Yawger, Young—30

Mr. DANA moved to strike out "four months" and insert "three months." Lost.

The amendment of Mr. STOW was agreed to, ayes 79, noes 20.

Mr. FLANDERS moved to strike out all that relates to qualifications of colored persons.—Mr. F. said his object was to place all citizens on an equality without distinction of color. His proposition presented that naked question. He had intended to have said something on this subject, but understanding that it had been fully discussed in his absence, he did not feel justified in occupying the valuable time of the body.

Mr. BRUCE hoped the motion would prevail, though he was pretty sure it would not. [Cries of question.] He wanted to know if there was a member who would give a single reason why it should not prevail [Mr. RUSSELL: we don't want any reason."] All offices from the Governor downwards, were open to the colored citizens—and why, if eligible to office, should they not have the right to elect officers? The only effort at argument that he had heard was made by the gentleman from New York (Mr. HUNT), who urged that the blacks were inferior to the whites because they had curly hair. That argument would seem to require that to qualify a man to be a voter, his hair must stick out in all directions like quills upon the fretful porcupine. He supposed the true test of qualification lay deeper than the skin or the hair—that it was enough if a man had intelligence, virtue and integrity, to give a discriminating vote. He insisted that as yet, nothing worthy of the name of an argument had been adduced against this provision.

Mr. CANDEE moved the previous question, and there was a second, and

Mr. FLANDERS' motion was lost, ayes 28, noes 75, as follows:

AYES—Messrs. Archer, Ayrault, Brayton, Bruce, Burr, Candee, Cornell, Crooker, Dana, Dodd, Dorlon, Flanders, Hotchkiss, E. Huntington, Miller, Parish, Patterson, Penniman, Rhoades, Shaver, Simmons, E. Spencer, W. H. Spencer, Stanton, Stetson, Strong, Taggart, Waterbury, Young—28.

NOES—Messrs. Allen, Angel, F. F. Backus, H. Backus, Baker, Bergen, Bowdish, Brundage, Bull, Cambreleng, D. D. Campbell, Chamberlain, Clyde, Conely, Cook, Cuddeback, Danforth, Dubois, Forsyth, Graham, Harrison, Hoffman, Hunt, A. Huntington, Hyde, Kennen, Kernan, Kingsley, Kirkland, Loomis, McNeil, McNitt, Marvin, Maxwell, Morris, Munro, Murphy, Nellis, Nicholas, Nicoll, O'Connor, Perkins, Porter, Powers, President, Riker, Ruggles, Russell, St. John, Salisbury, Sanford, Sears, Shaw, Sheldon, Shepard, Smith, Stow, Swackhamer, Taft, Talmadge, J. J. Taylor, W. Taylor, Townsend, Tuthill, Vache, Van Schoonhoven, Warren, White, Willard, Witbeck, Wood, Worden, A. Wright, Yawger, Youngs—75.

The section, as amended, on motion of Mr.

Stow, was agreed to—ayes 72, noes 30.

Mr. SIMMONS moved the following:

§ 2. No person born after the adoption of this constitution shall be entitled to vote unless he shall be able, at the time he offers his vote, to read and write the English language.

Mr. SIMMONS said that this would operate as a sort of tariff law to promote education. It would cut off no voter now. Twenty-one years hence, or thereabouts, it would be operative.

Mr. MURPHY moved to add the word "well." [Laughter.] Adopted.

Mr. BERGEN called for the reading of the new section—and

It was read, ending with "read and write the English language well." [Laughter.]

Mr. BERGEN wanted to add the word "Dutch." He went on to say that his section of the state was originally settled by the Dutch, and there were a great many Dutch families that might not be able to read and write the English language well, who nevertheless were intelligent voters, and who ought not to be deprived of the right. [A voice—"It only applies to the unborn."] Mr. B. did not care when they were born. If his memory served him, in the articles of capitulation, when the country was surrendered to the English, there was an express stipulation that they should not be deprived of the rights of citizenship. [A voice—"The revolution kicked all that over."] Under these circumstances it would be treating them with great injustice to undertake to deprive them of the right of voting. There were also a great many of German extraction. [A voice—"Then say high and low Dutch."] Dutch covered both. Unless this amendment was adopted it would exclude these also.

Mr. NICOLL said he had no doubt this proposition was exceedingly well meant on the part of the mover; and there were many who were disposed to sanction it if it were practicable, which he thought it was not. He hoped, as we had little time to perfect it, that it would be withdrawn.

Mr. SIMMONS did suppose that such a proposition would have been received with more gravity in such a body this. We expended a great deal of money to promote common education—and ought to expend more. There should be some standard language, for legal proceedings and laws, if this provision would oblige a man to become acquainted with more languages than one, it would be all the better for him. Besides, this provision operated only on the unborn, and would operate, he repeated, as a tariff law to promote the acquisition of the rudiments of learning—the instruments by which acquisitions might be made—and he ventured to say, if this provision was adopted, that twenty years hence, you would not find an adult in the state that would not be able to read and write his own ballot.

Mr. BASCOM suggested that the qualifications of voters in this respect should be submitted to the same tribunal that the gentleman from Essex proposed to confide the matter of conciliation courts—that is to the women. [Laughter.]

Mr. SIMMONS had no objections to referring the matter to the conciliation courts themselves.

It would be the most fit business that court could do. It would come up to their capacity, and would be a real reform, compared with which your Mormon law reforms would be as nothing. He should be willing to trust this matter to a conciliation court of old women, like your sewing societies, with their charity boxes for cents. He moved, however, to lay on the table.

Mr. MURPHY was sorry the gentleman from Essex should suppose his amendment was not seriously intended. He did not wish to treat the subject with levity. He believed a sound education was one of the best qualifications for a voter. But he believed a mere smattering was rather prejudicial than otherwise.

"A little learning was a dangerous thing,
"Drink deep, or taste not the Pierian spring."

Mr. JONES moved to lay the section on the table. Agreed to.

Mr. KIRKLAND now offered the following section, being the second of Mr. Bouck's article:—

§ 2 Laws may be passed excluding from the right of suffrage all persons who have been, or may be convicted of bribery, of larceny, or of any infamous crime:—and for depriving every person who shall have a bet or wager depending upon the direct or indirect result of any election, from the right to vote at such election

Mr. RHOADES moved to amend by substituting for the last clause as follows:—

"And for depriving every person who shall make, or become directly or indirectly interested in, any bet or wager depending upon the result of any election from the right to vote at such election."

Mr. NICOLL said this was a salutary provision, and he hoped something of the kind would be adopted.

Mr. BASCOM said if the legislature was let alone, they would pass a better law on this subject than we could. To deprive two men of the privilege of voting, at an election, where their votes would only neutralize each other, would amount to nothing at all. Disqualify a man from voting for two or three years, for betting on an election, and you would then reach the evil.

Mr. RICHMOND suggested that we must make some provision of this kind to authorize the legislature to make it cause of disfranchisement for one or two elections.

Mr. E. HUNTINGTON explained that the words "direct or indirect result of any election," were intended by the committee, to reach the case of a bet on the result of a presidential election, where the people voted for electors, and not directly for President.

Mr. VAN SCHOONHOVEN remarked that the words direct or indirect were unnecessary to attain that object, and should be struck out.

Mr. RHOADES said he had varied the form of the clause so as to make these words apply to the persons betting or interested in a bet. It was well known that the principal parties to a bet were not the only ones interested in it, but that five or even ten persons were often interested alike in a bet of \$100.

Mr. HUNT:—Why not then say "be interested in any bet?"

Mr. CROOKER offered the following amendment to the amendment:—

Add—"Laws shall be passed to define the meaning of the term 'man of color,' as used in the preceding

section, and rules shall be established for determining questions relating thereto that may arise under it. But no person shall be considered a man of color in whom the white blood predominates."

Mr. BRUCE suggested that it would be equally difficult to ascertain what white blood was.

Mr. CROOKER proposed this in good faith, and to get rid of what would be a great difficulty. In his section of the state there were few who would come within the description of persons of color; but there were many who were admitted to vote as whites, who by no means would claim to be white. And unless some definite meaning should be affixed to this phrase, persons of color, by legislative action, many might be shut out that now exercised the right of suffrage. Again, if it was the Anglo-Saxon blood that made a man white, and if that was so much purer than the African, certainly if a man had a larger proportion of the Saxon than the African blood in him, the former, on the majority principle, ought to triumph over the latter in determining the color. But, no matter what rule was adopted—some proportional limit should be fixed, at which the distinctive appellation of "man of color" should be lost sight of, and the man be ranked as white.

Mr. ANGEL said he was about to do what he had never before done in his life—move the previous question.

There was a second, &c., and

Mr. CROOKER's amendment was lost.

Mr. BASCOM suggested to Mr. RHOADES, to amend so as to exclude an elector from voting for two years, who should be interested directly or indirectly in a bet on an election. [Cries of "no," "no."]

Mr. RHOADES' amendment was adopted without a division.

Mr. JONES moved to strike out all the new matter in the original section, leaving it as it stood in the present constitution.

Mr. MARVIN hoped not. The legislature should have the power to suppress this practice of betting, by a temporary disfranchisement.—They would not have it under the present constitution.

Mr. WORDEN remarked that the legislature last winter found it to be so—that they could not disfranchise a voter for betting on an election.

Mr. SIMMONS inquired how the matter of fact was to be decided? Was the voter to have a trial?

Mr. MARVIN said it would be a ground of challenge, to be determined as other challenges were.

The section, as amended, was adopted.

The 3d section was read, as follows:—

§ 3. Laws may be passed providing that after the year one thousand eight hundred and fifty-five, no person shall have the right of suffrage under this constitution, unless he can read the English language.

Mr. KENNEDY moved to strike it out.

Mr. CONELY moved to amend so as to make it applicable only to persons arriving at the age of 21, after the year mentioned.

Mr. MANN said he knew men who were born here, French, German and others, who could neither read nor write the English language, and who were intelligent and honest voters.

Mr. WORDEN: What would you do with a blind man?

Mr. DORLON hoped this section would not be struck out. It was the part of wisdom for every government to promote by every means in its power, the general diffusion of knowledge and intelligence, and especially among those who constituted the governing power of the state.—The intelligence of the masses, in a country like ours, the sheet anchor of our safety, the rock on which society rested, without the decisions of the ballot box would fall into contempt. He would raise the standard of qualification for the exercise of this inestimable privilege of the ballot box. He would have no such constituencies as the late John Randolph delighted to boast that he had—for it appeared from the valedictory of the successor of the descendant of Pocahontas, on his resigning his seat in Congress for a foreign mission, that eight-tenths of that boasted constituency could not read. No man certainly ever had such constituents, and he trusted no man ever would. He would have no man vote who was not able to read and inform himself in that way sufficiently to give an intelligent vote.

Mr. RUGGLES remarked that this proposition should at least be treated seriously. Good reasons could be assigned for some such provision. But it should operate prospectively, and he was about to propose an amendment that he hoped would make it acceptable in that respect. It would prevent its having application to any now entitled to vote. Thus amended he should be desirous of voting for it. He moved to amend so that it should read, that laws might be passed, providing that after the year 1865, no person, "not now an elector," shall have the right of suffrage, &c., unless he can read the English language.

Mr. STOW suggested, as we were probably to have a new constitution once in 20 years at least, that the operation of the section had better not be put off so long; that this constitution might be superseded by a new one, before that time.

Mr. RUGGLES hoped that those who came here to make a new constitution, would have the sense to adopt some such provision.

Mr. W. TAYLOR said we should do everything we could for the education of the rising generation; but he would not put in a restriction here that would disfranchise many intelligent men—well qualified to discharge all the business of life—and he knew such—but who had never learned to read or write. Instances might occur where poverty might prevent a man from acquiring even the rudiments of learning early in life—and yet he might possess all the information, from conversation and otherwise, necessary to give an intelligent vote.

Mr. PATTERSON concurred with the gentleman from Onondaga, that it would be unwise to put such a provision in the constitution. He concurred also in the remark that it was the duty of the government to make ample provision for the education of every child in the state. But there was a class of men who would be entirely excluded under this provision—those born blind and those who had become blind—and yet

these men were as intelligent and honest, as thousands of our electors.

Mr. BERGEN moved to insert the words "or Dutch," after "English."

Mr. GREENE said he had an amendment prepared which would cover all these cases.

Mr. BERGEN urged his amendment, nevertheless.

Mr. GREENE moved to strike out and insert, so that the section would read as follows:

"After the year 1865, no person shall acquire the right to vote under this Constitution, unless he can read and write, except in cases of physical inability."

This was ruled out of order.

Mr. NICOLL remarked that the more he reflected on this, the more impracticable the proposition appeared to be. He trusted we should dispose of the matter in some way, and save a little time for the consideration of a proposition yet to be acted on, which was designed to diffuse widely the benefits of education.

Mr. MORRIS urged that one of the most effectual means of inducing the wealthy to contribute towards the diffusion of education, was to permit the ignorant to vote—all of them. He would rather enlarge than restrict the franchise in this respect.

The previous question was here moved and seconded, and **Mr. RUGGLES'** amendment was lost.

Proposition offered by **Mr. GREENE** :—

After the year 1865, no person shall acquire the right to vote under this Constitution, unless he can read and write, except in case of physical inability.

Mr. GREENE rose and said,

Mr. PRESIDENT,—Judging from the temper of the Convention, at the present moment, and from the manner in which it has disposed of the various propositions that have been under consideration on this subject, I feel that it is a hopeless undertaking to offer another. But as the one which I now send up is entirely free from all the objections that have been raised against the others, I think I will offer it. You will perceive, sir, that it is prospective in its operation, and affecting no one in any manner, between the present time and the year 1865. It is not restricted to the English language, as that is, which was reported by the standing committee, and as every other one has been, but it is open to all languages alike; so that a person who can read and write the German, French, Spanish, or any other language, will be equally entitled to vote with him who understands and is able to read and write the English language. It also exempts from its operation all persons, who, by reason of any physical infirmity, are rendered incapable of acquiring these rudiments of education. Now sir, I desire to submit a few very brief remarks on the propriety and importance of making intelligence the only test of suffrage. The right to vote is not a natural or inalienable right; but is a right conferred by the government on its members for a specific purpose, viz: that of choosing the officers whose duty it is to perform the various functions of government. The voter therefore, is the agent or the representative of the government, to perform this very important and responsible trust. Is it not then important, in order to a right and proper discharge

of this trust, that the agent should possess intelligence? It will be perceived that the act of conferring the privilege to vote, upon a person, imposes, at the same time a serious obligation. I have sometimes thought that the obligation to vote intelligently, is equally binding with that of paying a tax when lawfully assessed. The tax is assessed and collected for the purpose of defraying the pecuniary expenses of government, while the vote is cast to furnish the various necessary agents or instruments for the due administration of the government in all its diversified departments. The voter in the discharge of his duty, in depositing his vote in the ballot box, does not act for himself merely, but in addition to his obligation to the government, he is acting as the immediate representative of some five or six persons who have not the right to vote. These persons have claims upon the voter. Their rights are to be affected by the vote he casts. They, therefore, have a right to demand that the voter should be intelligent. It is therefore for the interest of the voter, that the government should require of him, at least so much intelligence as to be able to read and write. If this reasoning be good, then it follows as a necessary consequence that this Convention should make it a constitutional provision. I am therefore of the opinion, sir, that we ought not to adjourn without incorporating into the constitution to be submitted to the people, as a test of suffrage, that the voter shall be able to read and write after the year 1855. The preservation of the purity of the ballot box, in my judgment demands this at our hands. If the perpetuity of our free institutions depends upon the intelligence and virtue of the masses, then it is most clearly the duty of those who frame the laws, but more especially the fundamental law, to establish such provisions as will best promote and most permanently secure those objects, and at the same time tend most effectually to remove from amongst them ignorance and its certain concomitant—vice. The incorporation of such a provision as the one under consideration, into the constitution, would have, I am persuaded, a most salutary effect. It would tend very materially to the elevation of the constituency of our state. It would be a most powerful incentive to the acquisition of the rudiments of an education. No parent would suffer his son to grow up in ignorance, and no young man would be willing to remain in ignorance, when the necessary and inevitable consequence of such ignorance would be to deprive him of the right to vote. Reading and writing have been very aptly denominated the “keys of knowledge.” Is it not important that every person should possess them? Without them the mind must forever remain in darkness. With them the richest stores of human knowledge may be opened for possession. The ability to read is usually attended with a love of reading; and this love or desire, gratified, is continually adding to the stock of knowledge.—The art of writing is important in many respects. Without it a person is unable to avoid the many gross impositions that the crafty and designing are often practising upon the ignorant. From a want of knowledge of this art, thousands of voters are compelled, by the force of these circum-

stances, to submit to vote, as some proud aristocrat in the manufacturing establishments shall dictate, when, if they could write their own ballots, they would vote as they please. By the census of 1840, it appears that there were in this state at that time 44,454 persons, over twenty years of age, who could neither read nor write. A very formidable array of ignorance indeed. Now it appears to me, sir, that every member of this Convention, and every friend of his country and of humanity elsewhere, who does not believe that ignorance is a necessary element of a republican government, must ardently desire to see a radical change in this condition of the constituency of our state. Why should not the state of New York, in her mental, as well as in her physical resources, be, emphatically, the empire state? It would be a proud era indeed, in our state, which every patriot and philanthropist would hail with joy, when it could be said with truth, that there is not a person of the age of maturity within her limits, who cannot both read and write. I am aware of the impatience of the Convention to get at the question on this proposition; and I am aware too of the determination to reject it; but I felt it to be my duty to offer it, and to say what I have in its support. Having done so, I submit it to its fate.

Mr. HUTCHINSON moved the previous question, and there was a second, &c.

The amendment of Mr. GREENE was lost.

The section was also negatived, ayes 6, noes 75. [Ayes—Messrs Dorlon, E. Huntington, Kennedy, Miller, Simmons and Taggart.]

The fourth section was read as follows, and agreed to:—

§ 4 For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms house, or other asylum, at public expense; nor while confined in any public prison.

Mr. MORRIS moved the following additional section; to lie on the table:

§ —. Laws shall be passed compelling parents and guardians to afford their children an opportunity to acquire a good English education.

The fifth section was read, as follows, and agreed to:—

§ 5. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established.

The sixth section was read, as follows:—

§ 6 All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

Mr. TAGGART moved to insert “and village” after “town.” Lost.

The section was agreed to.

The seventh section was read, as follows:—

§ 7. Every elector of this State shall be eligible to any office under this constitution, except as hereinafter otherwise provided. But no person shall be elected or appointed to a local office who is not an elector in the district, county, city, town, or ward, for which he may be elected or appointed.

Mr. BASCOM moved to strike it out.—Agreed to.

The eighth section was read, as follows:—

§ 8. No person holding an office or place of public trust, in or under the Government of the United States, shall be eligible to, or hold any office of public trust, under the constitution or laws of this state.

Mr. MARVIN said that in every town there was a postmaster; and there were also many little offices which were a burthen upon the citizens, such as school inspector, &c., which the postmaster should be allowed to help bear. The provision here was sufficiently made in another article. He moved to strike out the section. Agreed to.

The 9th section was read, as follows:—

§ 9. Colored male citizens possessing the qualifications required by the first section of this article, shall also have the right to vote for all officers that now are, or hereafter may be, elective by the people.

This was recommended by the committee to be submitted separately.

Mr. RHOADES moved the following as a substitute:—

"After the year 1848, no property qualification shall be required to entitle any citizen of this state to the exercise of the right of suffrage."

Mr. MURPHY moved to add—"except as in this article provided." Lost.

The substitute proposed by Mr. RHOADES was rejected—ayes 39, noes 53.

Mr. TAYLOR moved as a preamble to this section, that it be referred to the select committee, with instructions to report the manner of, and the form of the ballot for, its separate submission to the people.

Messrs. WARD and WORDEN supported the motion of Mr. TAYLOR, and it was agreed to, as follows:—

AYES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Brayton, Bruce, Bull, Burr, D. D. Campbell, Candee, Chamberlain, Conely, Cook, Crooker, Dana, Danforth, Dodd, Dorlon, Forsyth, Gebhard, Graham, Greene, Harris, Harrison, Hart, Hoffman, Hotchkiss, Hunt, A. Huntington, E. Huntington, Kingsley, Kirkland, Loomis, McNiit, Marvin, Maxwell, Miller, Munro, Nellis, Nicholas, Parish, Patterson, Penniman, Perkins, Porter, Powers, Rhoades, Richmond, St. John, Salisbury, Sanford, Sears, Shaver, Shaw, Simmons, E. Spencer, W. H. Spencer, Stanton, Stetson, Stow, Strong, Taft, Taggart, Tallmadge,

W. Taylor, Townsend, Warren, Waterbury, Willard, Witbeck, Worden, A. Wright, W. B. Wright, Young

73.
NOES—Messrs. Bergen, Bowditch, Brundage, Cambreleng, R. Campbell, jr., Clyde, Cornell, Dubois, Flanders, Hutchinson, Hyde, Jones, Kennedy, Kernan, Mann, Morris, Murphy, Nicholl, O'Connor, Riker, Shepard, Smith, Swackhamer, J. J. Taylor, Futhill, Vache, White, Youngs—26.

Mr. KENNEDY moved a reconsideration. Laid over.

Mr. STOW offered the following additional sections, and proceeded to advocate their adoption:—

§ —. An elector owning a freehold, or having an unexpired term of not less than twenty-one years in a leasehold, (now existing) may, by an instrument executed by him, declare that he intends to exempt from incumbrances, for debt, the property described in such instrument—the value of such property shall not be less than one hundred, nor more than one thousand dollars.

§ —. The value of the property mentioned in the last section shall be ascertained by the assessors of the town or ward in which it shall be situated; who shall make a certificate of their appraisal.—Such instrument and such certificate shall be acknowledged, or proved in the manner entitling a deed to be recorded, and shall be recorded in the clerk's office of the county in which the property is situated; and notice of such record shall be published in such manner, and for such time as shall be prescribed by law; after such record and notice thereof shall have been duly published, such property shall not be incumbered by, or for, any debt created or contracted by such elector. This privilege shall not enable an elector to hold more than one piece of property thus exempt at the same time; and such exemption shall cease whenever he shall cease to be a resident of this state.

Mr. PERKINS moved to lay the proposition on the table.

Mr. BASCOM demanded the ayes and noes, and the motion was agreed to, ayes 47, noes 41.

Mr. WARD now moved that the article be agreed to and ordered engrossed.

Mr. PATTERSON called for the ayes and noes on this motion, and it was agreed to, ayes 74—[Noes—Messrs. Bergen, Cornell, Flanders, Jones, Mann, Murphy, Nicoll, Shepard, Stephens, Swackhamer, White, Young—13.

Adjourned to 8½ o'clock to-morrow morning.

WEDNESDAY, OCTOBER 7.

No clergyman present.

THE REVISED CONSTITUTION.

The Convention resumed the consideration of the report of the committee on revision.

ART. III ON THE LEGISLATIVE DEPARTMENT.

The Secretary read the sections of this article.

The 1st and 2d were agreed to.

Mr. HARRISON moved a reconsideration of so much of the 3d section, as unites Richmond with Queens and Suffolk in forming the first senate district. He desired its union with Kings. The motion was negative, ayes 44, noes 53.

Mr. SMITH moved a reconsideration of the vote by which the 17th and 18th districts were organized, the former consisting of Schoharie and Otsego, and the latter of Delaware and Chenango. Mr. S. was desirous to unite Chenango with Otsego.

Mr. BURR spoke in opposition to the motion.

He understood the object of the gentleman was to obtain an amendment in the arrangement of the senatorial districts, as established by the Convention, merely to gratify the good people of Chenango county. It would be recollected that heretofore several gentlemen had attempted to arrange the districts in a different manner from that reported by the standing committee, and that the attempt had been abandoned; it being conceded, that the arrangement could not be altered for the better. Nor did the gentleman's proposition better it. The population of Chenango was 39,429; that of Delaware 36,116—forming a district with an excess of only 560. The population of Otsego was 49,761; that of Schoharie 31,855—forming a district with an excess of 6,631. Now, if these two districts were reorganized to suit the gentleman, that formed of Otsego and Chenango would contain an excess of 14,206, while that formed of Delaware

and Schoharie would lack 7,014, thus creating a much greater inequality than now. Personally, he should feel quite indifferent as to this alteration, if this was the only thing aimed at. But there was another plan engrafted upon this.—The Albany and Schenectady, district had an excess of 9,367, and as Albany, for some reason or other, wished to get rid of Schenectady, the plan was to hitch her on to Delaware and Schoharie. He must protest against this scheme. Delaware and Schoharie touched each other endwise, forming a long district. No man could travel the length of the district, by the most direct road short of 120 miles. For all practical purposes, it would be much more convenient for the people of Schenectady to be annexed to Richmond, or the city of New York, than to form a part of such an ill-shaped and inconvenient district. Delaware seemed to be an object of aversion to all her neighbors. Chenango strove to get rid of her, by pushing her on to Schoharie, although Schoharie had as strong an aversion to her as Chenango. He supposed a majority of the people of both counties were unwilling to be connected with Delaware. Was it, then, best for the Convention to reconsider, for the purpose of transposing the four counties forming these two districts, and creating so great an inequality in the population of both, merely for the sake of obliging a portion of the people of Chenango county, when, by the same act, as great a proportion of the people of Schoharie would feel themselves as much dis-obliged? He trusted since all agreed that the districts were formed in the best manner they could be, that they would remain as they were.

Mr. SMITH replied. He said the counties of Chenango, Otsego and Schoharie were content with the change, and the people of Delaware did not object provided they should not be united with Schenectady. The change he contemplated would secure a more natural association, and one more in agreement with the relations of the counties.

The motion to reconsider was adopted—ayes 52, noes 39.

The question then recurred on the motion to arrange the district as proposed by Mr. SMITH.

Mr. HARRIS desired to amend by adding Schenectady to Schoharie and Delaware.

Mr. KENNEDY objected that the vote fixing the district in which Schenectady was placed had not been reconsidered.

The PRESIDENT ruled the motion of Mr. HARRIS out of order.

Mr. JONES moved the previous question, which was seconded—ayes 63, noes 28.

Mr. SMITH'S motion to amend was agreed to—ayes 49, noes 48. So the 17th district consists of Schoharie and Delaware, and the 18th of Otsego and Chenango.

Suggestions having been made by Mr. O'CONOR and Mr. MORRIS, in relation to the phraseology of the section describing the 3d, 4th, 5th and 6th senate districts.

Mr. TAGGART moved the previous question, and the reconsideration was carried—ayes 70, noes 31.

Mr. O'CONOR then moved his amendment, which provided that the senate districts in New York shall consist of contiguous and convenient

territory, and that no assembly district shall be divided in the formation of a senate district, the basis of representation being inhabitants, excluding aliens and persons of color not taxed.

The section was amended accordingly, and as amended was agreed to.

The 4th and 5th sections were read and passed.

An attempt was made by Messrs. MARVIN, CROOKER and others to amend the 6th section, fixing the per diem, &c., of members of the legislature; but there being no record of a motion to reconsider, it was ruled out of order.

The sections from the 7th to the 16th were adopted.

Mr. STETSON desired to amend the 16th section, as reported by the committee of revision. It was as follows:

§ 16. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

He desired to insert after "unless" in the 1st line, the words "two-thirds of all the members elected to each house be present during the last reading and on its final passage" instead of the words "of a majority of all the members elected to each branch of the legislature."

He discussed his amendment at some length.

Mr. MARVIN spoke in opposition to the whole section, and expressed the hope that it would be stricken out. He made that motion.

Mr. RICHMOND, Mr. RUSSELL, Mr. MURPHY, Mr. HARRIS, Mr. MORRIS, Mr. JONES, Mr. VANSCHOONHOVEN and others debated the amendment.

Mr. STRONG moved the previous question and there was a second, and Mr. STETSON'S amendment was rejected—ayes 35, noes 62.

Mr. MARVIN called for the question on his motion to strike out the section.

The PRESIDENT (Mr. PATTERSON, pro tem) decided the question to be on the section.

Mr. MARVIN desired a vote first on striking out, for if that should fail the previous question would be exhausted, and he should have the opportunity to say that if the Constitution were adopted with this section in it, he should vote against the Constitution and take the stump against it, for it would be destructive of all legislative power.

The PRESIDENT reiterated his decision that the motion to strike out was not in order.

A long conversation ensued, and ultimately the question was taken on the adoption of the section, and it was carried—ayes 71, noes 31.

After various resolutions to amend the 17th section, it was adopted.

The 18th section was read thus:—

§ — Provision shall be made by law for bringing suits against the state in the courts thereof, and for regulating their jurisdiction in proceedings in such suits.

Mr. HOFFMAN hoped the section would not be agreed to. He moved to strike it out.

Mr. MARVIN concurred in that motion, and demanded the previous question, but withdrew it at the solicitation of

Mr. STETSON who was understood to be author of the section. He proceeded to explain its provisions, and to call the attention of gen-

plemen to the mode in which claims against the state were disposed of by the legislature.

The section was stricken out.

Mr. TOWNSEND moved an additional section as follows:—

§ — The legislature shall, at its next session after the adoption of this Constitution, provide by law for equalizing the valuation of property for the purpose of taxation, as made by the assessors and supervisors in the respective counties of this state, so that each county shall contribute its proportionate share to the support of government.

Mr. GRAHAM said this was mere legislative matter; and moved to lay it on the table.

Negatived—ayes 37, nays 55.

Mr. BASCOM desired to amend so as not to limit its operation upon the next legislature, for if that legislature should fail to do it, [Mr. KENNEDY—"or do it ineffectually,"] it might be done by their successors.

Mr. TOWNSEND accepted the amendment.

Mr. HARRIS regarded it as a subject not surpassed in importance by any proposition which had been adopted. There was a great necessity for reform in this matter, and he offered a substitute for the section, as follows:—

§ — All property subject to taxation shall be taxed according to its actual value, to be ascertained in such manner as the legislature shall direct, making the same equal and uniform throughout the state. No one species of property from which a tax may be collected, shall be taxed higher than another species of property of equal value.

Mr. WHITE moved to lay the original proposition and the amendment on the table. Agreed to. Ayes 62, noes 44.

Mr. CAMPBELL offered the following as an additional section:—

The legislature shall provide by law for the re-organization of boards of supervisors of the several counties of the state, so as to create a more equal representation in said boards, and may confer upon the same such further powers of local legislation and administration, as shall, from time to time, be prescribed by law.

Mr. CAMPBELL advocated his amendment, and it was adopted; and the section was agreed to, and ordered to be engrossed. Ayes 67, noes 37.

On motion of Mr. LOOMIS, the vote on the 16th section was reconsidered, ayes 67, noes 30. The Convention then took a recess.

AFTERNOON SESSION.

ART. IV.—EXECUTIVE DEPARTMENT.

Article four as reported by the committee of revision, in relation to the Executive, was read section by section.

On motion of Mr. PATTERSON, the article was adopted and ordered to be engrossed—ayes 84, noes 1, [Mr. TAGGART.]

ART. V.—STATE OFFICERS, &c.

Article five, in relation to the state officers, &c., was next read, section by section, down to the 8th, when

Mr. SHEPARD proposed as a substitute, the following:

§ 8 No law shall be passed compelling the inspection, weighing or measuring of any article of merchandise, produce or manufacture, (except salt manufactured within this state,) or prohibiting any person from acting as inspector or measurer of any such article.

Mr. MORRIS objected to this, as permitting the same state of things as existed now. He, however, asked consent to move to amend the section as it stood, by adding after the word protecting, the words "the public health"—so that that part of the section would read:—

"But nothing in this section contained, shall abrogate any offices created for the purpose of protecting the public health, or the interests of the state in its property, revenue, tolls," &c.

Mr. SHEPARD objected to the motion.

Mr. PATTERSON said the amendment ought to be made, but as the objection came from New-York, where they were more interested in it than any other part of the state, so be it.

Mr. MORRIS said he supposed he should be obliged to move to recommit.

Mr. SHEPARD hoped his colleague would withdraw his objection and allow a vote to be taken on his motion. He did not wish to say a word on it. If his colleague would withdraw his objection, Mr. S. would withdraw his.

Mr. MORRIS moved to recommit the section to a committee of one, with instruction to insert the words he had sent up, and to report instanter.

Mr. O'CONOR moved to amend the instructions so as to direct the insertion of the section on the subject reported by the committee of nine. Lost.

Mr. SHEPARD moved to instruct the committee to report the section he had sent up. Lost.

Mr. SHEPARD withdrew his objection to his colleague's proposition.

Mr. MORRIS then asked consent to move his amendment directly to the section.

Mr. COOK now objected, and

Mr. MORRIS renewed his motion to reconsider—which was agreed to.

The PRESIDENT appointed Mr. MORRIS as the committee of one, who immediately reported back the section amended, as ordered, and the section as amended was adopted.

On motion of Mr. KIRKLAND, the article was then agreed to, and ordered to be engrossed, ayes 89, noes 15, as follows:—

AYES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bowdish, Brayton, Bruce, Brundage, Bull, Burr, Cambreleng, R. Campbell, jr., Candee, Chamberlain, Clyde, Conely, Cook, Crooker, Cuddeback, Dana, Danforth, Dodd, Dorlon, Dubois, Gebhard, Graham, Greene, Harris, Harrison, Hotchkiss, A. Huntington, E. Huntington, Hutchinson, Kemble, Kernan, Kingsley, Kirkland, Marvin, Maxwell, Miller, Morris, Munro, Nellis, Nicoli, Parish, Patterson, Penniman, Porter, Powers, President, Rhoades, Richmond, Riker, Kuggles, Russell, St. John, S. Salisbury, Sanford, Sears, Shaver, Shaw, Sheldon, Simmons, E. Spencer, W. H. Spencer, Stanton, Strong, Swackhamer, Taft, Taggart, J. J. Taylor, W. Taylor, Tilden, Townsend, Tuthill, Van Schoonhoven, Warren, White, Witbeck, Wood, W. B. Wright, Yawger, Young, Youngs—89.

NOES—Messrs. Cornell, Hoffman, Hunt, Jones, Kennedy, Loomis, Mann, McNeil, Murphy, O'Conor, Shepard, Stetson, Stow, Tallmadge, Waterbury—15.

ARTICLE VI.—THE JUDICIARY.

The judiciary article was taken up.

Mr. TAGGART proposed to recommit the 8th section, with instructions to strike out the words:—

"Any male citizen of the age of 21 years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this state."

He remarked that he did not believe the proposition desired to be constitutionalized in this instrument, nor did he believe that the people would desire to see the clause retained.

Mr. SWACKHAMER moved to amend by instructing the committee to insert the following in place of the present clause:—

"Every citizen of the State, of good moral character, (except judicial officers excluded by this Constitution) shall be admitted to practice as counsellor, solicitor or attorney in any court of law in this state."

Mr. WORDEN asked if it was worth while to occupy time with this matter? Did gentlemen desire to dispense with good moral character, learning and ability in counsellors and attorneys? These motions struck him as neither practical nor sensible.

Mr. SWACKHAMER replied that this was a matter of no little interest to the public. Such a provision as this had been asked for as long as he could remember. It would not do to say that we had no time. It could be done in five minutes.

Mr. BASCOM said the words "shall be admitted to practice," conflicted with another part of this constitution, which prohibited appointments to office by the courts. Better say—"shall be entitled to practice."

Mr. RICHMOND objected to the learning and ability" being in. He would leave only the good moral character.

Mr. BASCOM cared nothing about it. But strike out the learning and ability and then the lawyers would have no privileges beyond every citizen, black or white.

Mr. WORDEN asked if the gentleman proposed that any man, without responsibility or guaranty, should issue writs and processes against individuals?

Mr. BASCOM: The legislature will take care of that.

Mr. KENNEDY, to put an end to this battle between the lawyers proper and the chimney-corner lawyers, moved to lay on the table.

Mr. TILDEN suggested that the clause had better read perhaps—"possessing the requisite qualifications, except learning and ability."

Mr. RICHMOND That would exclude you.

Mr. STRONG. I think so too.

The motion to lay on the table prevailed, ayes 56, noes 48.

Mr. RUGGLES moved to amend the 11th section, so as to except "justices of superior courts not of record," as well as justices of the peace, from the judicial officers who are to be removable by the Governor and Senate. Agreed to.

Mr. SANFORD moved to recommit the 14th section with instructions to amend the section so that the third sentence of the first clause should read as follows:

"The county court shall have such jurisdiction in cases arising in justices courts, and in such special cases as the legislature may prescribe, and shall have such original civil jurisdiction as may be prescribed by law."

Mr. SANFORD urged his motion, as a matter of sheer justice to the counties, which he said were left without any court in which to collect their debts, between the justices' courts and the supreme court, whilst the cities were furnished with their local courts of original civil

jurisdiction. He added, that the chairman of the judiciary committee was willing the amendment should be adopted.

Mr. PATTERSON moved to lay the motion on the table. This question had been fully discussed, and decided by several strong votes.—Agreed to—60 to 42.

Various propositions to amend were adopted.

Mr. MORRIS here moved a new section providing for the election of a Surrogate in the city and county of New York, to hold for four years—his compensation to be paid by the board of supervisors.

Mr. O'CONOR, Mr. CROOKER, Mr. MURPHY and Mr. LOOMIS thought it entirely unnecessary, the legislature having ample power under the section to make all such provision.

Mr. MORRIS not pressing his amendment, Mr. STOW moved to amend so that Buffalo (as well as New-York) should be excepted from the provision of the last clause, prescribing an uniform organization for inferior local courts. Agreed to.

Mr. RUGGLES asked consent to add to the 17th section the following:—

"Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed, (after due notice and an opportunity of being heard in their defence) by such county, city or state courts as may be prescribed by law, for causes to be assigned in the order of removal."

No objection being made, this amendment was agreed to.

Mr. LOOMIS offered the following farther amendment, which was adopted:—

"In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term."

Mr. SWACKHAMER asked consent to offer his section abolishing the fees of attorneys and counsellors.

Mr. KENNEDY objected—so it could not be reconsidered.

Mr. HARRIS moved to recommit with instructions to add the following section:—

§—In civil actions for libel or slander, the defendant shall be allowed to give in evidence, upon reasonable notice, any facts tending to show that the alleged slander or libel is true, or that he uttered or published the same believing it to be true; and the jury shall have the right of deciding upon the effect to be given to such evidence, either in justification or in mitigation of damages.

The CHAIR ruled this out of order.

The whole article was then adopted by the following vote:—

AYES—Messrs. Allen, Angel, F F Backus, Baker, Bascom, Bruce, Brundage, Cambreleng, R Campbell, Jr., Clyde, Conely, Cook, Dana, Danforth, Dodd, Dorlon, Dubois, Flanders, Graham, Harris, Harrison, Hart, Hoffman, Hotchkiss, A. Huntington, Hyde, Kernan, Kingsley, Loomis, Morris, Munro, Nellis, Patterson, Powers, President, Rhoades, Ruggles, Russell, Shaw, Swackhamer, Taft, J. J. Taylor, W. Taylor, Townsend, Tuthill, Ward, Warren, Witbeck, Wood, A. Wright, W. B. Wright, Yawger, Young—55.

NOES—Messrs. Archer, Ayrault, H. Backus, Bergen, Bowditch, Brayton, Bull, Candee, Chamberlain, Cornell, Cuddeback, Forsyth, Greene, Hunt, E. Huntington, Hutchinson, Jones, Kennedy, Kirkland, Mann, McNeil, Marwin, Murphy, Nicholas, Nicol, O'Connor, Parish, Peniman, Perkins, Richmond, Riker, St. John, Salisbury, Sawyer, Shepard, Smith, W. H. Spencer, Stetson, Stow, Taggart, Tallmadge, Tilden, Waterbury, White, Willard, Worden—46.

ARTICLE VII.—ON THE FINANCES.

The first section having been read,

Mr. HOFFMAN asked consent to amend, so as to insert the word "fiscal" before year, in the third line. He explained that the words in each year, as it stood now, would be construed to mean the calendar year, which he desired to avoid, as the accounts were closed in the public offices on the 30th September in each year, and that was the time he desired to designate.

Mr. MARVIN asked how much the gentleman proposed to take of the revenues of the last fiscal year ending on the 30th September last?

Mr. HOFFMAN :—It would be one-third of the \$1,300,000—as June 1, to September 30, would be one-third of the year. As originally written, that was expressed, by saying "and at the same rate for a shorter period."

Mr. WORDEN expressed some doubts about the effect of those words, if the gentleman intended to re-insert them. He suggested that it would be better to strike out "commencing on the first day of June, '46."

Mr. HOFFMAN said that would derange the entire calculation—and no friend of the canals would ask that change.

Mr. WORDEN :—Why not say "and at that rate for parts of the fiscal year?"

Mr. HOFFMAN said he had that in originally; but he did not suppose it was necessary.

Mr. WORDEN said the gentleman's amendment might be construed to mean that the fiscal year was to commence on the first day of June.

Mr. HOFFMAN thought not.

After some further conversation—the word "fiscal" was inserted in two places in the section, before "year," and subsequently, the words "in each fiscal year," when they first occur, were transferred so as to come in after the words "set apart."

The same word was inserted in the second section, and some other verbal amendments made.

Mr. KIRKLAND moved to amend the third section, which appropriates the surpluses, by inserting—"commencing on the first day of October, 1846"—before the words "be applied," towards the close of the section. Otherwise, he said, no money could be appropriated to the enlargement, until September, '47.

Mr. LOOMIS suggested that the words should come in above, after the words "in each year."

Mr. KIRKLAND assented to that.

Mr. STOW enquired what Mr. HOFFMAN's understanding was of the effect of this section, in regard to any surpluses that might accumulate from June last up to the first October.

Mr. HOFFMAN :—They will be entirely in the hands of the legislature, to dispose of as they should think proper. We had no desire to bring them into these sinking funds.

Mr. WORDEN said the enquiry was not understood, or it was not properly answered.

Mr. MARVIN expressed his fears that the effect of these three sections, as amended, would be to take away the earnings of the canals this year from the pledge in the latter part of this 3rd section, to the canals. He thought they were right as they stood before this word fiscal was inserted.

There was a good deal of conversation here,

between Messrs. WORDEN and HOFFMAN, as to whether the words "and at the same rate for a shorter period," were inserted with the word "fiscal" in the 1st section. Mr. WORDEN insisting that they were not and should not be there.

Mr. WHITE also insisted that nothing could be more clear than that this sum of \$1,300,000 was to be taken from the canal revenues every year, for nine years, commencing on the 1st of June, 1846; and that there could be no difficulty in keeping the account at the public offices, without these words "and at the same rate" &c, or even the word "fiscal."

The PRESIDENT deciding that the words "and at the same rate for a shorter period," that they were not properly inserted, they were, on motion, stricken out.

COLORED SUFFRAGE.

Mr. RUSSELL, from the committee of revision, submitted according to order, resolutions prescribing the form of submitting separately the section in relation to colored suffrage, which was laid on the table to be printed.

Mr. RICHMOND moved a reconsideration of the judiciary article.

The financial article was again taken up, and Mr. KIRKLAND withdrew his amendment to the 3rd section.

Mr. W. TAYLOR moved to add after "Black river canal" the words "and the Oneida river improvement."

Mr. WORDEN understood that there would be at the end of this fiscal year, aside from this constitutional provision, a considerable amount of funds to appropriate to this and other works.

Mr. CHAMBERLAIN explained that provision had been made by law, which was now in force, for making the Oneida river navigable for boats drawing three feet water. That was all that could be necessary.

The amendment was rejected.

Mr. STOW again asked Mr. HOFFMAN to state the effect of this third section, as he understood it.

Mr. HOFFMAN said he had before said distinctly, that he supposed, taking these sections as they were, that any surplus on hand on the 1st day of October, not necessary to meet the requisitions of the two first sections, would undoubtedly be at the disposition of the legislature. He had no doubt about it himself. The Convention acted with a knowledge of the manner in which the public accounts were kept. The public officers would give a construction to the sections accordingly, believing the Convention to be well advised in the matter. He believed the surpluses, after satisfying the two first sections, would be entirely at the discretion of the legislature.

Mr. STOW moved to insert, after "revenues of said canals," third line from the bottom, "including the surplus on the first day of October, 1846."

Mr. J. J. TAYLOR objected.

Mr. HOFFMAN said it had better be left as it was. Better not disturb what it had cost us so much time and labor to agree on. It was a matter of very little consequence.

Mr. STOW said he would withdraw the pre-

position, with the understanding that it was to stand as it was, without alteration.

The third section was then adopted.

Some change was made in the phraseology of the twelfth section, at the suggestion of Mr. BAKER.

Mr. HOFFMAN remarked upon the fourteenth section, that when it was drawn it was not known what rule would be adopted in regard to the passage of bills. The Convention had since required a majority of all elected to pass every bill. This section would require, in the cases mentioned, three-fifths of all elected to be present. He desired this additional guaranty for safe legislation; and he should prefer to say two-thirds.

Mr. WORDEN suggested that this would put it in the power of two-fifths, by withdrawing, to defeat wise legislation.

Mr. HOFFMAN replied that the house from which they retired would deserve infamy if it did not imprison them for it. He had no doubt of the power of the two houses over members, and he never would have the least hesitation in exercising it.

Mr. MARVIN approved of the principle of requiring three-fifths to be present on such questions as these. But he suggested to the gentleman from Herkimer who had been so careful to guard this matter, that he had overlooked another provision in this constitution which permitted 44 members (or two-thirds of those pre-

sent) to pass a bill against a veto—when it required 65, or a majority of all elected, to pass it in the first instance.

Mr. WHITE moved that the article be agreed to, and ordered to be engrossed.

Mr. MARVIN begged to say one word. This article had originally consisted of two parts. He would have been glad to have voted for the first part, which secured the payment of the state debt and the completion of the unfinished works, but the second contained principles which he could not sanction. He gave this as his reason for voting in the negative.

The article was adopted by the following vote:—

AYES—Messrs. Allen, Angel, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bergen, Bowdish, Brayton, Bruce, Bull, Cambreleng, R. Campbell, Jr., Canoe, Chamberlain, Conely, Cook, Cornell, Cuddeback, Dana, Danforth, Dodd, Dubois, Forsyth, Graham, Harrison, Hoffman, Hotchkiss, Hunt, A. Huntington, Hyde, Kemble, Kennedy, Kernan, Kingsley, Kirkland, Loomis, Mann, McNeil, Maxwell, Morris, Munro, Nellis, Nicoll, O'Connor, Parish, Patterson, Perkins, Prest, Richmond, Riker, Ruggles, Russell, Salisbury, Sanford, Shaver, Smith, W. H. Spencer, Stanton, Stephens, Stetson, Strong, Swackhamer, Taft, Taggart, W. Taylor, Tilden, Townsend, Tuthill, Warren, White, Willard, Witbeck, Worden, A. Wright, W. B. Wright—77.

NOES—Messrs. Flanders, E. Huntington, Hutchinson, Marvin, St. John, Shepard, Stow, Young, Youngs—9.

The Convention then adjourned to 8½ o'clock to-morrow morning.

THURSDAY, OCTOBER 8.

No clergyman present.

FUNDS IN CHANCERY.

Mr. MANN made a report from the select committee, to whom was referred the several returns from the court of chancery in relation to the funds in its charge, to which the following resolutions were appended:—

Resolved, That this Convention recommend to the next legislature to provide by law for transferring, securing and depositing all funds and securities, now held, or which may hereafter be held, or under the control of the court of chancery, register, assistant register and clerks thereof, in the state or county treasuries, or make such other provisions as shall be deemed expedient to effect the investment, safety and security of said funds and property, and the convenience of the persons interested therein.

Resolved, That the several returns and statements now in the possession of the Convention, made in pursuance of a resolution passed August 13th, and directed to the chancellor, with the returns and statements yet to be received from the first district (New-York) in compliance with said resolution, be transmitted to the legislature, with a request to that body to have them printed complete, and one or more copies thereof forwarded to each of the county clerks in this state for public use and inspection: That the secretary of this Convention transmit a copy of these resolutions, with the documents and statements relating thereto, to the next legislature.

The resolutions were laid on the table and ordered to be printed.

BOARDS OF SUPERVISORS.

Mr. STRONG offered the following, and moved that the engrossing committee be instructed

to engross it as a section of the constitution instead of that heretofore passed:—

§ —. The legislature may provide by law for conferring upon the several boards of supervisors in this state such powers of local legislation and administration as shall from time to time be prescribed by law.

Objection being made,

Mr. STRONG moved to lay all prior orders on the table to enable him to make his motion in order. Carried.

Mr. STRONG then renewed his motion, and under the previous question it was adopted, 80 to 24.

TAXATION IN CITIES AND VILLAGES.

Mr. MURPHY moved instructions to the committee on revision to report the following section:

§ —. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and especially to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations.

Mr. VAN SCHOONHOVEN moved to add to the section, the following:

"But shall not affect any existing legislative provisions respecting liabilities heretofore incurred by any city or village corporation."

Mr. NICHOLAS moved the previous question and the amendment of Mr. V. S. was negatived—37 to 39.

Mr. HARRIS now moved to strike out the three last lines.

Mr. MURPHY opposed the motion. He said he inserted those lines that there might be some signification given to the resolution, which he proceeded to explain.

Mr. NICOLL moved the previous question on the whole section.

The amendment of Mr. HARRIS was rejected, and the section offered by Mr. MURPHY adopted, ayes 94, noes Messrs. Dodd and Townsend—2.

Mr. DANFORTH moved that members be allowed to change their votes upon the 3d article, the character of that article having been essentially changed by the adoption of the resolution offered this morning by Mr. STRONG.

Mr. PATTERSON moved to lay the pending order of business on the table. Agreed to.

Mr. HARRIS, from the committee on revision, reported back the section presented by Mr. MURPHY, and it was agreed to.

ARTICLE VIII—ON BANKING.

The Convention resumed the report of the committee on revision—the eighth Article being under consideration.

Mr. RICHMOND moved a reconsideration of the 2d section, which requires a majority vote to pass general corporation laws, &c.

Mr. PATTERSON and Mr. RUSSEL remarked that this section was now unnecessary, as by a previous section a majority vote had been required for all laws.

Mr. VAN SCHOONHOVEN urged the reconsideration that the vote on laws of this kind might be increased to two thirds.

Under the previous question the motion to reconsider was lost—43 to 54.

The section was rejected—ayes 17, nays 79.

Mr. TAGGART moved to amend the 5th section so that it would read, "but corporations or associations may be formed for such purposes under the general laws." Agreed to.

The 7th section is as follows:—

§ 7. The legislature shall provide by law for the registering of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

Mr. CAMBRELENG moved to add at the end of the section as follows:—

"But no deposit of securities shall be required from banks now existing and incorporated by special acts."

Mr. HOFFMAN had no doubt this was now the construction of this section, and he objected to the amendment.

Mr. CAMBRELENG appealed to him to withdraw the objection, but Mr. H. refused.

Mr. HARRIS hoped the amendment would be passed, as it would satisfy all parties and allay the feeling which now prevailed among those interested in safety fund banks. He moved to recommit, with instructions to add the amendment moved by Mr. CAMBRELENG.

Mr. TOWNSEND opposed this motion.

Mr. HOFFMAN said this was an attempt to disturb the compromise which had been agreed upon. As the matter now stood, the legislature would or would not require additional security from the safety fund banks. But adopt this amendment and you make these banks constitutional libertines, free to act as they pleased, with no power of control by the legislature.

Mr. STOW concurred with Mr. HOFFMAN, that this would be a dangerous provision. The

section was abundantly guarded as it stood, but if this clause should be inserted, it might give a very unsafe construction to the remainder of the sections.

The motion of Mr. HARRIS was negatived—ayes 22, noes 71.

Mr. MONRO moved to strike out the word "shall," where it occurs the second time, and insert "may."

Mr. HOFFMAN objected.

The 8th section is as follows:

The stockholders in every corporation and joint-stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, after the first day of January, 1860, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind, contracted after the said first day of January, 1860.

Mr. KIRKLAND, for the purpose of inserting the words "hereafter formed" after the words "banking purposes," moved a reconsideration of the section. Mr. K. said his object was that this constitution might not seem to encourage on its face what every lawyer knew we could not do.

Mr. BAKER hoped the reconsideration would prevail for another reason. There had been a motion made to amend the last line, by striking out the words "debts and liabilities of every kind contracted," and insert "notes or bills issued for circulation." Mr. B. showed the necessity for this restriction.

Mr. CAMBRELENG contended that all these apprehensions were ill-founded, and hoped this section would not be disturbed.

Mr. MURPHY should vote for the section, although he protested against the inconsistencies of this article.

Under the previous question, the motion to reconsider was negatived: ayes 39, noes 56.

The last section was then read.

On the question of agreeing to the article and ordering it engrossed,

Mr. MARVIN called for a division, so that the question should first be taken upon that part of it which consisted of the report on corporations other than banking. That portion he was in favor of; but the remainder he was opposed to, and he could not see how a majority of the Convention could consent to see it incorporated in the Constitution.

Mr. CAMBRELENG did not know why there should be a distinction made between different kinds of corporations.

Mr. MARVIN again opposed the adoption of the latter part of the article, relating to banking corporations, the provisions of which he said would throw the whole business of banking into the hands of the John Jacob Astors, or mere men of straw.

Mr. BRUCE asked consent to offer the following additional section, but it was objected to:—

All special laws granting the power to take private property for public use by any corporation or association (without the assent of the owners thereof,) or granting a franchise or right of way on the public highways or streams of this State, shall be passed by the votes of two-thirds of all the members elected to each branch of the Legislature.

Mr. CAMBRELENG moved the previous

question on the whole article, and it was seconded.

Mr. MARVIN called for a division, but it was ruled out of order.

Mr. M. then asked unanimous consent for such a division.

Mr. CAMBRELENG objected.

Some conversation here ensued as to whether Mr. Bruce's section was in order.

The CHAIR finally put the question to the Convention whether it should be considered, and there were, ayes 43, noes 54.

The whole article was then adopted, ayes 65, noes 38.

ARTICLE IX—ON EDUCATION.

The ninth article, on education, was next taken up.

The only section reported on this subject by the committee on revision is as follows:

§ 1. The proceeds of all lands belonging to this state except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States, and such as are contiguous to the salt springs, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund; the interest of which shall be inviolably appropriated to the support of common schools throughout this state.

Mr. NICOLL moved to recommit with instructions to substitute for this the report of committee No. 12.

Mr. NICOLL explained and advocated these sections.

Mr. TALLMADGE agreed heartily with his friend in one half of his speech, and differed in toto with the rest. In all that he said about education, he fully concurred, but in these two-penny provisions about the appropriation of these funds, he hoped we should have nothing to do with them. He would leave the legislature free to act on this subject of schools, and there was no necessity for a single additional provision in this constitution.

Mr. PATTERSON said if the Convention went beyond the provisions of the section reported by the committee of revision, and made provision for the permanent application of the U. S. deposit fund—which he was glad to see the gentleman from New-York (Mr. NICOLL) recognize as the property of the state—he (Mr. P.) thought some provision should be made for it in the constitution. While he could agree to make all necessary provision for our present good system of common schools, he should be opposed to so doing at the expense of the academies. Mr. P. went on to state the provisions of the present law, by which \$110,000 was given to the schools upon condition that an equal amount should be raised by the people. This sum goes towards paying for sites, buildings, libraries, &c., while the academies have but \$28,000 from the literature fund, and there were few of the latter who were able to get along without passing round the hat every year. The common schools were in a great measure rendered free, but the students in academies were obliged to pay for their education and find themselves. These higher seminaries must be preserved for the purpose of furnishing teachers in the common schools. The Normal school here might go far towards supplying this necessity, but it could not be supposed that it would be entirely

sufficient for the purpose designed. Under this view he could not consent to the 5th section as it stood, and he was glad to know that the chairman of the committee was willing to alter it. He should himself (Mr. P.) present an amendment to that section when it came up.

Mr. TUTHILL moved to substitute for the entire report his minority article on the same subject.

Mr. WILLARD moved to amend this substitute by striking out and inserting the first section of his own report:—

§ 1. The proceeds of all lands belonging to this state except such parts thereof as may be reserved or appropriated to public use or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, and all monies heretofore appropriated by law to the use of said fund, and which may be hereafter added thereto, shall be and remain a perpetual fund, the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this state.

Mr. PERKINS opposed any action that would injure or break down academies. He believed the present appropriation from the state treasury was abundant to secure the education of every child in the state.

Mr. RICHMOND regretted that there was not time to discuss this very important subject, in all its bearings, as it deserved. He desired to call especial attention to the last clause of the article, which provided that the amount of expense remaining after the application of the public fund, shall be defrayed by taxation upon the town. He believed that under such a provision, the expenses would be greatly enhanced. Make the districts themselves responsible for the expense, and then the people would be likely to have some interest in the condition of their schools, which was the life and support of them in all cases.

Mr. NICOLL said he proposed to strike out the first clause of the 6th section, and leave to the legislature to determine in which way the expenses of free education should be defrayed. He wished merely to obtain an expression by the Convention upon this great subject.

Mr. A. W. YOUNG spoke at some length upon the general subject.

Mr. HOFFMAN did not rise to say anything upon the subject of education, or the best system of education. Any attempt to discuss that subject he apprehended would bring the Convention to its certain death; for although the Convention might not adjourn, the members would. All that we could hope to do, might be done in a short section, securing the principal of the school fund, the literature fund, and the United States deposit fund, and rendering them inviolate. He hoped leave might be granted him to offer an amendment, which would cover all that the Convention could hope to do upon this matter. His proposition was as follows:—

§ 1. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenues of the said literature fund shall be applied to the support of academies, and the sum of \$25,000 of the revenues of the United States deposit fund shall each year be appropriated to and made a part of the capital of the said common school fund.

Mr. PATTERSON thought this the best pro-

position which had been offered on the subject. He commented upon its various provisions and thought the only question in it which should claim the attention of the Convention was, whether the sum named by him (\$25,000) was too large or too small. Was it not a little too large to preserve inviolate the present appropriations? That was the only question.

Mr. HOFFMAN (his motion being objected to) moved to lay the motion to recommit on the table.

Mr. MURPHY inquired if this motion to lay on the table would carry the section in relation to free schools?

The CHAIR replied in the affirmative.

Mr. TOWNSEND inquired if Mr. HOFFMAN's section would then be susceptible of amendment?

The CHAIR replied in the affirmative.

The motion to lay on the table prevailed—ayes 78, noes 22.

Mr. HOFFMAN then offered his substitute.

Mr. O'CONOR moved to amend by striking out "25,000" and insert 20,000."

Mr. KIRKLAND hoped this would be acceded to, as this was just about the amount of surplus of that fund. With that modification, he hoped the section offered by Mr. HOFFMAN would be adopted.

Mr. RUSSELL moved the previous question, and it was seconded.

The amendment of Mr. O'CONOR was negatived, ayes 35, noes 66.

The section itself was then adopted—ayes 104, noes 3.

Mr. NICOLL offered as an additional section the proposition to *submit to the people separately* the proposition to establish Free Schools, which is as follows:—

§ 6. The Legislature shall provide for the free education and instruction of every child of the state, in the common schools now established, or which shall hereafter be established therein.

Mr. NICOLL moved the previous question, and it was seconded.

The section was adopted by the following vote: ayes 57, noes 53.

Mr. DANFORTH laid on the table a motion to reconsider.

The section was then referred to the committee for the purpose of preparing the form of the ballot.

Mr. RUGGLES moved the following additional section:—

§ —. The Legislature shall at the same time provide for raising the necessary taxes to carry into effect the provisions contained in the preceding section.

Mr. RICHMOND moved to amend by inserting "in each school district," after the word "taxes."

Mr. WARD advocated the amendment of Mr. RUGGLES, and was followed on the same side by Mr. RUSSELL.

Mr. JONES moved the previous question and it was seconded.

The amendment of Mr. RICHMOND was agreed to.

The section was also adopted, ayes 82, noes 26.

Mr. RUGGLES moved that this be submitted separately in connection with the preceding. Agreed to

Mr. NICHOLAS moved that the 9th article be agreed to, and ordered engrossed.

Mr. CROOKER moved a recess. Agreed to.

AFTERNOON SESSION.

Mr. LOOMIS moved to recommit the 9th article, (on education,) with instructions to strike out the two last sections, which were ordered to be submitted separately.

Mr. TAGGART sustained, and Mr. TOWNSEND opposed the motion, and under the previous question it prevailed, 61 to 27.

Mr. Loomis being appointed the committee, reported as instructed, and

The article, as amended, was adopted and ordered to be engrossed, without a division.

ARTICLE X—ON LOCAL OFFICERS.

The first section having been read,

Mr. CROOKER moved a reconsideration of the vote by which it was adopted, for the purpose of making the term of sheriffs, &c., two instead of three years. He moved the previous question on his motion, and it was seconded, &c.

The Convention refused to recommit, 17 to 81.

Mr. ANGEL said it had been suggested to him that the first line of the 2d section might make officers now elective, permanent, preventing the legislature from abolishing them. It was, "all officers now elective by the people, shall continue to be elected." He saw no necessity for it and moved to strike it out.—Agreed to.

Mr. W. TAYLOR moved an additional section as follows:

The political year and legislative term shall begin on the first of January, and the legislature shall every year assemble on the first Tuesday of January, unless a different day shall be appointed.

Some verbal amendments were made on motion of Mr. PATTERSON and Mr. MURPHY, and the article adopted and ordered to be engrossed, ayes 101, noes 1, [Mr. E. Huntington.]

ARTICLE XI—ON THE MILITIA.

The 11th article being next under consideration, the first section was as follows:—

§ 1. The militia of this state shall at all times hereafter be armed and disciplined and in readiness for service; but all such inhabitants of this state of any religious denomination whatever as from scruples of conscience may be averse to bearing arms, shall be excused therefrom by paying to the state an equivalent in money, and the legislature shall provide by law for the collection of such equivalent to be estimated according to the expense in time and money of an ordinary able bodied militia man.

Mr. BASCOM obtained unanimous consent to strike out all after the word "therefrom," in the 5th line, and to insert in lieu thereof, the words, "upon such conditions as shall be prescribed by law."

Mr. FORSYTH moved to strike out the two first lines of the third section as follows: "The Governor shall nominate, and with the consent of the Senate, appoint all major generals and the commissary general," and insert, "All major generals shall be elected by the officers of the several brigades comprising the division."

Mr. LOOMIS hoped not. He disliked this close corporation system, and he hoped it would not be extended by the new constitution.

Mr. WARD opposed the motion, saying that

this question had been fully discussed and settled, and he hoped the Convention would not now reverse its decision.

Mr. FORSYTH in reply to Mr. Loomis, urged that the close corporation system, would in effect be perpetuated as well under the one mode of appointment as the other.

Mr. WHITE moved the previous question, and there was a second, and the motion lost.

The article was read through and adopted, and ordered to be engrossed: ayes 95, noes—Messrs. Jones, W. H. Spencer, and Warren—3.

Mr. PERKINS called attention to the fact that with the exception of the treasurer, there was no provision made for the removal of officers having charge of public funds. To supply this omission, he moved the following:—

§ 1. The Governor, Lieut. Governor and Chief Justice of the Court of Appeals, shall constitute a commission for hearing and investigating all suspicions and charges of embezzlement, fraud, oppression, gross neglect, or other malversation in office, of all officers, (except judicial,) whose powers and duties are not local, and who shall be elected at general elections.—They shall have power at all times to compel the attendance of witnesses and the production of papers; to examine all books, accounts, acts and omissions of such officer. They may, under such regulations as shall be prescribed by law, remove such officers, and appoint others in their place; but before any such officers shall be removed he shall be furnished with a copy of the charges made against him, and be heard in his defence. Upon the removal of any such officer, a copy of the charges and the evidence taken in support of the same, shall be filed in the office of the Secretary of State. Officers appointed by any body, or board of public officers, may except as otherwise provided in this constitution, be removed under such regulations as may be prescribed by law.

Mr. MARVIN moved to strike out the words "suspicions and," in the third line. Agreed to.

Mr. VAN SCHOONHOVEN moved to insert "official" before "books" in the eighth line.—Agreed to.

Mr. PORTER moved to insert "legislative and" before "judicial," in the parenthesis. He feared giving this inquisitorial power, which in high partizan times might be used to remove legislators as well as others, merely for the purpose of substituting agents of the appointing or removing power. Agreed to.

Mr. KIRKLAND moved the following substitute for the section:

§ 1. Provision shall be made by law for the removal for misconduct or malversation in office of all officers (except judicial) whose powers and duties are not local and legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removals.

Under the previous question this was adopted, 51 to 24.

Mr. STOW offered the following additional section:—

§ 2. The legislature may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this Constitution.

This was also agreed to.

Mr. JONES moved that these two sections be adopted and ordered engrossed as a part of article X. Agreed to.

ARTICLE XII—ON OATHS.

This article, which is the same as in the old constitution, was adopted and ordered to be engrossed, without amendment.

ARTICLE XIII—FUTURE AMENDMENTS.

Mr. CROOKER moved to recommit with in-

structions to strike out the second section, (providing for future Conventions.) Lost.

The article was adopted and ordered to be engrossed.

MISCELLANEOUS.

This article provides for the expiration of the terms of offices abolished, and the commencement of the term of all others, and the organization of the new Government in general.

The 3rd section which provides for the Secretary of State, &c., loan commissioners, and county superintendents, shall hold until the 31st December, '47, was the subject of some conversation—Mr. RUSSELL desiring to insert the Agent of the Clinton Prison, and Mr. CROOKER to strike out county superintendents—the latter moving to strike them out. Mr. LOOMIS moved to include in the motion loan commissioners. Both sections were agreed to.

The fourth section was so amended, on motion of Mr. CROOKER, as not to compel the courts to "organize" on the day named in it—by striking out "organize and"

Mr. RUGGLES moved the following addition to the fifth section:—

"The courts of oyer and terminer hereby established shall, in their respective counties, have jurisdiction, on and after the day last mentioned, of all indictments and proceedings then pending in the present courts of oyer and terminer; and also of all indictments and proceedings then pending in the present courts of general sessions of the peace, except in the city of New York, and except in cases of which the courts of sessions hereby established may lawfully take cognizance; and of such judgments and proceedings the courts of session hereby established shall have jurisdiction on and after the day mentioned."

Mr. LOOMIS moved to add between the printed section and the amendment of Mr. RUGGLES, the following:—

"Proceedings pending in courts of common pleas on writs originally commenced in justices' courts shall be transferred to the county courts provided for in this Constitution, in such manner and form, and under such regulations as shall be provided by law."

Both amendments were agreed to, and the section adopted.

Mr. SWACKHAMER inquired by what authority the select committee had left out the section abolishing the offices of masters and examiners in chancery?

Mr. BAKER said this was provided for in the 8th section.

Mr. SWACKHAMER said that was not the same. He moved to recommit the 6th section with instructions to add to it the following:—

"The offices of master and examiner in chancery are hereby abolished"

There was a good deal of warm conversation here between Messrs. SWACKHAMER and RUSSELL, as to the fact whether the committee of revision had or had not transcended their powers, and whether the section in fact abolished the offices of master and examiner.

Mr. JONES moved the previous question, and it was seconded.

The motion of Mr. SWACKHAMER was negatived.

The section was agreed to.

The 8th section is as follows:

§ 8. The offices of chancellor, justices of the supreme court, master in chancery, (except as herein otherwise provided) circuit and county judges, vice-chancellors, assistant vice-chancellor, supreme court commission-

ers, examiners in chancery, and surrogates, as now existing, shall expire on the first Monday of July, 1847.

Mr. BASCOM offered the following substitute :—

§ —. The offices of chancellor, justice of the existing supreme court, circuit judge, vice chancellor, assistant vice-chancellor, judges of the existing county courts of each county, supreme court commissioner, master in chancery, examiner in chancery, and surrogate, (except as herein otherwise provided), are abolished from and after the first day of July, 1847.

After some conversation,

Mr. LOOMIS moved to amend the original section, by making the last clause read as follows :—“ As they now exist are abolished, and shall expire on the first Monday of July, 1847.”

Mr. HARRIS moved to strike out the words “ as they now exist.” Agreed to.

The amendment of Mr. Loomis was agreed to.

The substitute of Mr. Bascom for the original section, as amended, now coming up,

Mr. NICOLL moved the previous question, and it was seconded, and the substitute of Mr. Bascom agreed to.

Mr. RAKER wanted to add after the word “ supreme court commissioner,” “ commissioners to take affidavits to be read in the supreme court.” Objected to.

The 10th section, providing that sheriffs, clerks and coroners in office when this constitution takes effect, shall serve out their terms, was the subject of some conversation.

Mr. HARRIS moved to include “ justices of the peace.” Agreed to; and the section as amended was adopted.

Mr. W. TAYLOR offered the following additional section :—

§ 12. The 8th section of the 5th article, so far as it relates to the offices thereby abolished, shall take effect on the first day of July, next after the adoption of this constitution, except in case where the offices shall sooner expire.

Mr. T. said these were the offices of weigher, gauger, &c., many of whom had made large outlays, and he presumed it was not the intention to do them a positive injury.

Mr. MORRIS inquired if most of these offices did not expire this winter? He understood they were appointed for two years, under Gov. Wright. [A voice—“ under Gov. Young.”] Mr. M. repeated under Gov. Wright.

Mr. STOW :—The gentleman forgets that the law does not recognize remote possibilities. [Laughter.]

Mr. MORRIS was serious about this. His impression was that these officers were appointed at the commencement of this administration, and would go out at the end of two years. If so, there could be no better time to abolish these offices than when they expired.

Under the previous question, moved by Mr. NICOLL the section was rejected—ayes 18, noes 76.

Mr. MORRIS offered the following section :—

§ 12. All courts established in any county or city, and all judicial and other officers of such courts in office on the first day of January, 1847, shall continue with all their respective powers and compensation until the first day of July, 1847, (unless sooner discontinued by the legislature) on which day the term of office of all such officers shall expire. And the courts in cities shall remain with their present powers and jurisdiction until otherwise directed by law.

Mr. MORRIS explained that his object was

to continue the operation of local courts in city and county on the 1st July, 1847, by which time the new judges would be elected and the courts recognized by the legislature.

Mr. NICOLL asked if this would not abolish all our city courts?

Mr. WORDEN said it would abolish clerks now elected and other officers of courts—even the sheriffs. It would abolish all the lawyers besides.

Mr. MORRIS modified the section so as to make it applicable to judicial officers—and

The section, as modified, was adopted.

Mr. RUGGLES inquired if the section would not abolish the superior court in New York?

Mr. O'CONOR : No. It was framed expressly to save these courts.

Mr. MURPHY suggested that provision should be made somewhere for supplying these courts with judges, which was not done in any part of this constitution. He urged that it was but just that if we continued the courts, we should continue in office the incumbents until their terms expired.

Mr. TAGGART moved to strike out the words, “ on which day the term of office of all such judicial officers shall expire.”

Mr. MORRIS said although the city courts were continued in some form, the judges of all of them were to be abolished on the day named in this section—except the three judges of the superior court in New York. If we were to sweep away all these judges, why leave the three judges of the superior court? He trusted we were not going to make fish of one class of judges and flesh of another—but that all would be elective alike.

Mr. MURPHY urged that though there might be a propriety in discontinuing judicial officers when we had reorganized the courts; yet he insisted that it would be improper to put out of office judges of courts which we proposed to continue until the legislature should otherwise direct. There might be grievances in regard to the judges of the superior court in New York; but he protested against applying a rule intended for New York to all other cities. They had good judges in Brooklyn, and desired to sustain them—and not to have a scramble for their seats in a few months. They had been appointed but a short time. He proposed to add at the end of the section the following :—

“ All the judicial officers of such courts shall continue in office until the expiration of their respective terms as now established, unless such courts be discontinued by the legislature.”

Mr. MORRIS disclaimed acting from a mere desire to get rid of the judges of the superior court. He proposed this section as an act of justice and principle—and as in strict accordance with the action of the Convention, which the gentleman had himself sanctioned.

After some further conversation,

Mr. WHITE moved the previous question on Mr. TAGGART's amendment, and it was agreed to.

Mr. NICOLL moved the previous question on Mr. MURPHY's amendment and the section.

The amendment was rejected, and Mr. MORRIS' section, as amended, was adopted, 62 to 12.

Mr. RUGGLES doubted whether gentlemen

were aware of the full operation of this section, and he laid on the table a motion for reconsideration. As he understood it, it abolished the offices of judges of the city courts by implication merely. What we did, should be done directly.

The 6th section was slightly modified at the suggestion of Mr. RHOADES, and on motion of Messrs. RUGGLES and HARRIS.

Mr. ST. JOHN offered the following additional section.—

§—. No public officer shall receive pay from the public treasury for services rendered in two capacities during the same period of time; nor shall any such officer receive pay for constructive services or for services which have not actually been performed.

Mr. NICOLL moved to lay the same on the table. Carried, 52 to 35.

Mr. KENNEDY offered the following:—

§—. All appointments by any legislative body or official board, on whom appointment to office may devolve, shall be made *viva voce*; and a record of the vote of each member shall be entered on their respective journals.

Mr. TALLMADGE moved to lay it on the table for the time being. Agreed to.

SEPARATE SUBMISSION.

Mr. RUGGLES here expressed a desire, before acting on the miscellaneous article, to take the sense of the Convention on the practicability of submitting the judiciary article separately to the people, for approval or rejection. He believed it to be practicable, and if so, a matter of duty, under the injunctions of the Convention act. He read resolutions which he had

drawn up, recommending this subject to the committee of revision, with instructions to rearrange the several sections that had been transferred from the judiciary to the miscellaneous article, and to submit the form of a separate submission of the judiciary article thus rearranged.

After some conversation,

Mr. TALLMADGE moved a reference to the committee on revision, to reconsider their resolution, and inquire into the expediency of submitting the several articles separately as far as practicable.

Mr. RUGGLES moved to amend so as to instruct that committee to report the judiciary article for separate submission.

Mr. PATTERSON insisted that this would be utterly impossible—and that if it were practicable, it would take a month to re-arrange the articles for separate submission.

Mr. RUGGLES insisted that there was no difficulty about it.

Mr. RICHMOND took the same ground.

Mr. O'CONOR concurred also with Mr. RUGGLES that there was no kind of difficulty in submitting this judiciary article separately. He said this after having examined this constitution with reference to this very question.

Mr. BRUNDAGE had leave to record his vote in favor of the 10th article.

On motion of Mr. NICHOLAS, the Convention

Adjourned to 8½ o'clock to-morrow morning.

FRIDAY, OCTOBER 9.

No clergyman present

FUNDS IN CHANCERY

Mr. MANN called for his resolutions reported yesterday from the select committee on the funds in chancery.

Mr. LOOMIS opposed the resolutions. These matters might well be left to the legislature, which must make some provision for the disposition of these funds, the court of chancery being abolished.

Mr. MANN spoke in defence of his resolutions, the passage of which he thought necessary.

Mr. TAGGART trusted that the Convention, after imposing upon the officers in chancery such onerous duties as they had been required to perform, would make some use of the information furnished.

Mr. MILLER moved to lay the first resolution on the table. Carried—42 to 32

The second resolution was adopted.

CITY COURTS.

Mr. RUGGLES moved to reconsider the section adopted last night, on the motion of Mr. MORRIS, relating to courts in cities, for the purpose of adopting the following in its place:—

§—. All local courts established in any city or village, including the Superior Court, Common Pleas and Surrogate's Courts of the city and county of New York, shall remain with their present powers and jurisdiction until otherwise directed by the legislature;

and the judges of such courts and any clerks thereof in office on the first day of January, 1847, shall continue in office until the expiration of their terms of office or until the legislature shall otherwise direct.

The motion to reconsider was agreed to, after a brief explanation by Mr. O'CONOR.

The substitute of Mr. RUGGLES being before the Convention.

Mr. PATTERSON moved to amend by striking out "and any clerks thereof," and also all after "office," near the end of the section and inserting "until the first Monday of July, 1847, and no longer."

Messrs. O'CONOR, PATTERSON, LOOMIS, and WORDEN, discussed this proposition.

Mr. BERGEN moved the previous question, which was seconded.

Mr. PATTERSON's amendment was lost, ayes 35, noes 61, and

The substitute of Mr. RUGGLES was adopted.

Mr. MORRIS asked unanimous consent to transfer the words "until otherwise directed by the legislature."

The section as amended was agreed to.

VIVA VOICE APPOINTMENTS.

Mr. KENNEDY called for the consideration of the section offered by him yesterday, declaring that the votes for all appointments to office by any board upon whom it should be devolved to make them should be given *viva voce*, and entered on the journals of such bodies.

The Convention refused to consider, 34 to 43.
THE REVISED CONSTITUTION.

On motion of Mr. WARD, the Convention proceeded to the unfinished business.

The question was on the 14th article.

Mr. RUSSELL moved the previous question, and the article was agreed to, and ordered to be engrossed.

COLORED SUFFRAGE.

The Convention next proceeded to the consideration of the report of the committee on revision, submitting *separately* the proposition to extend the right of suffrage to colored citizens.

Mr. LOOMIS moved to recommit with instructions to strike out all to the fourth paragraph and insert a provision that the last clause of the first section of the article on suffrage shall be submitted to the people for their approval or rejection; and to amend the remainder of the report in accordance. He desired to avoid the absurdity of having two parts of the same article in direct contradiction with each other.

Mr. NICHOLAS said this would unsettle the freehold suffrage of the colored people. The Convention had decided, by a strong vote, not to deprive them of this right, and that it should not be involved by this special submission of the question of equal suffrage. If the people decided in favor of equal suffrage, the present right would of course become a nullity, but should the special submission fail, he wished, and he believed the Convention intended, that the present freehold suffrage should be continued in full force.

Mr. JONES moved to lay the motion to recommit on the table. Agreed to.

Mr. RUSSELL moved the previous question on the first resolution, and there was a second, and it was adopted—ayes 84, noes 25.

NOES—Messrs. Allen, Cambreleng, Conely, Cornell, Cuddeback, Brundage, Harrison, Hunt, A. Huntington, Jones, Kennedy, Mann, Morris, O'Connor, Perkins, Kiker, Sanford, Shepard, Stephens, Tilden, Vache, Ward, White, Wood, Yawger—25.

Mr. O'CONOR moved to lay the second motion on the table until the supplemental report was taken up. Lost—ayes 20, noes 84.

The second resolution was agreed, to and both ordered to be engrossed.

Mr. TAYLOR offered the following, and it was agreed to:

Resolved, That it shall be the duty of the Secretary of State to cause the Constitution, as proposed to be amended, together with the forms of the ballots, to be published at least twice prior to the election in each of the public newspapers published in this state. Provided, the same shall be published for such reasonable compensation as shall be fixed by the Secretary of State and Comptroller; but no neglect to publish the same in any of the papers of this state shall impair the validity of the notice.

The Convention then took up the supplemental report of the committee on revision, the first resolution, as follows, being under consideration:

Resolved, That in the judgment of this Convention the several amendments to this Constitution, agreed to by this Convention, cannot be prepared so as to be voted upon separately.

Mr. KIRKLAND rose to protest against this resolution. The act under which this Convention had acted required them to submit to the people each article separately, if in the judgment

of the Convention it should be practicable. Deeming it practicable, he could not vote for the resolution.

Mr. BASCOM said the act required another thing. It required them to submit the amended constitution to the people at the coming election, which they should not do, if they spent a week or two in arranging it. He moved the previous question, and

The first resolution was adopted, ayes 70, noes 40.

Mr. O'CONOR offered the following:—

Resolved, That it be referred to a select committee of three to arrange the amendments to the constitution agreed to by this Convention in such manner that the amendments relating to the judiciary, and also the amendment relating to future amendments, may be separately submitted; and that the said committee report the manner of so submitting all said amendments, together with the form of the ballot, within two hours.

Mr. COOK enquired if it was in order.

The PRESIDENT (Mr. WARD pro tem.) decided that it was not, without a reconsideration of the vote just taken.

Mr. O'CONOR appealed, and proceeded to explain. He said the Convention had decided the several amendments could not all be voted upon separately; but it did not follow that some particular articles might not be separately submitted.

Mr. SWACKHAMER contended that the decision of the chair was right.

Mr. HARRIS sustained the chair, and looked upon the appeal as the last struggle against a constitution which was the best that ever was framed. He had never moved the previous question, but he thought this was the proper place to begin. He moved the previous question.

Mr. O'CONOR called for the yeas and nays on seconding, and there were yeas 70, nays 26.

The decision of the CHAIR was affirmed, ayes 74, noes 17.

The 2d, 3d, and 4th resolutions were adopted.

Mr. HOFFMAN here rose and said—"I suppose, Mr. President, that we have now got nearly through with our labors. We have made a Constitution which I admit contains some palpable defects and errors; but I affirm that it contains more excellent matter, got together by this Convention, than any constitution in the whole earth. I suppose that the resolutions just adopted, together with that adopted on the motion of the gentleman from Onondaga, (Mr. W. TAYLOR,) should be ordered to be engrossed with the Constitution as one of the Convention's public acts. I therefore make you that motion."

Mr. NICOLL said this would be done—the resolutions being engrossed on a separate piece of parchment.

Mr. HOFFMAN varied his motion accordingly, and it was agreed to nem. con.

Mr. HOFFMAN then suggested that some member who could write—he could not, and, therefore, he hoped he should not be on the committee—should move the appointment of a committee to prepare a short address to the people to accompany the constitution.

Mr. VAN SCHOONHOVEN hoped the gentleman from Herkimer would make the motion, and he be appointed on the committee; and if writing was inconvenient to him he could obtain an amanuensis.

Mr. NICOLL moved that a committee of three be appointed, of which Mr. HOFFMAN should be the chairman, to prepare the address suggested.

Mr. VAN SCHOONHOVEN suggested that the number of the committee be five.

Mr. NICOLL assented.

Mr. HOFFMAN moved to strike out his own name.

Mr. BASCOM said, we have excused the gentleman from Herkimer a number of times, but I cannot vote to excuse him now.

The motion to excuse Mr. HOFFMAN was negatived. The resolution was then adopted.

The CHAIR designated Messrs. HOFFMAN, NICOLL, PORTER, STOW and _____ as said committee.

Messrs. SMITH and WHITE both called for the consideration of a resolution some time since offered by Mr. CHAFFIELD, to designate the Door-keepers as Assistant Secretaries, in order to secure them the compensation formerly paid to such officers in the legislature.

The resolution was discussed by various gentlemen.

Mr. NICHOLAS said that ours was a government of laws, and the very being of that government depended upon the supremacy of the laws. As constitution makers we should not practice or countenance such an evasion of the law as was now proposed. He would be liberal in the allowance to the attendants on the Convention as far as the law would permit, and if the law was defective and would not remunerate them for their services, he would unite with other gentlemen in a representation to that effect to the legislature, and he had no doubt ample justice would be done them; but he would not evade the existing law. He would not attempt to do by indirect means what could not be done under a fair construction of the existing law.

Mr. MORRIS offered a substitute to the effect that each member of this Convention would contribute his equal quota from his private means, to make up the pay of these officers to \$3 per day.

Mr. JONES offered a substitute requesting the next legislature to make up the pay of these officers to \$3 per day.

Mr. MORRIS withdrew his amendment; and that of Mr. JONES' was adopted.

Mr. CAMBRELENG remarked that there was a class of hard working gentlemen, who had served us faithfully, and who were entitled to our thanks, which were all that we had the power to give them. He offered the following resolution, which was unanimously adopted:—

Resolved, That the six gentlemen, connected with the Albany Argus, Albany Atlas and Albany Evening Journal, as Reporters, viz: Sherman Crowell, Richard Sutton, Wm. G. Bishop, Wm. H. Attree, Wm. H. Hill and Francis S. Rew, be entitled to the thanks of this Convention for the industry and ability with which they have discharged their duty as Reporters for the papers to which they have been respectively attached.

Mr. STOW being compelled to leave the city to-day, asked to be excused from serving on the committee to prepare an address. Agreed to.

Mr. MILLER offered a resolution recommending the next legislature to provide for the payment of the clergymen officiating at this Convention. Adopted.

Mr. WORDEN offered a resolution returning the thanks of this Convention to the clergy.—Adopted.

Mr. NICOLL (for himself and Mr. BAKER) the engrossing committee, reported the Constitution as correctly engrossed upon parchment, which the Secretaries proceeded to read.

At two o'clock, six articles having been read, the reading was suspended, and the Convention took a recess.

AFTERNOON SESSION.

Mr. W. TAYLOR offered a resolution directing the Secretary of State to compare the printed copies of the constitution with the engrossed copy to be deposited in his office, &c., &c., which was agreed to.

The reading of the engrossed constitution was then concluded.

Mr. TAGGART moved that the constitution, as read, be adopted and signed; adding that though there were many things in it that he disapproved, as a whole it was a better constitution than we had ever had, and he was disposed to take it as it was.

Mr. PATTERSON seconded the motion, and hoped it would receive a unanimous aye. That the instrument had defects could not be denied; but on the whole there was so much more in it that he approved, than that he did not approve, that he should give it his hearty approval. He adverted to some of its leading features which gave it a great superiority over the old constitution—glancing at the provisions in regard to the legislative, the judicial, executive and administrative departments—the abolition of hundreds of useless offices—the election of the necessary officers by the people directly—the ample provisions made for the payment of the state debt and the completion of the unfinished works—saying that as a whole, no state in the Union could boast of a better constitution. In the judiciary department particularly, the improvement upon the present system was, in his judgment, greater than in any other department.—He had no doubt the instrument would be adopted by the people by a large majority, and it deserved to be.

Mr. MURPHY said that he felt bound, in consequence of the remarks of the gentleman from Chautauque, who had just taken his seat, to trouble the Convention with one word. With that gentleman he should vote for the Constitution, because he believed that the good exceeds the evil which it contains; but that gentleman had pointed out what he considered to be its merits, and compelled him to speak of one of its most unfortunate features—and now solemnly to protest against it—and that is, the provision which authorizes private property to be taken for certain private purposes—a stretch of power, in his opinion, beyond any exercised by any other country where the fruits of a man's labor are respected.

Mr. RICHMOND also protested against that part of it.

Mr. JONES sent up the following resolution which was adopted:—

Resolved, That the engrossed Constitution be now signed by the members of the Convention, as an attestation thereof; and that those members not now in at-

attendance be at liberty to sign the same at any time previous to the 3d day of November next, in the office of the Secretary of State.

Mr. O'CONOR gave briefly the reasons why he could not record a vote in favor of this constitution—premising that he should not have done so, had not the gentleman from Chautauque given at large the reasons why he should vote for it. He went on to say in regard to the single part of it to which he had given most attention, and which had received from the gentleman the highest commendation—he meant the judicial department—that he thought the Convention had altogether failed to present to the people a constitution which would meet the exigencies of the times, or in any degree remedy the difficulties in this respect, which led to the calling of this Convention—that it did not in any moderate degree meet his approval, and was a most signal failure. It would therefore be his duty to vote against the constitution, and to induce his fellow citizens to take the same course when they came to vote upon it.

Mr. VAN SCHOONHOVEN said, though a vote for this constitution did not imply an approval of every item of it, yet he was prepared to vote for every article in it, as a whole—not however without protesting against the principle alluded to by Mr. MURPHY, and qualifiedly against the judiciary article. As a whole, however, he approved of it, and should vote for it, and do what he could to sustain it at the polls, believing it to be a great improvement on the present constitution.

Mr. STRONG said he too should support this constitution, here and elsewhere—and if he had had doubts about its being approved by the people, he was satisfied from the opposition of many of the lawyers to it, that it would—for opposition from that quarter would only serve to recommend it to the farmers and mechanics of the state.

Mr. WORDEN did not believe that this constitution was to be adopted on any such narrow ground as that, by the enlightened constituency represented here, but because it commended itself to their judgment. He regarded this constitution, as a whole, as an improvement on the science of government—throwing, as it did, upon the people, the responsible duty of keeping their own government under their own control, and of preserving and perpetuating their own rights and liberties. There were provisions in it that he should have preferred to have had changed; but in the fundamental principle to which he had alluded, it was what he desired to see it. He was willing to leave this great experiment of republican government in the hands of the people, with the least possible trammels upon their free action. And this the instrument intended to do—and having framed it, after much labor and in a spirit of compromise and concession, he hoped we should submit it to the people without attempting to influence their action for or against it, by pointing to this or that provision as objectionable—but that the whole instrument would be left to their calm and deliberate judgment.

Mr. CAMBRELENG had hoped the vote on this constitution would have been unanimous, at least for submission. He held up for the imitation of those who based their objection to the

instrument upon a single article—the example of one of the most distinguished statesmen of the Convention of '21, from Oneida, who separated from the few friends with whom he had acted against the details of the constitution, when the question came up on voting for it, and its submission—and this, on the ground that it contained in itself a provision for its own amendment. Mr. C. went on to say that this was the first constitution ever formed that rested, not nominally, but in fact, on a popular foundation—which made your legislative, judicial and executive departments, distinct in reality as well as in name, and all of them springing directly from the people. He went heartily for every article in this constitution. With all its defects, it was sound in principle, from beginning to end. Its only defect consisted in its extent, and in some respects in its language; but in principle it was sound from the first syllable to the last. He should give it his hearty approbation, and he had hoped every member would.

Mr. TALLMADGE suggested that this matter might be adjusted in such a manner as to relieve it of all difficulty, and enable all to sign the instrument, under explanations or otherwise as they desired. He read a resolution to this effect—that the constitution, as now engrossed, and just read, be signed by the President and Secretaries—and that members be desired to attest the same, and subscribe their names thereto as witnesses.

The PRESIDENT remarked that a resolution of similar import had already been adopted.

Mr. STOW felt embarrassed under the form of proceeding ordered by the Convention. An attestation might be regarded as a solemn sanction of the instrument by every member signing it in that form. For one, he would not give his unqualified assent to the instrument.—It might be adopted—for the people would have very little time to examine and discuss it. If adopted, he trusted it might prove to be for the best interests of our common country, and he should then give it his sincere support, and endeavor to carry it out. But now, he was called upon to decide for himself—and his opinion was that this constitution would not meet the first expectations of the state or the country.—It was not such a constitution as he approved; and lest his silence might be regarded as a tacit approval of it, he felt called upon to express this his dissent.

Mr. MORRIS said he should not have said a word but for the remarks of his friend, (Mr. O'CONOR,) and his not less esteemed friend from Erie, (Mr. Stow,) which would go forth among thousands who had not perhaps time to consider this instrument fully, and who might thus imbibe a prejudice against it. There were many things in it that he and others voted against, not because it was not an improvement upon the present constitution, but because he desired to get something better—for there was not a provision in this instrument that he did not regard as an improvement upon the old constitution. Every part and parcel of it was founded on the principle on which our government was based—the intelligence and capacity of the people for self-government—he could with pleasure vote for each and every part of it—believing that it

was destined and calculated to promote the best interests of the people of the state individually and collectively.

Mr. DANA concurred with Mr. MORRIS, protesting however against the principle of making constitutional distinctions between citizens on account of color.

Mr. MARVIN said he would vote for the constitution here, intending however by that, to submit it to the people, for their deliberate consideration. It contained provisions which he had combatted from the beginning to the end—provisions which he believed would be changed in a few years, and through the power of amendment which was contained in it. He would not advert to the particular provisions to which he had often expressed his objections, and which were not, in his judgment, such as the people had a right to expect from us. But there was running through it a popular principle of which he approved most heartily; and in giving his vote for it, he intended to approve of its general tenor, and not to sanction the particular articles in regard to which his opinions were well known—particularly that feature of it which placed trammels on the action of the people through the legislature. These and other defects, he had no doubt would be changed under the power to amend.

Mr. RICHMOND expressed his approval of the popular principle which ran through the whole instrument, and particularly of the provision objected to by Mr. MARVIN, which he thought one of the best provisions in it.

Mr. CHAMBERLAIN said he was one of those who in one branch of the legislature voted against the bill calling this Convention together. He voted against it at the polls, and did every thing he could fairly and honorably to defeat it. Not because he did not think some amendments to the constitution necessary and proper; but because he believed the instrument itself pointed out a way in which it could be amended in such manner as the people might desire. But the people thought otherwise. This Convention was authorized by the people, and they had sent their representatives here to revise the constitution. He was sent here, not expecting however to do much towards perfecting a constitution; but intending rather to guard the interests of his constituents, so far as he could do so fairly and honorably. In that respect he was fully satisfied. He had voted against several articles of this constitution when presented separately. He preferred that the people should have the same opportunity to express their judgment upon each article. But the Convention had willed otherwise, and he submitted to their decision. He dissented from a portion of the instrument; but there were many bright spots about it; and he should sustain it as a whole with great pleasure.

Mr. BRUCE regarded the instrument as far better than the present constitution; and though opposed to some things in it, he should sustain it as a whole, here and elsewhere.

The Convention then proceeded to vote, and the Amended Constitution was AGREED to by the following vote:—

AYES—Messrs. Allen, Angel, Archer, Ayrault, F. F. Backus, H. Backus, Baker, Bascom, Bowditch, Brayton, Bruce, Brundage, Bull, Burr, Cambreleng, R. Camp-

bell, jr., Candee, Chamberlain, Clyde, Conely, Cook, Cornell, Crooker, Cuddeback, Dana, Danforth, Dodd, DuBois, Flanders, Forsyth, Gebhard, Graham, Greene, Harris, Harrison, Hawley, Hoffman, Hotchkiss, A. Huntington, Hutchinson, Hyde, Jones, Kemble, Kernan, Kingsley, Kirkland, Loomis, Mann, McNeil, Marvin, Maxwell, Miller, Morris, Munro, Murphy, Nellis, Nicholas, Nicoll, Parish, Patterson, Penniman, Perkins, Porter, Powers, President, Rhodes, Richmond, Riker, Ruggles, Russell, St. John, Salisbury, Sanford, Sears, Shaver, Shaw, Sheldon, E. Spencer, Stanton, Stephens, Stetson, Strong, Swackhamer, Tait, Taggart, J. J. Taylor, W. Taylor, Tilden, Townsend, Tuthill, Vanschoonhoven, Ward, Warren, Waterbury, Willard, Witbeck, Worden, A. Wright, W. B. Wright, Yawger, Young, Youngs—104.

NOES—Messrs. E. Huntington, O'Connor, W. H. Spencer, Stow, Tallmadge, White—6.

[Gov. BOUCK, Mr. BROWN, Mr. D. D. CAMPBELL, Mr. CHATFIELD, Mr. CLARK, Mr. GARDNER, Mr. HUNTER, Mr. JORDAN, Mr. MCNITT, Mr. NELSON, Mr. SIMMONS, and Mr. SMITH, were absent from the city when the vote was taken.]

Mr. A. HUNTINGTON, of Suffolk, when called to sign the Constitution, briefly remarked, that though a silent, he had not been an inattentive member of the Convention, as his votes on all important questions abundantly testified.

That the instrument embodied some errors, was undoubtedly true, but as a whole, he was satisfied with it; and believed that when our institutions should have been skillfully organized under its great outlines, much benefit would result from it to the community at large. Time would detect its errors, and its own intrinsic provisions would correct them. His friends, he was sure would excuse him, if he exclaimed, in the language of another:—

"The work is done. Nor Folly's active rage,
Nor Envy's self, shall blot the golden page.
Time shall admire—his mellowing touch employ
To mend the immortal tablet—not destroy."

Mr. HOFFMAN, from the committee appointed for that purpose, submitted an Address to the People.

Mr. KENNEDY here said that he should be glad to vote for the constitution if allowed to have recorded on the journal a brief explanation, which he sent up.

Objections being made, it could not be received.

Mr. WORDEN moved that the Address be signed by the President and Secretaries, and be printed with the official copies of the constitution ordered to be printed for distribution. He took the occasion to say that the address was in the cold, rigid, truthful language of the gentleman from Herkimer, and the gentleman would pardon him for saying, it was in the eloquent and forcible manner which that gentleman at all times could command. It presented the naked facts—leaving the people, without any attempt to influence their decision, to form their own conclusions.

The motion was agreed to.

Mr. LOOMIS offered the following resolution, which was agreed to:—

Resolved, That the President do, in Convention, deliver to the Secretary of State the engrossed amended Constitution, to be deposited of record in his office.

Mr. SWACKHAMER offered the following resolution, which was unanimously adopted:

Resolved, That JAMES F. STARBUCK, FRANCIS SEGER and HENRY W. STRONG, are entitled to the thanks of this Convention for the faithful and efficient manner in which they have discharged their duties as secretaries.

Mr. PATTERSON [Mr. CAMBRELENG in the chair *pro tem*,] said he had a resolution to offer which he trusted would receive the unanimous vote of the Convention. It was a resolution of thanks to our presiding officer, and which he took great pleasure in offering. He knew full well the arduous and delicate duties of the chair and he could appreciate the courteous and impartial manner in which they had been discharged. He trusted the Convention would adopt the resolution with a hearty and unanimous aye:—

“Resolved, That the thanks of this Convention be presented to the Hon. JOHN TRACY, for the able, dignified and impartial manner in which he has discharged the arduous and responsible duties of the Chair; and that in retiring therefrom he carries with him the best wishes of every member of this Convention.

The resolution was unanimously adopted.

Mr. E. HUNTINGTON said he gave a very reluctant vote against the constitution. There were many things in it to which he could give his unqualified approval. Indeed, with the exception of the article on the judiciary and that on corporations, he liked the constitution very well. But his objections to these articles prevented his giving a vote for it.

Mr. BAKER, from the engrossing committee, presented the resolutions of submission, &c. and they were adopted.

The SECRETARY of STATE being present,

and the engrossed Constitution having been signed by the members present,

The PRESIDENT delivered it into the hands of the Secretary of State, to be deposited in his office of record.

The PRESIDENT then addressed the convention, as follows:—

Gentlemen:—It is highly gratifying to me, to receive at the close of our labors, the approbation contained in the resolution you have adopted unanimously. With a grateful heart, I return you my sincere thanks.

To form a constitution of civil government, which will best secure the political rights and permanent welfare of a free people, is a work of great magnitude and importance. You have devoted yourselves to this momentous work, and have discharged the high trust committed to you, with great zeal and fidelity. I confidently hope, that the constitution now to be submitted to our constituents, will be ratified by them, and that the people of this state will realize from it the most auspicious results.

It gives me great pleasure, Gentlemen, to acknowledge my obligations to you for the courtesy and kindness you have at all times extended to me, and to assure you of my best wishes for your prosperity and happiness.

On motion of Mr. WARD, the Convention then

Adjourned *sine die*.

THE
CONSTITUTION
OF THE
STATE OF NEW-YORK,
AS AMENDED.

WE THE PEOPLE of the State of New-York, grateful to Almighty God for our Freedom, in order to secure its blessings, DO ESTABLISH this Constitution.

ARTICLE I.

Section 1. No member of this State shall be disfranchised, or deprived of any of the rights or privileges, secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Section 2. The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever. But a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law.

Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Section 4. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Section 5. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Section 6. No person shall be held to answer for a capital or otherwise infamous crime, (except in cases of impeachment, and in cases of militia, when in actual service; and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace; and in cases of petit larceny, under the regulation of the Legislature,) unless on presentment or indictment of a grand jury, and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offence; nor shall he be compelled in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

Section 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the man-

ner to be prescribed by law; but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

Section 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Section 9. The assent of two-thirds of the members elected to each branch of the Legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

Section 10. No law shall be passed, abridging the right of the people peaceably to assemble and to petition the government, or any department thereof, nor shall any divorce be granted, otherwise than by due judicial proceedings, nor shall any lottery hereafter be authorized or any sale of lottery tickets allowed within this State.

Section 11. The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.

Section 12. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

Section 13. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners according to the nature of their respective estates.

Section 14. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

Section 15. All fines, quarter sales, or other like restraints upon alienation reserved in any grant of land, hereafter to be made, shall be void.

Section 16. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid,

unless made under the authority, and with the consent of the Legislature.

Section 17. Such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the Convention of the State of New-York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered, and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof as are repugnant to this Constitution, are hereby abrogated; and the Legislature, at its first session after the adoption of this Constitution, shall appoint three commissioners, whose duty it shall be to reduce into a written and systematic code the whole body of the law of this State, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient. And the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the Legislature, when called upon to do so; and the Legislature shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of the said commissioners; and shall also provide for the publication of the said code, prior to its being presented to the Legislature for adoption.

Section 18. All grants of land within this State, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority, or shall impair the obligation of any debts contracted by this State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

ARTICLE II.

Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ten days, and an inhabitant of this State one year next preceding any election, and for the last four months a resident of the county where he may offer his vote, shall be entitled to vote at such election, in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of color, unless he shall have been for three years a citizen of this State, and for one year next preceding any election shall have been seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation unless he shall

be seized and possessed of such real estate as aforesaid.

Section 2. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, of larceny, or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, from the right to vote at such election.

Section 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms house, or other asylum, at public expense; nor while confined in any public prison.

Section 4. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established.

Section 5. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

ARTICLE III.

Section 1. The legislative power of this State shall be vested in a Senate and Assembly.

Section 2. The Senate shall consist of thirty-two members, and the Senators shall be chosen for two years. The Assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

Section 3. The State shall be divided into thirty-two districts, to be called Senate Districts, each of which shall choose one Senator. The districts shall be numbered from one to thirty-two inclusive.

District number one (1) shall consist of the counties of Suffolk, Richmond and Queens.

District number two (2) shall consist of the county of Kings.

Districts number three (3) number four (4) number five (5) and number six (6) shall consist of the city and county of New-York; and the board of supervisors of said city and county shall, on or before the first day of May one thousand eight hundred and forty-seven, divide the said city and county into the number of Senate Districts to which it is entitled, as near as may be of an equal number of inhabitants, excluding aliens and persons of color not taxed, and consisting of convenient and contiguous territory; and no Assembly District shall be divided in the formation of a Senate District. The board of supervisors, when they shall have completed such division, shall cause certificates thereof, stating the number and boundaries of each district, and the population thereof, to be filed in the office of the Secretary of State, and of the clerk of the said city and county.

District number seven (7) shall consist of the counties of Westchester, Putnam and Rockland.

District number eight (8) shall consist of the counties of Dutchess and Columbia.

District number nine (9) shall consist of the counties of Orange and Sullivan.

District number ten (10) shall consist of the counties of Ulster and Greene.

District number eleven (11) shall consist of the counties of Albany and Schenectady.

District number twelve (12) shall consist of the county of Rensselaer.

District number thirteen (13) shall consist of the counties of Washington and Saratoga.

District number fourteen (14) shall consist of the counties of Warren, Essex and Clinton.

District number fifteen (15) shall consist of the counties of St. Lawrence and Franklin.

District number sixteen (16) shall consist of the counties of Herkimer, Hamilton, Fulton and Montgomery.

District number seventeen (17) shall consist of the counties of Schoharie and Delaware.

District number eighteen (18) shall consist of the counties of Otsego and Chenango.

District number nineteen (19) shall consist of the county of Oneida.

District number twenty (20) shall consist of the counties of Madison and Oswego.

District number twenty-one (21) shall consist of the counties of Jefferson and Lewis.

District number twenty-two (22) shall consist of the county of Onondaga.

District number twenty-three (23) shall consist of the counties of Cortland, Broome and Tioga.

District number twenty-four (24) shall consist of the counties of Cayuga and Wayne.

District number twenty-five (25) shall consist of the counties of Tompkins, Seneca and Yates.

District number twenty-six (26) shall consist of the counties of Steuben and Chemung.

District number twenty-seven (27) shall consist of the county of Monroe.

District number twenty-eight (28) shall consist of the counties of Orleans, Genesee and Niagara.

District number twenty-nine (29) shall consist of the counties of Ontario and Livingston.

District number thirty (30) shall consist of the counties of A. Legany and Wyoming.

District number thirty-one (31) shall consist of the county of Erie.

District number thirty-two (32) shall consist of the counties of Chautauque and Cattaraugus.

Section 4. An enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the Legislature, at the first session after the return of every enumeration, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and persons of color not taxed; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate district, except such county shall be equitably entitled to two or more Senators.

Section 5. The members of Assembly shall be apportioned among the several counties of this State, by the Legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of color not taxed, and shall be chosen by single districts.

The several boards of supervisors in such counties of this State, as are now entitled to more than one member of Assembly, shall assemble on the first Tuesday of January next, and divide their respective counties into Assembly districts equal to the number of members of Assembly to which such counties are now severally entitled by law, and shall cause to be filed in the offices of the Secretary of State and the clerks of their respective counties, a description of such Assembly districts, specifying the number of each district and the population thereof, according to the last preceding State enumeration, as near as can be ascertained. Each Assembly district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and persons of color

not taxed, and shall consist of convenient and contiguous territory; but no town shall be divided in the formation of Assembly districts.

The Legislature, at its first session after the return of every enumeration, shall re-apportion the members of Assembly among the several counties of this State, in manner aforesaid, and the boards of supervisors in such counties as may be entitled, under such re-apportionment, to more than one member, shall assemble at such time as the Legislature making such re-apportionment shall prescribe, and divide such counties into Assembly districts, in the manner herein directed, and the apportionment and districts so to be made, shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section.

Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the Assembly, and no new county shall be hereafter erected, unless its population shall entitle it to a member.

The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member.

Section 6. The members of the Legislature shall receive for their services a sum not exceeding three dollars a day, from the commencement of the session; but such pay shall not exceed in the aggregate three hundred dollars for per diem allowance, except in proceedings for impeachment. The limitation as to the aggregate compensation shall not take effect until the year one thousand eight hundred and forty-eight. When convened in extra session by the Governor, they shall receive three dollars per day. They shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting on the most usual route. The speaker of the Assembly shall, in virtue of his office receive an additional compensation equal to one-third of his per diem allowance as a member.

Section 7. No member of the Legislature shall receive any civil appointment within this State, or to the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member, for any such office or appointment, shall be void.

Section 8. No person being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the Legislature. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Section 9. The elections of Senators and members of Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

Section 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members, shall choose its own officers; and the Senate shall choose a temporary president, when the Lieutenant-Governor shall not attend as president, or shall act as Governor.

Section 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of

each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Section 12. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

Section 13. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

Section 14. The enacting clause of all bills shall be "The people of the State of New-York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

Section 15. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the Legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

Section 16. No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.

Section 17. The Legislature may confer upon the boards of supervisors of the several counties of the State, such further powers of local legislation and administration, as they shall from time to time prescribe.

ARTICLE IV.

Section 1. The executive power shall be vested in a Governor, who shall hold his office for two years: a Lieutenant Governor shall be chosen at the same time, and for the same term.

Section 2. No person, except a citizen of the United States, shall be eligible to the office of Governor; nor shall any person be eligible to that office, who shall not have attained the age of thirty years, and who shall not have been five years next preceding his election, a resident within this State.

Section 3. The Governor and Lieutenant Governor shall be elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant Governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant Governor, the two houses of the Legislature, at its next annual session, shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor, or Lieutenant Governor.

Section 4. The Governor shall be commander-in-chief of the military and naval forces of the State. He shall have power to convene the Legislature (or the Senate only) on extraordinary occasions. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures, as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation to be established by law, which shall neither be increased nor diminished after his election and during his continuance in office.

Section 5. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulation as may

be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Section 6. In case of the impeachment of the Governor, of his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the State.

Section 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor, until the vacancy be filled, or the disability shall cease.

Section 8. The Lieutenant-Governor shall, while acting as such, receive a compensation which shall be fixed by law, and which shall not be increased or diminished during his continuance in office.

Section 9. Every bill which shall have passed the Senate and Assembly, shall, before it becomes a law, be presented to the Governor: if he approve, he shall sign it; but if not, he shall return it with his objections to that house, in which it shall have originated; who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of all the members present, it shall become a law, notwithstanding the objections of the Governor. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

ARTICLE V.

Section 1. The Secretary of State, Comptroller, Treasurer and Attorney-General shall be chosen at a general election, and shall hold their offices for two years. Each of the officers in this Article named (except the Speaker of the Assembly), shall at stated times, during his continuance in office, receive for his services, a compensation, which shall not be increased or diminished during the term for which he shall have been elect

ed ; nor shall he receive, to his use, any fees or perquisites of office, or other compensation.

Section 2. A State Engineer and Surveyor shall be chosen at a general election, and shall hold his office two years, but no person shall be elected to said office who is not a practical engineer.

Section 3. Three Canal Commissioners shall be chosen at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The Commissioners of the Canal Fund shall meet at the Capitol on the first Monday of January, next after such election, and determine by lot which of said Commissioners shall hold his office for one year, which for two, and which for three years; and there shall be elected annually, thereafter, one Canal Commissioner, who shall hold his office for three years.

Section 4. Three Inspectors of State Prisons, shall be elected at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The Governor, Secretary of State, and Comptroller, shall meet at the Capitol on the first Monday of January next succeeding such election, and determine by lot which of said Inspectors shall hold his office for one year, which for two, and which for three years; and there shall be elected annually thereafter one Inspector of State Prisons, who shall hold his office for three years, said Inspectors shall have the charge and superintendence of the State Prisons, and shall appoint all the officers therein. All vacancies in the office of such Inspector shall be filled by the Governor, till the next election.

Section 5. The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, shall be the Commissioners of the Land-Office.

The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer, and Attorney-General, shall be the Commissioners of the Canal Fund.

The Canal Board shall consist of the Commissioners of the Canal Fund, the State Engineer and Surveyor, and the Canal Commissioners.

Section 6. The powers and duties of the respective boards, and of the several officers in this Article mentioned, shall be such as now are or hereafter may be prescribed by law.

Section 7. The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty. The Governor shall appoint a competent person to discharge the duties of the office, during such suspension of the Treasurer.

Section 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity, whatever, are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section contained, shall abrogate any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls, or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

ARTICLE VI.

Section 1. The Assembly shall have the power of impeachment, by the vote of the majority of all the members elected. The court for the trial

of impeachments, shall be composed of the President of the Senate, the Senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment, according to evidence; and no person shall be convicted, without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment, and punishment according to law.

Section 2. There shall be a Court of Appeals, composed of eight judges, of whom four shall be elected by the electors of the State for eight years, and four selected from the class of Justices of the Supreme Court having the shortest time to serve. Provision shall be made by law, for designating one of the number elected, as chief judge, and for selecting such Justices of the Supreme Court, from time to time, and for so classifying those elected, that one shall be elected every second year.

Section 3. There shall be a Supreme Court having general jurisdiction in law and equity.

Section 4. The State shall be divided into eight judicial districts, of which the city of New-York shall be one; the others to be bounded by county lines and to be compact and equal in population as nearly as may be. There shall be four Justices of the Supreme Court in each district, and as many more in the district composed of the city of New-York, as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population, as shall be in conformity with the number of such judges in the residue of the State in proportion to its population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

Section 5. The Legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity, as they have heretofore possessed.

Section 6. Provision may be made by law for designating from time to time, one or more of the said justices, who is not a judge of the court of appeals, to preside at the general terms of the said court to be held in the several districts. Any three or more of the said justices, of whom one of the said justices so designated, shall always be one, may hold such general terms. And any one or more of the justices may hold special terms and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

Section 7. The judges of the court of appeals and justices of the supreme court shall severally receive at stated times for their services, a compensation to be established by law, which shall not be increased or diminished during their continuance in office.

Section 8. They shall not hold any other office or public trust. All votes for either of them, for any elective office (except that of justice of the supreme court, or judge of the court of appeals), given by the Legislature or the people, shall be

void. They shall not exercise any power of appointment to public office. Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this State.

Section 9. The classification of the justices of the supreme court; the times and place of holding the terms of the court of appeals, and of the general and special terms of the supreme court within the several districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law.

Section 10. The testimony in equity cases shall be taken in like manner as in cases at law.

Section 11. Justices of the supreme court and judges of the court of appeals, may be removed by concurrent resolution of both Houses of the Legislature, if two-thirds of all the members elected to the Assembly and a majority of all the members elected to the Senate, concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace, and judges and justices of inferior courts not of record may be removed by the Senate on the recommendation of the Governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of, shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the journals.

Section 12. The judges of the court of appeals shall be elected by the electors of the State, and the justices of the supreme court by the electors of the several judicial districts, at such times as may be prescribed by law.

Section 13. In case the office of any judge of the court of appeals, or justice of the supreme court, shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied at the next general election of judges, when it shall be filled by election for the residue of the unexpired term.

Section 14. There shall be elected in each of the counties of this State, except the city and county of New-York, one county judge, who shall hold his office for four years.—He shall hold the county court, and perform the duties of the office of surrogate. The county court shall have such jurisdiction in cases arising in justices courts, and in special cases, as the Legislature may prescribe; but shall have no original civil jurisdiction, except in such special cases.

The county judge, with two justices of the peace to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the Legislature shall prescribe, and perform such other duties as may be required by law.

The county judge shall receive an annual salary, to be fixed by the board of supervisors, which shall be neither increased nor diminished during his continuance in office. The justices of the peace, for services in courts of sessions, shall be paid a per diem allowance out of the county treasury.

In counties having a population exceeding forty thousand, the Legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.

The legislature may confer equity jurisdiction in special cases upon the county judge.

Inferior local courts, of civil and criminal jurisdiction, may be established by the Legislature in cities; and such courts, except for the cities of New York and Buffalo, shall have an uniform organization and jurisdiction in such cities.

Section 15. The Legislature may, on application of the board of supervisors provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

Section 16. The Legislature may reorganize the judicial districts at the first session after the return of every enumeration under this Constitution, in the manner provided for in the fourth section of this Article and at no other time; and they may, at such session, increase or diminish the number of districts, but such increase or diminution shall not be more than one district at any one time. Each district shall have four justices of the Supreme Court; but no diminution of the districts shall have the effect to remove a judge from office.

Section 17. The electors of the several towns, shall, at their annual town meeting, and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts not of record and their clerks may be removed after due notice and an opportunity of being heard in their defence by such county, city or state courts as may be prescribed by law, for causes to be assigned in the order of removal.

Section 18. All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the Legislature may direct.

Section 19. Clerks of the several counties of this State shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. A clerk for the Court of Appeals, to be ex-officio clerk of the Supreme Court, and to keep his office at the seat of government, shall be chosen by the electors of the State; he shall hold his office for three years, and his compensation shall be fixed by law and paid out of the public Treasury.

Section 20. No judicial officer, except justices of the peace shall receive to his own use, any fees or perquisites of office.

Section 21. The Legislature may authorize the judgments decrees and decisions of any local inferior court of record of original civil jurisdiction, established in a city, to be removed for review directly into the Court of Appeals.

Section 22. The Legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

Section 23. Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law, but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference and agree to abide the judgment, or assent thereto, in the presence of such tribunal, in such cases as shall be prescribed by law.

Section 24. The Legislature at its first session after the adoption of this Constitution, shall pro-

vide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of this State, and to report thereon to the Legislature, subject to their adoption and modification from time to time.

Section 25. The Legislature at its first session after the adoption of this Constitution, shall provide for the organization of the Court of Appeals, and for transferring to it the business pending in the Court for the Correction of Errors, and for the allowance of writs of error and appeals to the Court of Appeals, from the judgments and decrees of the present Court of Chancery and Supreme Court, and of the courts that may be organized under this Constitution.

ARTICLE VII.

Section 1. After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart in each fiscal year, out of the revenues of the State canals, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of one million and three hundred thousand dollars until the first day of June, one thousand eight hundred and fifty-five, and from that time the sum of one million and seven hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the State debt called the canal debt, as it existed at the time first aforesaid, and including three hundred thousand dollars then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

Section 2. After complying with the provisions of the first section of this article, there shall be appropriated and set apart out of the surplus revenues of the State canals, in each fiscal year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt; and after that period, then the sum of one million and five hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the State debt called the General Fund debt, including the debt for loans of the State credit to railroad companies which have failed to pay the interest thereon, and also the contingent debt on State stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever and as far as any part thereof may become a charge on the Treasury or General Fund, until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the monies to the said sinking fund shall at any time be deferred, by reason of the priority recognized in the first section of this article, the sum so deferred, with quarterly interest thereon, at the then current rate, shall be paid to the last mentioned sinking fund, as soon as it can be done consistently with the just rights of the creditors holding said canal debt.

Section 3. After paying the said expenses of superintendence and repairs of the canals, and the sums appropriated by the first and second sections of this article, there shall be paid out of the surplus revenues of the canals, to the Treasury of the State, on or before the thirtieth day of September, in each year, for the use and benefit of

the General Fund, such sum, not exceeding two hundred thousand dollars, as may be required to defray the necessary expenses of the State; and the remainder of the revenues of the said canals shall, in each fiscal year, be applied, in such manner as the Legislature shall direct, to the completion of the Erie Canal enlargement, and the Genesee Valley and Black River canals, until the said canals shall be completed.

If at any time after the period of eight years from the adoption of this Constitution, the revenues of the State, unappropriated by this article, shall not be sufficient to defray the necessary expenses of the government, without continuing or laying a direct tax, the Legislature may, at its discretion, supply the deficiency, in whole or in part, from the surplus revenues of the canals, after complying with the provisions of the first two sections of this article, for paying the interest and extinguishing the principal of the Canal and General Fund debt; but the sum thus appropriated from the surplus revenues of the canals shall not exceed annually three hundred and fifty thousand dollars, including the sum of two hundred thousand dollars, provided for by this section for the expenses of the government, until the General Fund debt shall be extinguished, or until the Erie Canal Enlargement and Genesee Valley and Black River Canals shall be completed, and after that debt shall be paid, or the said canals shall be completed, then the sum of six hundred and seventy-two thousand five hundred dollars, or so much thereof as shall be necessary, may be annually appropriated to defray the expenses of the government.

Section 4. The claims of the State against any incorporated company to pay the interest and redeem the principal of the stock of the State loaned or advanced to such company, shall be fairly enforced, and not released or compromised; and the moneys arising from such claims shall be set apart and applied as part of the sinking fund provided in the second section of this article. But the time limited for the fulfillment of any condition of any release or compromise heretofore made or provided for, may be extended by law.

Section 5. If the sinking funds, or either of them, provided in this article, shall prove insufficient to enable the State, on the credit of such fund, to procure the means to satisfy the claims of the creditors of the State as they become payable, the Legislature shall, by equitable taxes, so increase the revenues of the said funds as to make them, respectively, sufficient perfectly to preserve the public faith. Every contribution or advance to the canals, or their debt, from any source, other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the Treasury, for the use of the State, out of the canal revenues as soon as it can be done consistently with the just rights of the creditors holding the said canal debt.

Section 6. The Legislature shall not sell, lease, or otherwise dispose of any of the canals of the State; but they shall remain the property of the State and under its management, forever.

Section 7. The Legislature shall never sell or dispose of the salt springs, belonging to this State. The lands contiguous thereto and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law and under the direction of the commissioners of the land office, for the purpose of investing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished.

Section 8. No moneys shall ever be paid out of the Treasury of this State, or any of its funds,

or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Section 9. The credit of the State shall not, in any manner, be given or loaned to, or in aid of any individual association or corporation.

Section 10. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not at any time, exceed one million of dollars; and the moneys arising from the loans creating such debts, shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

Section 11. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in War; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Section 12. Except the debts specified in the tenth and eleventh sections of this article, no debt shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.

No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it, at such election.

On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The Legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted, in pursuance of such law, shall remain in force and be irrevocable, and be annually collected, until the proceeds thereof shall have made the provision herein before specified to pay and discharge the interest and principal of such debt and liability.

The money arising from any loan or stock creating such debt or liability, shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever.

No such law shall be submitted to be voted on, within three months after its passage, or at any general election, when any other law, or any bill, or any amendment to the Constitution shall be submitted to be voted for or against.

Section 13. Every law which imposes, continues or revives a tax, shall distinctly state the tax

and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

Section 14. On the final passage, in either house of the Legislature, of every act which imposes, continues, or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust-money or property, or releases, discharges, or commutes any claim or demand of the State, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and three-fifths of all the members elected to either house, shall, in all such cases, be necessary to constitute a quorum therein.

ARTICLE VIII.

Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases wherein the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section, may be altered from time to time or repealed.

Section 2. Dues from corporations shall be secured by such individual liability of the corporations and other means as may be prescribed by law.

Section 3. The term corporations as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

Section 4. The Legislature, shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

Section 5. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation issuing bank notes of any description.

Section 6. The Legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

Section 7. The stockholders in every corporation and joint-stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, after the first day of January, one thousand eight hundred and fifty, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind, contracted after the said first day of January, one thousand eight hundred and fifty.

Section 8. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

Section 9. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

ARTICLE IX.

Section 1. The capital of the Common School Fund; the capital of the Literature Fund, and the capital of the United States Deposit Fund, shall

be respectively preserved inviolate. The revenue of the said Common School Fund shall be applied to the support of common schools; the revenues of the said Literature Fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenues of the United States Deposit Fund shall each year be appropriated to and made a part of the capital of the said Common School Fund.

ARTICLE X.

Section 1. Sheriffs, clerks of counties, including the register and clerk of the city and county of New-York, coroners, and district attorneys, shall be chosen, by the electors of the respective counties, once in every three years and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices.—They may be required by law, to renew their security, from time to time, and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff.

The Governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.

Section 2. All county officers whose election or appointment is not provided for, by this Constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors, of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

Section 3. When the duration of any office, is not provided by this Constitution, it may be declared by law, and if not so declared, such office shall be held, during the pleasure of the authority making the appointment.

Section 4. The time of electing all officers named in this article shall be prescribed by law.

Section 5. The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Section 6. The political year and legislative term, shall begin on the first day of January; and the Legislature shall every year assemble on the first Tuesday in January, unless a different day shall be appointed by law.

Section 7. Provision shall be made by law for the removal for misconduct or malversation in office of all officers (except judicial) whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.

Section 8. The Legislature may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this Constitution.

ARTICLE XI.

Section 1. The militia of this State, shall at all times hereafter, be armed and disciplined, and in

readiness for service; but all such inhabitants of this State of any religious denomination whatever as from scruples of conscience may be averse to bearing arms, shall be excused therefrom, upon such conditions as shall be prescribed by law.

Section 2. Militia officers shall be chosen, or appointed, as follows:—captains, subalterns and non-commissioned officers shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions; brigadier-generals and brigade inspectors by the field officers of their respective brigades; major generals, brigadier generals and commanding officers of regiments or separate battalions, shall appoint the staff officers to their respective divisions, brigades, regiments or separate battalions.

Section 3. The Governor shall nominate, and with the consent of the Senate, appoint all major generals, and the commissary general. The adjutant general and other chiefs of staff departments, and the aids-de-camp of the commander-in-chief shall be appointed by the Governor, and their commissions shall expire with the time for which the Governor shall have been elected.—The commissary general shall hold his office for two years. He shall give security for the faithful execution of the duties of his office, in such manner and amount as shall be prescribed by law.

Section 4. The Legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the Governor.

Section 5. The commissioned officers of the militia shall be commissioned by the Governor; and no commissioned officer shall be removed from office, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the decision of a court martial, pursuant to law. The present officers of the militia shall hold their commissions subject to removal, as before provided.

Section 6. In case the mode of election and appointment of militia officers hereby directed, shall not be found conducive to the improvement of the militia, the Legislature may abolish the same; and provide by law for their appointment and removal, if two-thirds of the members present in each house shall concur therein.

ARTICLE XII.

Section 1. Members of the Legislature and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:—

“I do so solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of New-York; and that I will faithfully discharge the duties of _____ according to the best of my ability.”

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

ARTICLE XIII.

Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of Senators, and shall be pub-

lished for three months previous to the time of making such choice, and if in the Legislature so chosen, as aforesaid, such proposed amendment or amendments, shall be agreed to, by a majority, of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature, voting thereon, such amendment or amendments shall become part of the constitution.

Section 2. At the general election to be held in the year eighteen hundred and sixty-six, and in each twentieth year thereafter, and also at such time as the Legislature may by law provide, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the Legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a Convention for such purpose, the Legislature at its next session, shall provide by law for the election of delegates to such Convention.

ARTICLE XIV.

Section 1. The first election of Senators and Members of Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-seven.

The Senators and members of Assembly who may be in office on the first day of January, one thousand eight hundred and forty-seven, shall hold their offices until and including the thirty-first day of December following, and no longer.

Section 2. The first election of Governor and Lieutenant-Governor under this Constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-eight; and the Governor and Lieutenant-Governor in office when this Constitution shall take effect, shall hold their respective offices until and including the thirty-first day of December of that year.

Section 3. The Secretary of State, Comptroller, Treasurer, Attorney General, District Attorneys, Surveyor General, Canal Commissioners, and inspectors of State Prisons in office when this Constitution shall take effect, shall hold their respective offices until and including the thirty-first day of December, one thousand eight hundred and forty-seven, and no longer.

Section 4. The first election of judges and clerk of the Court of Appeals, justices of the Supreme Court, and county judges, shall take place at such time between the first Tuesday of April and the second Tuesday of June, one thousand eight hundred and forty-seven, as may be prescribed by law. The said courts shall respectively enter upon their duties, on the first Monday of July, next thereafter; but the term of office of said judges, clerk and justices as declared by this Constitution, shall be deemed to commence on the first day of January, one thousand eight hundred and forty-eight.

Section 5. On the first Monday of July, one thousand eight hundred and forty-seven, jurisdiction of all suits and proceedings then pending in the present supreme court and court of chancery, and all suits and proceedings originally commenced and then pending in any court of common pleas, (except in the city and county of New York), shall become vested in the supreme court hereby established. Proceedings pending in

courts of common pleas and in suits originally commenced in justices courts, shall be transferred to the county courts provided for in this Constitution, in such manner and form and under such regulation as shall be provided by law. The courts of oyer and terminer hereby established shall, in their respective counties, have jurisdiction, on and after the day last mentioned, of all indictments and proceedings then pending in the present courts of oyer and terminer, and also of all indictments and proceedings then pending in the present courts of general sessions of the peace, except in the city of New York, and except in cases of which the courts of sessions hereby established may lawfully take cognizance; and of such indictments and proceedings as the courts of sessions hereby established shall have jurisdiction on and after the day last mentioned.

Section 6. The Chancellor and the present supreme court shall, respectively, have power to hear and determine any of such suits and proceedings ready on the first Monday of July, one thousand eight hundred and forty-seven, for hearing or decision, and shall, for their services therein, be entitled to their present rates of compensation until the first day of July, one thousand eight hundred and forty-eight, or until all such suits and proceedings shall be sooner heard and determined. Masters in chancery may continue to exercise the functions of their office in the court of chancery, so long as the Chancellor shall continue to exercise the functions of his office under the provisions of this Constitution.

And the Supreme Court hereby established, shall also have power to hear and determine such of said suits and proceedings as may be prescribed by law.

Section 7. In case any vacancy shall occur in the office of chancellor or justice of the present Supreme Court, previously to the first day of July, one thousand eight hundred and forty-eight the Governor may nominate, and by and with the advice and consent of the Senate, appoint a proper person to fill such vacancy. Any judge of the Court of Appeals or justice of the Supreme Court, elected under this Constitution, may receive and hold such appointment.

Section 8. The offices of chancellor, justice of the existing supreme court, circuit judge, vice-chancellor, assistant vice-chancellor, judge of the existing county courts of each county, supreme court commissioner, master in chancery, examiner in chancery, and surrogate, (except as herein otherwise provided,) are abolished from and after the first Monday of July, one thousand eight hundred and forty-seven, (1847.)

Section 9. The Chancellor, the justices of the present Supreme Court, and the circuit judges, are hereby declared to be severally eligible to any office at the first election under this Constitution.

Section 10. Sheriffs, clerks of counties, (including the register and clerk of the city and county of New-York) and justices of the peace, and coroners, in office, when this Constitution shall take effect, shall hold their respective offices until the expiration of the term for which they were respectively elected.

Section 11. Judicial officers in office when this Constitution shall take effect, may continue to receive such fees and perquisites of office as are now authorized by law, until the first day of July, one thousand eight hundred and forty-seven, notwithstanding the provisions of the twentieth section of the sixth article of this Constitution.

Section 12. All local courts established in any city or village, including the Superior Court,

Common Pleas, Sessions and Surrogate's Courts of the city and County of New York shall remain, until otherwise directed by the Legislature, with their present powers and jurisdictions; and the judges of such courts and any clerks thereof in office on the first day of January one thousand eight hundred and forty seven, shall continue in office until the expiration of their terms of office, or until the Legislature shall otherwise direct.

Section 13. This Constitution shall be in force from and including the first day of January, one thousand eight hundred and forty seven, except as is herein otherwise provided.

DONE, In Convention, at the Capitol, in the City of Albany, the ninth day of October, in the year one thousand eight hundred and forty-six, and of the Independence of the United States of America the seventy-first.

In witness whereof, we have hereunto subscribed our names.

JOHN TRACY, President,
And Delegate from the County of Chenango.
JAMES F. STARBUCK,
H. W. STRONG, } *Secretaries.*
FR. SEGER.

State of New-York, }
Secretary's Office. }

I have compared the preceding with the original engrossed Constitution deposited in this office on the ninth day of October, 1846, and do Certify, that the same is a correct transcript therefrom, and of the whole of said original.

Given under my hand and seal of office, at the City of Albany, the tenth day of October, in the year of our Lord, one thousand eight hundred and forty-six.

N. S. BENTON,
Secretary of State.

The names of the following Delegates are appended to the said engrossed Constitution, to wit:—

ROBERT CAMPBELL, jr.,
GEO. GE. C. CLYDE,
CHARLES P. KIRKLAND,
SAMUEL RICHMOND,
FEDERAL DANA,
JOHN MILLER,
ROBERT C. NICHOLAS,
ORON ARCHER,
PETER YAWGER,
MORSE TAGGART,
STEPHEN ALLEN,
JOHN T. HARRISON,
DANIEL JOHN SHAW,
JOHN J. WOOD,
JULIUS CANDEE,
B. S. BRUNDAGE,
GEO. W. PATTERSON,
WM. B. WRIGHT,
ARSALOM BULL,
BENJ. F. BRUCE,
W. MAXWELL,
JOHN YOUNGS,
JOHN L. STEPHENS,
CAMPBELL P. WHITE,
W. G. ANGEL,
HARRY RACKUS,
GEO. S. MA'N,
CYRUS H. KINGSLEY,
ENOCH STONG,
ROBT. H. MORRIS,
DAVID MUNRO,
RUSSELL PARISH,
AARON SALISBURY,
C. SWACKHAMER,
HORATI' N. TAFT,
SOLOMON TOWNSEND,
WM. C. ROUCK,
FR. DRICK F. BACKUS,
JOHN H. HUNT,
WM. S. CONELY,
ALLEN AYRAULT,
JOHN J. TAYLOR,

GOUV. KEMBLE,
SAMUEL J. TILDEN,
ELIJAH SPRINGER,
ELIJAH RHOADES,
HEN. C. MURPHY,
JOHN NELLIS,
ELISHA W. SHELTON,
HENRY NICOLL,
W. H. VAN SCHOONHOVEN
E. M. MCNIEL,
ARMAXED LOOMIS,
CHARLES H. RUGGLES,
JOHN K. PORTER,
J. L. RIKER,
JAMES T. L' MADGE,
WILLIAM TAYLOR,
GEORGE W. TUTHILL,
ABRAHAM WITBECK,
PERRY WARREN,
L. B. SHEPARD,
TUNIS G. BERGEN,
ALBERT L. BAKER,
ANSEL BASCOM,
JOHN ROWDISH,
HERVEY BRAYTON,
ISAAC FURR,
JAMES M. COOK,
B. F. CORNELL,
GEORGE A. S. CROOKER,
LEWIS CUDDEBACK,
ROBT. DORLON,
GEO. G. GRAHAM,
A. S. GREENE,
IRA HARRIS,
ORRIS HART,
ALONZO HAWLEY,
MICHAEL HOFFMAN,
WILLIAM HOTCHKISS,
ABEL HUNTINGTON,
EDWARD HUNTINGTON,
J. L. HUTCHINSON,
JOHN HYDE,

JONAH SANFORD,
JNO. LESLIE RUSSEL,
D. R. FLOYD JONES,
C. C. CAMBRELENG,
C. T. CHAMBERLAIN,
ANDREW V. YOUNG,
A. W. DANFORTH,
EDWARD DODD,
PETER K. DUBOIS,
JOSEPH R. FLANDERS,
JAMES C. FORSYTH,
JOHN GEBHARD, jun'r,
THOMAS B. SEARS,
DAVID B. ST. JOHN,

PETER SHAVER,
DAVID S. WATERBURY,
WILLIAM KEENAN,
CH. O'CONNOR,
RICH. P. MARVIN,
H. K. WILLARD,
BISHOP PERKINS,
JAMES POWERS,
BENJAMIN STANTON,
L. STETSON,
JOHN W. BROWN,
AARON WARD,
ALVAH WORDEN,
AMOS WRIGHT.

IN CONVENTION OF THE PEOPLE OF THE STATE OF NEW YORK, assembled at Albany, on the first day of June, in the year of our Lord, one thousand eight hundred and forty-six, pursuant to an act of the Legislature of the said State, entitled "An act recommending a Convention of the People of this State," passed May 13, 1845.

Resolved, That in the judgment of this Convention, the several amendments to the Constitution, agreed to by this Convention cannot be prepared so as to be voted upon separately.

Resolved, That the form of the ballots, to be given for the adoption or rejection of the said amendments shall be as follows; on such ballots as are given in favor of the adoption of the said amendments, shall be written or printed or partly written and partly printed, the words "*amended Constitution, yes;*" and on such ballots as are given against the adoption of said amendments, shall be written or printed, or partly written and partly printed the words "*amended Constitution, no;*" and the word "*Constitution,*" shall be written or printed, or partly written and partly printed upon the said ballots in such manner as that when such ballots are folded it shall appear upon the outside thereof.

Resolved, That 10,000 copies of these resolutions, with the said amendments, with the Address of the Convention, and also the present Constitution subjoined be printed, and that the Comptroller cause fifty copies thereof to be forwarded without delay, and at the expense of the State, to each Member of this Convention, and that the remainder in like manner be transmitted by him to the several county clerks, whose duty it shall be to distribute the same among the different towns and wards of this State; also that said amendments be published in the State Paper weekly, until the next election.

Resolved, That the Secretary of State forward immediately to the several county clerks and sheriffs of this state, a copy of the foregoing first and second resolutions. And the said clerks and sheriffs shall cause the said resolutions to be published once in each week in each newspaper published in their respective counties, until the next election, and also a notice that the said amendments will be voted upon at the next general election in the several election districts of the State.

Resolved, That it shall be the duty of the Secretary of State, to cause the Constitution as proposed to be amended, together with the forms of the ballots, to be published at least twice pri-

or to the election in each of the public newspapers published in this state, provided the same shall be published for such reasonable compensation as shall be fixed by the Secretary of State and Comptroller; but no neglect to publish the same in any of the papers of this state shall impair the validity of the notice.

Resolved, That the Secretary of State examine and compare the printed copies of the Constitution, ordered by this Convention, with the engrossed copy, this day filed in the Secretary's office, and certify the same, officially.

Resolved, That at the next general election, and at the same time when the votes of the electors shall be taken for the adoption or rejection of the amended Constitution, the additional amendment in the words following:

"§ . Colored male citizens, possessing the qualifications required by the first section of the second article of the Constitution, other than the property qualification, shall have the right to vote for all officers that now are, or hereafter may be, elective by the people after the first day of January, 1847."

Shall be separately submitted to the electors of this State for adoption, or rejection, in form following, to wit:

A separate ballot may be given by every person, having the right to vote for the amended Constitution, to be deposited in a separate box.

Upon the ballots given for the adoption of the said separate amendment, shall be written or printed, or partly written and partly printed, the words,

"Equal suffrage to colored persons?—Yes."

And upon the ballots given against the adoption of the said separate amendment, in like manner, the words,

"Equal suffrage to colored persons?—No."

And on such ballots shall be written or printed, or partly written and partly printed, the words,

"Constitution: Suffrage."

In such manner that such words shall appear on the outside of such ballot when folded.

If, at the said election, a majority of all the votes given for and against the said separate amendment shall contain the words "Equal suffrage to colored persons?—Yes," then the said separate amendment after the first day of January, 1847, shall be a separate section of article second of the Constitution, in full force and effect, anything contained in the Constitution to the contrary notwithstanding.

Resolved, That the last preceding resolution be caused to be published, in the manner specified in the resolution of the Convention relative to the notice of the time and manner of voting for the amended constitution.

By order of the Convention,

JOHN TRACY, *President,*

And Delegate from the county of Chenango.

JAMES F. STARBUCK,)
FRANCIS SEGER,) Secretaries.
HENRY W. STRONG,)

IN CONVENTION,

ALBANY, October 9, 1846.

To the People of the State of New York.

The Delegates of the People in Convention, having terminated their deliberations, present to you the result of their labors in an amended

Constitution of fourteen Articles, to be considered together, for your adoption. They have presented for your separate consideration, a section relative to suffrage, equally applicable to the present and proposed constitution.

In these fourteen articles, they have reorganized the legislature; established more limited districts for the election of the members of that body, and wholly separated it from the exercise of judicial power. The most important state officers have been made elective by the people of the state; and most of the officers of cities, towns and counties, are made elective by the voters of the locality they serve. They have abolished a host of useless offices. They have sought at once to reduce and decentralize the patronage of the Executive government. They have rendered inviolate the funds devoted to Education. After repeated failures in the legislature, they have provided a Judicial System, adequate to the wants of a free people, rapidly increasing in arts, culture, commerce and population. They have made provision for the payment of the whole State Debt, and the completion of the Public Works begun. While that debt is in the progress of payment, they have provided a large contribution from the canal revenues towards the current expenses of the state, and sufficient for that purpose, when the state debt shall have been paid; and have placed strong safeguards against the recurrence of debt, and the improvident expenditure of the public money. They have agreed on important provisions in relation to the mode of creating incorporations, and the liability of their members; and have sought to render the business of banking more safe and responsible. They have incorporated many useful provisions more effectually to secure the people in their rights of person and property against the abuses of delegated power. They have modified the power of the legislature, with the direct consent of the people, to amend the constitution from time to time, and have secured to the people of the state, the right once in twenty years to pass directly on the question, whether they will call a convention for the revision of the constitution.

These articles embrace all the provisions, agreed upon by the Convention, to constitute the Constitution of the State. They are of course very numerous, often dependent one upon another, and can be best considered, as a whole; and the Convention have not found it practicable to separate them into parts to be separately passed upon by the people.

The Convention have therefore presented the subject in the form that will best enable the people to judge between the old and the new Constitution. If the Constitution now proposed be adopted, the happiness and progress of the People of this State, will, under God, be in their own hands.

By order of the Convention,

JOHN TRACY, *President,*

And Delegate from the county of Chenango.

JAMES F. STARBUCK,)
FRANCIS SEGER,) Secretaries.
HENRY W. STRONG,)

THE CONSTITUTION OF THE STATE OF NEW-YORK, Adopted November 10, 1821.

WE, the people of the State of New-York, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our form of government, do establish this constitution.

ARTICLE FIRST.

Section 1. The legislative power of this state shall be vested in a senate and assembly.

Section 2. The senate shall consist of thirty-two members. The senators shall be chosen for four years, and shall be freeholders. The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

Section 3. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each house shall choose its own officers; and the senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.

Section 4. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Section 5. The state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district shall consist of the counties of Suffolk, Queens, Kings, Richmond and New-York.

The second district shall consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster and Sullivan.

The third district shall consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie and Schenectady.

The fourth district shall consist of the counties of Saratoga, Montgomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin and St. Lawrence.

The fifth district shall consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis, and Jefferson.

The sixth district shall consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins and Tioga.

The seventh district shall consist of the counties of Onondaga, Cayuga, Seneca and Ontario.

The eighth district shall consist of the coun-

ties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaraugus and Chautauque.

As soon as the senate shall meet, after the first election to be held in pursuance of this constitution, they shall cause the senators to be divided by lot, into four classes, of eight in each, so that every district shall have one senator of each class; the classes to be numbered one, two, three and four. And the seats of the first class shall be vacated at the end of the first year; of the second class, at the end of the second year; of the third class, at the end of the third year; of the fourth class, at the end of the fourth year; in order that one senator be annually elected in each senate district.

Section 6. An enumeration of the inhabitants of the state shall be taken, under the direction of the legislature, in the year one thousand eight hundred and twenty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of color not taxed: and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district.

Section 7. The members of the assembly shall be chosen by counties, and shall be apportioned among the several counties of the state, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, paupers, and persons of color not taxed. An apportionment of members of the assembly shall be made by the legislature, at its first session after the return of every enumeration; and when made, shall remain unaltered until another enumeration shall have been taken. But an apportionment of members of the assembly shall be made by the present legislature, according to the last enumeration taken under the authority of the United States, as nearly as may be. Every county heretofore established, and separately organized, shall always be entitled to one member of the assembly; and no new county shall hereafter be erected, unless its population shall entitle it to a member.

Section 8. Any bill may originate in either house of the legislature; and all bills passed by one house, may be amended by the other.

Section 9. The members of the legislature shall receive for their services a compensation, to be ascertained by law and paid out of the public treasury; but no increase of the compensation shall take effect during the year in which it shall have been made. And no law shall be passed increasing the compensation of the members of the legislature beyond the sum of three dollars a day.

Section 10. No member of the legislature shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he shall have been elected.

Section 11. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, while a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Section 12. Every bill which shall have passed the senate and assembly, shall, before it become a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

Section 13. All officers holding their offices during good behavior, may be removed by joint resolution of the two houses of the legislature, if two-thirds of all the members elected to the assembly, and a majority of all the members elected to the senate concur therein.

Section 14. The political year shall commence on the first day of January; and the legislature shall every year assemble on the first Tuesday of January, unless a different day shall be appointed by law.

Section 15. The next election for governor, lieutenant-governor, senators, and members of assembly, shall commence on the first Monday of November, one thousand eight hundred and twenty-two; and all subsequent elections shall be held at such time, in the month of October or November, as the legislature shall by law provide.

Section 16. The governor, lieutenant-governor, senators and members of assembly, first elected under this constitution, shall enter on the duties of their respective offices, on the first day of January, one thousand eight hundred and

twenty-three; and the governor, lieutenant-governor, senators and members of assembly, now in office, shall continue to hold the same until the first day of January, one thousand eight hundred and twenty-three, and no longer.

ARTICLE SECOND.

Section 1. Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year preceding any election, and for the last six months a resident of the town or county where he may offer his vote; and shall have, within the year next preceding the election, paid a tax to the state or county, assessed upon his real or personal property; or shall by law be exempted from taxation; or being armed and equipped according to law, shall have performed, within that year, military duty in the militia of this state; or who shall be exempt from performing military duty in consequence of being a fireman in any city, town or village in this state: And also every male citizen of the age of twenty-one years, who shall have been, for three years next preceding such election, an inhabitant of this state, and for the last year a resident in the town or county where he may offer his vote; and shall have been within the last year assessed to labor on the public highways, and shall have performed the labor, or paid an equivalent therefor, according to law; shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people. But no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election shall be seised and possessed of a freehold estate of the value of two hundred and fifty dollars over and above all debts and incumbrances charged thereon; and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at any such election. And no person of color shall be subject to direct taxation, unless he shall be seised and possessed of such real estate as aforesaid.

Section 2. Laws may be passed, excluding from the right of suffrage persons who have been or may be convicted of infamous crimes.

Section 3. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established.

Section 4. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

ARTICLE THIRD.

Section 1. The executive power shall be vested in a governor. He shall hold his office for two years; and a lieutenant-governor shall be chosen at the same time, and for the same term.

Section 2. No person except a native citizen of the United States, shall be eligible to the office of governor; nor shall any person be eligible to that office who shall not be a freeholder, and shall not have attained the age of thirty years, and have been for five years a resident within this state; unless he shall have been absent during that time on public business of the United States, or of this state.

Section 3. The governor and lieutenant-governor shall be elected at the times and places of

choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature shall, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenant-governor.

Section 4. The governor shall be general and commander-in-chief of the militia, and admiral of the navy of the state. He shall have power to convene the legislature, (or the senate only,) on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state; and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

Section 5. The governor shall have power to grant reprieves and pardons after conviction, for all offences except treason and cases of impeachment. Upon convictions for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting; when the legislature shall either pardon or direct the execution of the criminal, or grant a further reprieve.

Section 6. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the governor, absent or impeached, shall return or be acquitted. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

Section 7. The lieutenant-governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall act as governor, until the vacancy shall be filled, or the disability shall cease.

ARTICLE FOURTH.

Section 1. Militia officers shall be chosen or appointed as follows: Captains, subalterns and non-commissioned officers, shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions. Brigadier-generals, by the field officers of their respective brigades. Major-generals, brigadier-generals, and commanding officers of regiments or separate battalions, shall appoint the staff officers of their respective divisions, brigades, regiments or separate battalions.

Section 2. The governor shall nominate, and with the consent of the senate, appoint all major-generals, brigade inspectors and chiefs of the staff departments, except the adjutant-general and commissary-general; the adjutant-general shall be appointed by the governor.

Section 3. The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their election to the governor.

Section 4. The commissioned officers of the militia shall be commissioned by the governor; and no commissioned officer shall be removed from office, unless by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial pursuant to law. The present officers of the militia shall hold their commissions subject to removal as before provided.

Section 5. In case the mode of election and appointment of militia officers hereby directed shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment and removal, if two-thirds of the members present in each house shall concur therein.

Section 6. The secretary of state, comptroller, treasurer, attorney-general, surveyor-general, commissary-general, shall be appointed as follows: The senate and assembly shall each openly nominate one person for the said offices respectively, after which they shall meet together, and if they shall agree in their nominations, the person so nominated shall be appointed to the office for which he shall be nominated. If they shall disagree, the appointment shall be made by the joint ballot of the senators and members of assembly. The treasurer shall be chosen annually. The secretary of state, comptroller, attorney-general, surveyor-general and commissary-general, shall hold their offices for three years, unless sooner removed by concurrent resolution of the senate and assembly.

Section 7. The governor shall nominate, by message in writing, and with the consent of the senate shall appoint, all judicial officers except justices of the peace; who shall be appointed in the manner following, that is to say: The board of supervisors in every county in this state shall at such times as the legislature may direct, meet together; and they, or a majority of them so assembled, shall nominate so many persons as shall be equal to the number of justices of the peace to be appointed in the several towns in the respective counties. And the judges of the respective county courts, or a majority of them, shall also meet and nominate a like number of persons; and it shall be the duty of the said board of supervisors, and judges of county courts, to compare such nominations, at such time and place as the legislature may direct; and if, on such comparison, the said boards of supervisors and judges of county courts shall agree in their nominations, in all or in part, they shall file a certificate of the nominations in which they shall agree, in the office of the clerk of the county; and the person or persons named in such certificates, shall be justices of the peace; and in case of disagreement in the whole, or in part, it shall be the farther duty of

the said boards of supervisors and judges respectively, to transmit their said nominations, so far as they disagree in the same, to the governor, who shall select from the said nominations, and appoint so many justices of the peace, as shall be requisite to fill the vacancies. Every person appointed a justice of the peace, shall hold his office for four years, unless removed by the county court, for causes particularly assigned by the judges of the said court; and no justice of the peace shall be removed, until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.

Section 8. Sheriffs and clerks of counties, including the register and clerk of the city and county of New-York, shall be chosen by the electors of the respective counties, once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff; and the governor may remove any such sheriff, clerk or register, at any time within the three years for which he shall be elected, giving to such sheriff, clerk or register, a copy of the charge against him, and an opportunity of being heard in his defence, before any removal shall be made.

Section 9. The clerks of courts, except those clerks whose appointment is provided for in the preceding section, shall be appointed by the courts of which they respectively are clerks; and district attorneys by the county courts. Clerks of courts and district attorneys shall hold their offices for three years, unless sooner removed by the courts appointing them.

Section 10. The mayors of all the cities in this state, shall be appointed annually, by the common councils of the respective cities.

Section 11. So many coroners as the legislature may direct, not exceeding four in each county, shall be elected in the same manner as sheriffs, and shall hold their offices for the same term, and be removable in like manner.

Section 12. The governor shall nominate, and with the consent of the senate appoint, masters and examiners in chancery; who shall hold their offices for three years, unless sooner removed by the senate, on the recommendation of the governor. The registers and assistant registers shall be appointed by the chancellor, and hold their offices during his pleasure.

Section 13. The clerk of the court of oyer and terminer and general sessions of the peace in and for the city and county of New-York, shall be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court; and such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts, or by the governor with the consent of the senate, as may be directed by law.

Section 14. The special justices, and the assistant justices, and their clerks in the city of New-York, shall be appointed by the common

council of the said city; and shall hold their offices for the same term that the justices of the peace in the other counties of the state hold their offices; and shall be removed in like manner.

Section 15. All officers heretofore elective by the people, shall continue to be elected; and all other officers whose appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed a may by law be directed.

Section 16. Where the duration of any office is not prescribed by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

ARTICLE FIFTH.

Section 1. The court for the trial of impeachments and the correction of errors, shall consist of the president of the senate, the senators, the chancellor, and the justices of the supreme court, or the major part of them; but when an impeachment shall be prosecuted against the chancellor, or any justice of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal; and when an appeal from a decree in chancery shall be heard, the chancellor shall inform the court of the reasons for his decree, but shall have no voice in the final sentence; and when a writ of error shall be brought on a judgment of the supreme court, the justices of that court shall assign the reason for their judgment, but shall not have a voice for its affirmation or reversal.

Section 2. The assembly shall have the power of impeaching all civil officers of this state for mal and corrupt practices in office, and for high crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try and determine the charge in question, according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend farther than the removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this state; but the party convicted shall be liable to indictment and punishment according to law.

Section 3. The chancellor and justices of the supreme court shall hold their offices during good behavior, or until they shall attain the age of sixty years.

Section 4. The supreme court shall consist of a chief justice and two justices, any of whom may hold the court.

Section 5. The state shall be divided by law, into a convenient number of circuits, not less than four nor exceeding eight, subject to alteration by the legislature, from time to time, as the public good may require; for each of which, a circuit judge shall be appointed in the same manner, and hold his office by the same tenure as the justices of the supreme court; and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court, and in courts of oyer and terminer and gaol delivery.

And such equity powers may be vested in the said circuit judges, or in the county courts, or in such other subordinate courts as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.

Section 6. Judges of the county courts, and recorders of cities, shall hold their offices for five years, but may be removed by the senate, on the recommendation of the governor, for causes to be stated in the recommendation.

Section 7. Neither the chancellor, nor justices of the supreme court, nor any circuit judges, shall hold any other office or public trust. All votes for any elective office, given by the legislature or the people, for the chancellor, or a justice of the supreme court or circuit judge, during his continuance in his judicial office, shall be void.

ARTICLE SIXTH.

Section 1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear, (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the State of New-York; and that I will faithfully discharge the duties of the office of according to the best of my ability.

And no other oath, declaration or test, shall be required as a qualification for any office of public trust.

ARTICLE SEVENTH.

Section 1. No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Section 2. The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever; and no new court shall be instituted, but such as shall proceed according to the course of the common law, except such courts of equity as the legislature is herein authorized to establish.

Section 3. The free exercise and enjoyment of religious professions and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace, or safety of this state.

Section 4. And whereas the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence, or description whatever, be eligible to, or capable of holding any civil or military office or place within this state.

Section 5. The militia of this state shall, at all times hereafter, be armed and disciplined, and in readiness for service; but all such inhabitants of this state, of any religious denomination whatever, as from scruples of conscience, may be averse to bearing arms, shall be excused

therefrom by paying to the state an equivalent in money; and the legislature shall provide by law for the collection of such equivalent, to be estimated according to the expense, in time and money, of an ordinary able-bodied militiaman.

Section 6. The privileges of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require its suspension.

Section 7. No person shall be held to answer for a capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia, when in actual service; and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace, and in case of petit larceny, under the regulation of the legislature;) unless on presentment or indictment of a grand jury; and in every trial on impeachment or indictment, the party accused shall be allowed counsel as in civil actions. No person shall be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Section 9. The assent of two-thirds of the members elected to each branch of the legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering or renewing any body corporate or politic.

Section 10. The proceeds of all lands belonging to this state, except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund; the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this state. Rates of toll, not less than those agreed to by the canal commissioners, and set forth in their report to the legislature on the twelfth of March, one thousand eight hundred and twenty-one, shall be imposed upon and collected from all parts of the navigable communications between the great western and northern lakes and the Atlantic ocean, which now are or hereafter shall be made and completed: And the said tolls, together with the duties on the manufacture of all salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; and the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars otherwise appropriated by the said act; and the

amount of the revenue established by the act of the legislature of the thirtieth of March, one thousand eight hundred and twenty, in lieu of the tax upon steamboat passengers; shall be and remain inviolably appropriated and applied to the completion of such navigable communications, and to the payment of the interest and reimbursement of the capital of the money already borrowed, or which hereafter shall be borrowed, to make and complete the same. And neither the rates of toll on the said navigable communications; nor the duties on the manufacture of salt aforesaid; nor the duty on goods sold at auction, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; nor the amount of the revenue established by the act of March the thirtieth, one thousand eight hundred and twenty, in lieu of the tax upon steamboat passengers; shall be reduced or diverted, at any time before the full and complete payment of the principal and interest of the money borrowed, or to be borrowed as aforesaid. And the legislature shall never sell or dispose of the salt springs belonging to this state, nor the land contiguous thereto which may be necessary or convenient for their use, nor the said navigable communications, or any part or section thereof; but the same shall be and remain the property of this state.

Section 11. No lottery shall hereafter be authorized in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law.

Section 12. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, of, or with the Indians in this state, shall be valid, unless made under the authority and with the consent of the legislature.

Section 13. Such parts of the common law, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the state of New-York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state, as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to the constitution, are hereby abrogated.

Section 14. All grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void. But nothing contained in this constitution shall affect any grants of land within this state, made by the authority of the said king or his predecessors; or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state or by per-

sons acting under its authority; or shall impair the obligations of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

ARTICLE EIGHTH.

Section 1. Any amendment or amendments to this constitution, may be proposed in the senate or assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on the journals with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for three months previous to the time of making such choice, and if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become a part of the constitution.

ARTICLE NINTH.

Section 1. This constitution shall be in force from the last day of December, in the year one thousand eight hundred and twenty-two. But all those parts of the same which relate to the right of suffrage; the division of the state into senate districts; the number of members of the assembly to be elected in pursuance of this constitution; the apportionment of members of assembly; the election hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; the continuance of the members of the present legislature in office until the first day of January in the year one thousand eight hundred and twenty-three; and the prohibition against authorizing lotteries; the prohibition against appropriating the public moneys or property for local or private purposes, or creating, continuing, altering or renewing any body politic or corporate, without the assent of two-thirds of the members elected to each branch of the legislature, shall be in force and take effect from the last day of February next. The members of the present legislature shall, on the first Monday of March next, take and subscribe an oath or affirmation to support this constitution, so far as the same shall then be in force. Sheriffs, clerks of counties, and coroners, shall be elected at the election hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; but they shall not enter on the duties of their offices before the first day of January then next following. The commissions of all persons holding civil offices on the last day of December, one thousand eight hundred and twenty-two, shall expire on that day; but the officers then in commission, may respectively continue to hold their said offices until new appointments or elections shall take place under this constitution.

Section 2. The existing laws relative to the manner of notifying, holding and conducting elections, making returns and canvassing votes, shall be in force, and observed in respect to the elections hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two, so far as the same are applicable. And the present legislature shall pass such other and further laws as may be requisite for the execution of the provisions of this constitution in respect to elections.

DONE in Convention at the Capitol, in the city of Albany, the tenth day of November, in the year one thousand eight hundred and twenty-one, and of the independence of the United States of America, the forty-sixth.
In witness whereof, we have hereunto subscribed our names.

DANIEL D. TOMPKINS, *President.*

Amendments to the Constitution of the State of New-York.

[The following amendments to the Constitution were proposed by the legislature in 1825, were referred to the legislature of 1826, agreed to by two-thirds of the members elected to each house of that legislature, submitted to the people, and approved and ratified at an election held on the sixth, seventh and eighth days of November, 1826.]

AMENDMENT No. I.

That the people of this state, in their several towns, shall at their annual election, and in such manner as the legislature shall direct, elect by ballot their justices of the peace; and the justices so elected in any town, shall immediately thereafter meet together, and in presence of the supervisor and town clerk of the said towns, be divided by lot into four classes, of one in each class, and be numbered one, two, three and four; and the office of number one shall expire at the end of the first year, of number two at the end of the second year, of number three at the end of the third year, and of number four at the end of the fourth year, in order that one justice may thereafter be annually elected; and that so much of the seventh section of the fourth article of the constitution of this state as is inconsistent with this amendment, be abrogated.

AMENDMENT No. II.

That so much of the first section of the second article of the constitution as prescribes the qualifications of voters other than persons of color, be, and the same is hereby abolished, and that the following be substituted in the place thereof:

Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are or hereafter may be elective by the people.

[The following amendments were proposed in 1832, agreed to by two-thirds of the members elected to each house in 1833, submitted to the people, and approved and ratified at the election in November, 1833.]

AMENDMENT No. III.

That the duties on the manufacture of salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen, and by the tenth section of the seventh article of the constitution of this state, may at any time here-

after be reduced by an act of the legislature of this state; but shall not, while the same is appropriated and pledged by the said section, be reduced below the sum of six cents upon each and every bushel; and the said duties shall remain inviolably appropriated and applied as is provided by the said tenth section.

And that so much of the said tenth section of the seventh article of the constitution of this state as is inconsistent with this amendment, be abrogated.

AMENDMENT No. IV.

At the end of the tenth section of the fourth article of the said constitution, add the following words: "Except in the city of New-York, in which city the mayor shall be chosen annually by the electors thereof, qualified to vote for the other charter officers of the said city, and at the time of the election of such officers."

[The following amendment was proposed in 1834, agreed to by two-thirds of the members elected to each house in 1835, submitted to the people and approved and ratified at the election held in November, 1835.]

AMENDMENT No. V.

Whenever a sufficient amount of money shall be collected and safely invested for the reimbursement of such part as may then be unpaid of the money borrowed for the construction of the Erie and Champlain canals, the tenth section of the seventh article of the constitution of this state, as far as it relates to the amount of duties on the manufacture of salt, and the amount of duties on goods sold at auction, shall cease and determine; and thereafter the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars otherwise appropriated by the act of the fifteenth of April, one thousand eight hundred and seventeen, and the duties on the manufacture of salt, shall be restored to the general fund.

[The following amendment was proposed in 1837, agreed to by two-thirds of the members elected to each house in the year 1838, submitted to the people and approved and ratified at the election in November, 1839.]

AMENDMENT No. VI.

Mayors of the several cities of this state, may be elected annually by the male inhabitants entitled to vote for members of the common council of such cities respectively, in such manner

as the legislature shall by law provide; and the legislature may, from time to time, make such provisions by law for the election of any one or more of such mayors; but until such provision shall be made by law, such mayors, (excepting the mayor of the city of New-York,) shall be appointed in the manner now provided by the constitution of this state; and so much of the tenth section of article fourth of the constitution of this state, as is inconsistent with this amendment, is hereby abrogated.

[The following amendment was proposed in 1844, agreed to by two thirds of the members elected to each house in 1845, submitted to the people and approved and ratified at the election in 1845.]

AMENDMENT No. VII.

No judicial officer shall be removed by the joint resolution of the two houses of the legislature, or by the senate on the recommendation of the governor, unless the cause of such removal

shall be entered on the journal of both houses, or of the senate, as the case may be; and such officer against whom the legislature or the senate may be about to proceed shall be served with notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either house shall act thereupon, and shall have an opportunity to be heard in his defense before any question shall be taken upon such removal; and the yeas and nays shall be entered upon the journals of the senate, or houses, as the case may be.

[The following amendment was proposed in 1844, agreed to by two-thirds of the members elected to each house in 1845, submitted to the people and approved and ratified at the election in 1845.]

AMENDMENT No. VIII.

No property qualifications shall be required to render a person eligible to or capable of holding any office or public trust in this state.

THE
CONSTITUTION
OF THE
STATE OF NEW-YORK,
Adopted April 20, 1777.

WHEREAS the many tyrannical and oppressive usurpations of the king and parliament of Great Britain, on the rights and liberties of the people of the American colonies, had reduced them to the necessity of introducing a government by congresses and committees, as temporary expedients, and to exist no longer than the grievances of the people should remain without redress :

And whereas the congress of the colony of New-York did, on the thirty-first day of May, now last past, resolve as follows, viz :

“Whereas the present government of this colony, by congress and committees, was instituted while the former government, under the crown of Great Britain, existed in full force ;—and was established for the sole purpose of opposing the usurpation of the British parliament, and was intended to expire on a reconciliation with Great Britain, which it was then apprehended would soon take place, but is now considered as remote and uncertain.

“And whereas many and great inconveniences attend the said mode of government by congress and committees, as of necessity, in many instances legislative, judicial and executive powers have been vested therein, especially since the dissolution of the former government, by the abdication of the late governor, and the exclusion of this colony from the protection of the king of Great Britain.

“And whereas the continental congress did resolve as followeth, to wit :

“Whereas his Britannic majesty, in conjunction with the lords and commons of Great Britain, has by a late act of parliament, excluded the inhabitants of these united colonies from the protection of his crown : And whereas no answer whatever, to the humble petition of the colonies for redress of grievances and reconciliation with Great Britain, has been, or is likely to be given, but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies : And whereas it appears absolutely irreconcilable to reason and good conscience, for the people of these colonies now to take the oaths and affirmations necessary for the support of any government under the crown of Great Britain ; and it is necessary that the exercise of every kind of authority under the said crown should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies, for the preservation of internal peace, virtue and good order, as well as for the defence of our lives, liberties, and properties, against the hostile invasions and

cruel depredations of our enemies : Therefore,

“Resolved, That it be recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigencies of their affairs has been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.”

“And whereas doubts have arisen, whether this congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form of government and internal police, to the exclusion of all foreign jurisdiction, dominion and control whatever. And whereas it appertains of right solely to the people of this colony to determine the said doubts : Therefore,

“Resolved, That it be recommended to the electors in the several counties in this colony, by election in the manner and form prescribed for the election of the present congress, either to authorize (in addition to the power vested in this congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and propriety of instituting such new government as in and by the said resolution of the continental congress is described and recommended : And if the majority of the counties by their deputies in provincial congress, shall be of opinion that such new government ought to be instituted and established, then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties, and happiness of the good people of this colony ; and to continue in force until a future peace with Great Britain shall render the same unnecessary. And

“Resolved, That the said election in the several counties ought to be had on such day, and at such place or places, as by the committee of each county respectively shall be determined. And it is recommended to the said committees, to fix such early days for the said elections, as that all the deputies to be elected have sufficient time to repair to the city of New-York by the second Monday in July next ; on which day all the said deputies ought punctually to give their attendance.

“And whereas the object of the foregoing resolution is of the utmost importance to the good people of this colony :

“Resolved, That it be, and it is hereby earnestly recommended to the committees, free-

holders, and other electors, in the different counties in this colony, diligently to carry the same into execution."

"And whereas the good people of the said colony, in pursuance of the said resolution, and reposing special trust and confidence in the members of this convention, have appointed, authorized, and empowered them, for the purposes, and in the manner, and with the powers in and by the said resolve, specified, declared, and mentioned.

"And whereas the delegates of the United American States, in general congress convened, did on the fourth day of July now last past, solemnly publish and declare in the words following, viz :

"When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

"We hold these truths to be self evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of those ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such now is the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this let facts be submitted to a candid world.

"He has refused his assent to laws the most wholesome and necessary for the public good.

"He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

"He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of

representation in the legislature; a right inestimable to them and formidable to tyrants only.

"He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

"He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

"He has refused for a long time after such dissolutions to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

"He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others, to encourage their migrations hither, and raising the conditions of new appropriations of lands.

"He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

"He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

"He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

"He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

"He has affected to render the military independent of, and superior to the civil power.

"He has combined with others, to subject us to a jurisdiction, foreign to our constitution, and unacknowledged by our laws: giving his assent to their acts of pretended legislation.

"For quartering large bodies of troops among us:

"For protecting them, by a mock trial, from punishment for any murders they should commit on the inhabitants of these states:

"For cutting off our trade with all parts of the world:

"For imposing taxes on us, without our consent:

"For depriving us, in many cases, of the benefits of trial by jury:

"For transporting us beyond seas, to be tried for pretended offences:

"For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

"For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

"For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

"He has abdicated government here, by declaring us out of his protection, and waging war against us.

"He has plundered our seas, ravaged our

coasts, burnt our towns, and destroyed the lives of our people.

"He is at this time transporting large armies of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

"He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

"He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

"In every stage of these oppressions, we have petitioned for redress, in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

"Nor have we been wanting in attentions to our British brethren. We have warned them from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexion and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war: in peace, friends.

"We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the supreme judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

And whereas this convention, having taken this declaration into their most serious consideration, did, on the ninth day of July last past, unanimously resolve that the reasons assigned by the continental congress, for declaring the united colonies free and independent states, are cogent, and conclusive; and that, while we lament the cruel necessity which has rendered

that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in support of it.

By virtue of which several acts, declarations, and proceedings, mentioned and contained in the afore recited resolves or resolutions of the general congress of the United American States, and of the congress or conventions of this state, all power whatever therein hath reverted to the people thereof, and this convention hath, by their suffrages and free choice, been appointed, and, among other things, authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state, most conducive to the happiness and safety of their constituents in particular, and of America in general

I. This convention, therefore, in the name and by the authority of the good people of this state, DOth ORDAIN, DETERMINE, AND DECLARE, That no authority shall, on any pretence whatever, be exercised over the people or members of this state, but such as shall be derived from and granted by them.

II. This convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, That the supreme legislative power within this state, shall be vested in two separate and distinct bodies of men; the one to be called the Assembly of the state of New-York; the other to be called the Senate of the state of New-York; who, together, shall form the Legislature, and meet once at least in every year for the despatch of business.

III. And whereas laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: BE IT ORDAINED, That the governor, for the time being, the chancellor and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the senate and assembly, shall, before they become laws, be presented to the said council for their revision and consideration; and if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate or house of assembly, in whichsoever the same shall have originated, who shall enter the objections sent down by the council, at large, in their minutes, and proceed to reconsider the said bill. But if after such reconsideration, two-thirds of the said senate or house of assembly, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays,

Be it further ordained, That if any bill shall not be returned by the council, within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case, the bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days.

IV. That the assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportion following, viz :

For the city and county of New-York, nine.

The city and county of Albany, ten.

The county of Dutchess, seven.

The county of Westchester, six.

The county of Ulster, six.

The county of Suffolk, five.

The county of Queens, four.

The county of Orange, four.

The county of Kings, two.

The county of Richmond, two.

The county of Tryon, six.

The county of Charlotte, four.

The county of Cumberland, three.

The county of Gloucester, two.

V. That as soon after the expiration of seven years, subsequent to the termination of the present war, as may be, a census of the electors and inhabitants in this state be taken, under the direction of the legislature. And if on such census it shall appear, that the number of representatives in assembly from the said counties is not justly proportioned to the number of electors in the said counties respectively, that the legislature do adjust and apportion the same by that rule. And further, that once in every seven years, after the taking of the said first census, a just account of the electors resident in each county shall be taken; and if it shall thereupon appear that the number of electors in any county shall have increased or diminished one or more seventieth parts of the whole number of electors, which on the said first census shall be found in this state, the number of representatives for such county shall be increased or diminished accordingly, that is to say, one representative for every seventieth part, as aforesaid.

VI. And whereas an opinion hath long prevailed among divers of the good people of this state, that voting at elections by ballot would tend more to preserve the liberty and equal freedom of the people, than voting *visa voce*; To the end, therefore, that a fair experiment be made, which of those two methods of voting is to be preferred :

Be it ordained, That as soon as may be, after the termination of the present war between the United States of America and Great Britain, an act or acts be passed by the legislature of this state, for causing all elections thereafter to be held in this state for senators and representatives in assembly, to be by ballot, and directing the manner in which the same shall be conducted. And whereas it is possible, that after all the care of the legislature, in framing the said act or acts, certain inconveniences and mischiefs, unforeseen at this day, may be found to attend the said mode of electing by ballot :

It is further ordained, That if after a full and

fair experiment shall be made of voting by ballot aforesaid, the same shall be found less conducive to the safety or interest of the state, than the method of voting *visa voce*, it shall be lawful and constitutional for the legislature to abolish the same: Provided two-thirds of the members present in each house respectively shall concur therein. And further, that during the continuance of the present war, and until the legislature of this state shall provide for the election of senators, and representatives in Assembly, by ballot, the said elections shall be made *visa voce*.

VII. That every male inhabitant of full age, who shall have personally resided within one of the counties of this state for six months immediately preceding the day of election, shall, at such election, be entitled to vote for representatives of the said county in assembly; if during the time aforesaid, he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this state: Provided always, That every person who now is a freeman of the city of Albany, or who was made a freeman of the city of New-York, on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities respectively, shall be entitled to vote for representatives in Assembly within his said place of residence.

VIII. That every elector, before he is admitted to vote, shall, if required by the returning officer or either of the inspectors, take an oath, or if of the people called Quakers, an affirmation of allegiance to the state.

IX. That the assembly thus constituted, shall choose their own speaker, be judges of their own members, and enjoy the same privileges, and proceed in doing business, in like manner as the assemblies of the colony of New-York of right formerly did; and that a majority of the said members shall, from time to time, constitute a house to proceed upon business.

X. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, that the senate of the state of New-York shall consist of twenty-four freeholders, to be chosen out of the body of freeholders and that they be chosen by the freeholders of this state, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

XI. That the members of the senate be elected for four years, and immediately after the first election, they be divided by lot into four classes, six in each class, and numbered, one, two, three, and four; and that the seats of the members of the first class shall be vacated at the expiration of the first year; the second class the second year, and so on continually, to the end, that the fourth part of the senate, as nearly as possible, may be annually chosen.

XII. That the election of senators shall be after this manner: that so much of this state as is now parcelled into counties, be divided into four great districts: the southern district to comprehend the city and county of New-York,

Suffolk, Westchester, Kings, Queens, and Richmond counties : the middle district to comprehend the counties of Dutchess, Ulster, and Orange : the western district, the city and county of Albany, and Tryon county ; and the eastern district, the counties of Charlotte, Cumberland and Gloucester. That the senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, to wit : in the southern district, nine ; in the middle district, six ; in the western district, six ; and in the eastern district, three. And be it ordained, That a census shall be taken as soon as may be, after the expiration of seven years from the termination of the present war, under the direction of the legislature ; and if, on such census, it shall appear that the number of senators is not justly proportioned to the several districts, that the legislature adjust the proportion, as near as may be, to the number of freeholders, qualified as aforesaid, in each district. That when the number of electors within any of the said districts shall have increased one twenty-fourth part of the whole number of electors, which by the said census shall be found to be in this state, an additional senator shall be chosen by the electors of such District. That a majority of the number of senators, to be chosen as aforesaid, shall be necessary to constitute a senate sufficient to proceed upon business ; and that the senate shall, in like manner with the assembly, be the judges of its own members. And be it ordained, That it shall be in the power of the future legislatures of this state, for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts, as to them shall appear necessary.

XIII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that no member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to the subjects of this state by this constitution, unless by the law of the land, or the judgment of his peers.

XIV. That neither the assembly nor the senate shall have power to adjourn themselves for any longer time than two days, without the mutual consent of both.

XV. That whenever the assembly and senate disagree, a conference shall be held in the presence of both, and be managed by committees, to be by them respectively chosen by ballot. That the doors, both of the senate and assembly, shall at all times be kept open to all persons, except when the welfare of the state shall require their debates to be kept secret. And the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New-York ; and, except such parts as they shall, as aforesaid, respectively determine not to make public, be, from day to day, if the business of the legislature will permit, published.

XVI. It is, nevertheless, provided, that the number of senators shall never exceed one hundred, nor the number of the assembly, three hundred ; but that, whenever the number of senators shall amount to one hundred, or of the assembly to three hundred, then, and in such case, the legislature shall, from time to time

hereafter, by laws for that purpose, apportion and distribute the said one hundred senators and three hundred representatives among the great districts, and counties of this state in proportion to the number of their respective electors, so that the representation of the good people of this state, both in the senate and assembly, shall forever remain proportionate and adequate.

XVII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that the supreme executive power and authority of this state shall be vested in a governor ; and that, statedly, once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this state shall be, by ballot, elected governor, by the freeholders of this state, qualified, as before described, to elect senators, which elections shall be always held at the times and places of choosing representatives in assembly for each respective county ; and that the person who hath the greatest number of votes within the said state, shall be the governor thereof.

XVIII. That the governor shall continue in office three years, and shall, by virtue of his office, be general and commander-in-chief of all the militia, and admiral of the navy, of this state ; that he shall have power to convene the assembly and senate on extraordinary occasions ; to prorogue them from time to time, provided such prorogation shall not exceed sixty days in the space of any one year ; and, at his discretion, to grant reprieves and pardons to persons convicted of crimes other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature, at their subsequent meeting, and they shall either pardon, or direct the execution of the criminal, or grant a further reprieve.

XIX. That it shall be the duty of the governor to inform the legislature, at every session, of the condition of the state, so far as may respect his department ; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare, and prosperity ; to correspond with the continental congress, and other states ; to transact all necessary business with the officers of government, civil and military ; to take care that the laws are faithfully executed, to the best of his ability ; and to expedite all such measures as may be resolved upon by the legislature.

XX. That the lieutenant-governor shall, at every election of governor, and as often as the lieutenant-governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a governor ; and such lieutenant-governor shall, by virtue of his office, be president of the senate, and, upon an equal division, have a casting vote in their decisions, but not vote on any other occasion.

And in case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until another be chosen, or the governor absent or impeached, shall return, or be acquitted.

Provided, that where the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall still continue in the command of all the military force of this state, both by sea and land.

XXI. That whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senators shall have power to elect one of their own members to the office of president of the senate, which he shall exercise *pro hac vice*. And if, during such vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state the president of the senate shall, in like manner as the lieutenant-governor, administer the government, until others shall be elected by the suffrage of the people, at the succeeding election.

XXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE. AND DECLARE, that the treasurer of this state shall be appointed by act of the legislature, to originate with the assembly. *Provided*, that he shall not be elected out of either branch of the legislature.

XXIII. That all officers, other than those who, by this constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council, for the appointment of the said officers, of which the governor for the time being, or the lieutenant-governor, or the president of the senate, (when they shall respectively administer the government,) shall be president, and have a casting voice, but no other vote; and, with the advice and consent of the said council, shall appoint all the said officers; and that a majority of the said council be a quorum: AND FURTHER, The said senators shall not be eligible to the said council for two years successively.

XXIV. That all military officers be appointed during pleasure; that all commissioned officers, civil and military, be commissioned by the governor; and that the chancellor, the judges of the supreme court, and first judge of the county court in every county, hold their offices during good behavior, or until they shall have respectively attained the age of sixty years.

XXV. That the chancellor and judges of the supreme court shall not, at the same time, hold any other office, except that of delegate to the general congress, upon special occasions; and that the first judges of the county courts, in the several counties, shall not, at the same time, hold any other office, excepting that of senator, or delegate to the general congress. But if the chancellor, or either of the said judges be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve

XXVI. That sheriffs and coroners be annually appointed; and that no person shall be capable of holding either of the said offices more than four years successively; nor the sheriff of holding any other office at the same time.

XXVII. AND BE IT FURTHER ORDAINED, That

the register, and clerks in chancery, be appointed by the chancellor; the clerks of the supreme court, by the judges of the said court; the clerk of the court of probates, by the judge of the said court; and the register and marshal of the court of admiralty, by the judge of the admiralty. The said marshals, registers, and clerks, to continue in office during the pleasure of those by whom they are to be appointed as aforesaid.

And all attorneys, solicitors, and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practice; and be regulated by the rules and orders of the said court.

XXVIII. AND BE IT FURTHER ORDAINED, That where, by this constitution, the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the council of appointment: *Provided*, That new commissions shall be issued to judges of the county courts (other than to the first judge,) and to justices of the peace, once at the least in every three years.

XXIX. The town clerks, supervisors, assessors, constables, and collectors, and all other officers, heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of the legislature.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

XXX. That delegates to represent this state in the general congress of the United States of America be annually appointed, as follows, to wit: The senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of delegates to be appointed; after which nomination they shall meet together, and those persons named in both lists, shall be delegates; and out of those persons whose names are not on both lists, one half shall be chosen by the joint ballot of the senators and members of assembly, so met together as aforesaid.

XXXI. That the style of all laws shall be as follows, to wit: "Be it enacted by the people of the state of New-York, represented in senate and assembly," and that all writs and other proceedings shall run in the name of the people of the state of New-York, and be tested in the name of the chancellor, or chief judge of the court from whence they shall issue.

XXXII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations which shall be established by the legislature, and to consist of the president of the senate for the time being, and the senators, chancellor and judges of the supreme court, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal: and, in like manner, when an appeal, from a decree in equity, shall be

heard, the chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error, on a question of law, on a judgment in the supreme court, the judges of the court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

XXXIII. That the power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two-third parts of the members present shall consent to and agree in such impeachment. That, previous to the trial of every impeachment, the members of the said court shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence; and that no judgment of the said court shall be valid unless it shall be assented to by two-third parts of the members then present; nor shall it extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this state. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land.

XXXIV. AND BE IT FURTHER ORDAINED, That in every trial on impeachment, or indictment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil actions.

XXXV. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE, AND DECLARE, that such parts of the common law of England and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony on the 19th day of April in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this state, subject to such alterations and provisions as the legislature of this state shall, from time to time, make concerning the same. That such of the said acts as are temporary, shall expire at the times limited for their duration respectively. That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives, claimed or exercised by the king of Great Britain and his predecessors, over the colony of New-York and its inhabitants, or are repugnant to this constitution, be and they hereby are, abrogated and rejected. And this convention doth further ORDAIN, that the resolves or resolutions of the congress of the colony of New-York, and of the convention of the state of New-York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this state subject, nevertheless, to such alterations and provisions as the legislature of this state

may, from time to time, make concerning the same.

XXXVI. AND BE IT FURTHER ORDAINED, That all grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but that nothing in this constitution contained, shall be construed to affect any grants of land, within this state, made by the authority of the said king, or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them, made prior to that day. And that none of the said charters shall be adjudged to be void, by reason of any nonuser or misuser of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five, and the publication of this constitution. AND FURTHER, that all such of the officers, described in the said charters respectively, as, by the terms of the said charters, were to be appointed by the governor of the colony of New-York, with or without the advice and consent of the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution for the appointment of officers in this state, until otherwise directed by the legislature.

XXXVII. AND WHEREAS it is of great importance to the safety of this state that peace and amity with the Indians within the same, be at all times supported and maintained: AND WHEREAS the fraud too often practiced towards the Indians, in contracts for their lands, have, in divers instances, been productive of dangerous discontents and animosities: BE IT ORDAINED, that no purchases or contracts for the sale of lands made since the 14th day of October, in the year of our Lord one thousand seven hundred and seventy-five, or which may hereafter be made with or of the said Indians, within the limits of this state, shall be binding on the said Indians, or deemed valid, unless made under the authority and with the consent of the legislature of this state.

XXXVIII. AND WHEREAS we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against the spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind: this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind: *Provided*, that the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

XXXIX. AND WHEREAS the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function; therefore no minister of the gospel, or priest of any denomination whatsoever, shall, at any time hereafter, under any pretence or de-

scription whatever, be eligible to or capable of holding, any civil or military office or place within this state.

XL. AND WHEREAS it is of the utmost importance to the safety of every state, that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society, to be prepared and willing to defend it; this convention, therefore, in the name, and by the authority of the good people of this state doth ORDAIN, DETERMINE, AND DECLARE, That the militia of this state, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of the inhabitants of this state (being of the people called Quakers,) as from scruples of conscience, may be averse to the bearing of arms be therefrom excused by the legislature, and do pay to the state such sums of money, in lieu of their personal service, as the same may, in the judgment of the legislature, be worth. And that a proper magazine of warlike stores proportionate to the number of inhabitants, be, forever hereafter, at the expense of this state, and by acts of the legislature, established, maintained, and continued, in every county in this state.

XLI. And this convention doth further ORDAIN, DETERMINE AND DECLARE, in the name, and by the authority of the good people of this

state, that trial by jury, in all cases, in which it hath heretofore been used in the colony of New-York, shall be established, and remain inviolate forever: And that no acts of attainder shall be passed by the legislature of this state, for crimes other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood. AND FURTHER, that the legislature of this state shall, at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law.

XLII. And this convention doth further, in the name and by the authority of the good people of this state, ORDAIN, DETERMINE AND DECLARE, That it shall be in the discretion of the legislature to naturalize all such persons, and in such manner, as they shall think proper: *Provided*, all such of the persons so to be by them naturalized, as, being born in parts beyond sea, and out of the United States of America, shall come to settle in, and become subjects of this state, shall take an oath of allegiance to this state, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate, and state, in matters, ecclesiastical as well as civil. By order:

LEONARD GANSEVOORT, *Præs. pro tem.*

APPENDIX.

SPEECH OF MR. O'CONOR, *on the Legislative Department, and in favor of an increase of the Senate, July 29.*

Mr. O'CONOR said he had voted to postpone the motion to reconsider, not in the hope of obtaining in the interim any additional information, or from a belief that he should be able a few days hence to vote more understandingly, or to fortify his opinion with stronger arguments than now presented themselves to his mind. He had so voted because the question, as it now stands temporarily settled by the vote of the Convention, was so settled by a very large, and it might be thought a decisive majority, and because he was desirous that there should be a fuller attendance of members when that vote should be taken, which was finally to determine it. He desired, also, that the gentlemen who had voted in the majority might have time and a full opportunity to bestow upon the question the calm and deliberate consideration its gravity demanded. The constant sittings of this body and the fatigue attendant upon its protracted discussions in midsummer, left but little interval for that reflection in the solitude of our chambers, which affords the best means of conducting us to safe results. For these reasons he would have been rejoiced at a postponement, but it had been decreed otherwise. The question must now be taken, and because he deemed the point directly before the Convention, and the questions immediately connected with and dependent upon it to be of vital moment—deeply affecting the future welfare of the State—and the character and stability of its government, he would go into the subject somewhat at large. He would present some considerations which ought not to be lost sight of in examining it, but which had not yet been adverted to, either during the debate in the committee of the whole or in the Convention. The general question is, shall the whole State be divided into single Senate and Assembly districts? And to this question is appended a variety of minor details, all settled by a vote, and all now to be brought up in succession for final review, and that settlement reconsidered, or made firm and perpetual. Shall this proposition be affirmed in all its rigor—giving it a literal execution, without regard to resulting mischiefs however manifest, numerous and formidable? Looking to these results, he found the question to be much more grave and momentous than he had at first supposed. He had been brought so to regard it by the very instructive debates of this body to which he had been an attentive hearer, and by the reflections to which those debates had given rise. He would assure the Convention, that although the plan of single districts subjected the great city which he had the honor in part to represent, to the process of subdivision in a much

greater degree than any of the counties, that circumstance did not at all conduce to his conclusion. Indeed the operation, though more extensive, was less inconvenient in that city than in most other parts of the State. He took no interest in this question, save as a citizen of the State of New-York, and as it affected the general interest of the whole State. Some discussion had taken place on the subject of *pledges* to vote for single districts. For himself, he approached this question untrammelled by any pledges. He hoped that no member of this body was tied down to one side of any question to arise here, by a previous pledge. He had not understood any gentleman to admit himself to be in such a predicament. He was sure no one ought to have come here so fettered. All argument must be vain when addressed to a pledge-bound representative—in whom to listen is a trespass, to deliberate a crime. He (Mr. O'C.) apprehended that many things were set down as pledges which did not deserve that appellation. For himself, he protested against the doctrine which would treat as a binding pledge, the mere expression of a present opinion. He conceived that the candidate for nomination as a representative, should fairly and candidly express his opinions, and should ever stand ready with equal fairness and candour to surrender them, if subsequent light should convince him that they were erroneous. Before his nomination to this Convention, he (Mr. O'C.) had received and answered the same set of questions alluded to by his colleague, the chairman of the fifth standing committee, (Mr. MORRIS.) If, as has been insinuated, there was in the framing of those questions, some artifice, designed to leave to the respondent an undue liberty, he (Mr. O'C.) had not perceived it, and claimed no benefit from it. He understood the question on this subject precisely as his colleague, (Mr. MORRIS,) had understood it, and so understanding it, he had answered it promptly and sincerely: he had answered that he was in favor of single Assembly and Senate districts. Such was then his opinion—he came here with that opinion—and in its true spirit and intent that was still his opinion. But as to the propriety of carrying into execution, literally and fully, the phrase single districts, he felt constrained to admit a change of opinion—wrought in his mind by the investigations had here. To divide the State into single Senate districts is impracticable, without involving us in one or the other of two great evils, either of them far more mischievous than any benefit expected from the division. Under these circumstances, he felt perfectly free to act and vote in a manner some-

what variant from a literal conformity to the opinions expressed by him prior to election. He would, however, conform to the spirit of those opinions. He would act precisely as he believed his constituents would themselves act, had they been present in this chamber, heard our arguments, joined in our deliberations and thus been enabled to judge of the question with the enlightenment consequent upon the enjoyment of these advantages. He conceived that the popular demand for single districts might be fully satisfied by a middle course—that we could avoid the mischiefs which threaten us on either side, and at the same time substantially comply with that demand. He did not say this to justify or extenuate a departure from pledges. He had already said that he had given none. But as gentlemen desired to adhere to the principle involved in their expressed opinions, he proposed to shew that they might do so without going to the extent of making single districts. Our constituents have felt the inconvenience of large districts, by which large minorities residing in some parts of the State are left unrepresented in the Legislature; and, with one voice have required us to adopt a remedy. When our nominating committees requested us to provide for single districts, they aimed at the eradicating of the inconvenience; but they did not intend to bind us by a word or a phrase—to tie us down to any particular kind of remedy. The demand was for some adequate and effectual remedy, and that when sitting here in Legislative Council we should consider the existing grievance, deliberate fully upon its nature, and apply the best preventive our united wisdom could devise. The most obvious course—a course which lay at the surface—struck the general mind, and furnished the readiest expression of the popular sentiment, was the creation of single districts. But we have now examined the subject in all its varied relations—in reference to the consequences of change. We have found that the single district plan involves many evils, and that there is an appropriate innocuous method of effecting the desired end. We find that *small* districts will answer the same purpose as single districts. Are we not at liberty to adopt that remedy? or should we embrace many evils to avoid one? The grievance complained of was very great, no one was more ready to acknowledge or desirous to remove it than himself. The city of New-York presents an apt illustration of it. That city contains a very large body of persons entertaining similar political opinions, numerous enough to elect several representatives, and in particular sections of the city, forming a majority of the electors. The members of that party however, form a minority of the whole city; and they are consequently without a representation in the Legislature, or at least without that direct representation through their friends and immediate neighbors—the sharers of their opinions, and the grateful recipients of their suffrages, to which a republican constituency is entitled. It is undeniable that such classes ought to be represented. One political party ought not to be permitted perpetually to elect all the representatives of that great district. This position no man can deny without asserting a monstrosity, at variance with political science and

every sense of political justice. As well might it be allowed that all the members of the Senate and Assembly should be elected by general ticket. A worse government could scarcely exist than we should be cursed with under such a method of election. In this all will agree. The worst system of election that could be devised is the general ticket—its extreme opposite, the single district system had, from contrast, caught public attention and won public favor. We find ourselves, consequently, employed in responding to a demand for single districts. He maintained that we should comply with that demand, substantially, and according to its true spirit, if we furnished a remedy to the evil complained of, a method of election that attained the object of the demand. Single districts would indeed attain the desired end; but single districts were attended with manifest and striking inconvenience. The same end can be as well attained by districts of moderate size, without any inconvenience. By creating districts of moderate size we can give to every respectable portion of persons, having a local majority, a due voice in the government—through their chosen representatives. He (Mr. O'C.) was in favor of this latter course. It was a safe middle course—it secured all the benefits of the single district system—it preserved one of the best features in our present legislative organization. And he trusted that no member of the Convention would be restrained from adopting it, merely because he had heretofore expressed an opinion in favor of single districts. If we kept in view all the benefits of that system—bringing the representative near to his constituents and securing a just representation to all classes, we shall certainly do our whole duty. His plan was to increase the number of senators and reduce the senatorial term so as to reduce the districts to half their present size. He would fix the number at forty-eight, and the term at three years. This would allow of treble districts, one senator in each district being elected every year. If, however, treble districts should not be acceptable, double districts and a two years term might be adopted, which would still further reduce the size of the district. The former course he deemed preferable; but if the latter was preferred by others he was prepared to yield. As to single assembly districts, his opinion had been originally formed with reference to the city of New-York, and without reflecting upon the influence of that measure elsewhere. He now saw no inconvenience to that city in it, and whenever it could be done without a sacrifice of the public interest, or great offense to those upon whom it was to operate, he would rigorously conform to the demand for single districts. He cheerfully surrendered his own city to the dividing knife—to be carved into as many pieces as her friends or her foes, in good or ill will, might desire, but from the course of the debate he perceived that the country counties winced under the operation—they shrunk from it as a timid patient under the hand of the surgeon. They dreaded the disregard of county lines—the severance of ancient and cherished county associations. They feared, and not without reason, that the State was to be unfairly subdivided by a multitude of Boards of Supervisors. elected

upon the rotten borough system—where the representative of hundreds had no more weight than the representative of thousands—where, even if justice was done, it would not be appreciated; but be deemed injustice because of the unfair constitution of the tribunal. They saw no escape from this evil by a resort to the legislature; for that body would not be less likely to make unfair partition from design; and would be more likely to act from passion, indifference, or impatience. In contemplation of this state of the matter, a well founded aversion to the contemplated change affected the minds of many. He conceived that we could satisfy this sentiment, and attain all the objects aimed at by our constituents by an apportionment of the assembly upon a plan somewhat modified from the single district plan. He would provide that all counties entitled to more than four assembly men should be divided into districts, entitled to four members, and that whenever, hereafter, any county should become entitled to an enlarged representation beyond four members, a separate district should be formed therein, so that hereafter not more than four assembly men should ever be elected in one district. This rule would divide New-York into four districts, and no other county would now require to be divided; nor would a division ever take place hereafter, except at the same time that the county to be divided was to receive an enlarged representation. If it should even then be thought painful to sever the county into parts—the operation would coincide with the gain of a member—the bitter and the sweet would come in one draught, and the public mind would be reconciled to the change. The division of New-York city into four parts ought to be satisfactory. Experience had shewn such a division to be sufficiently favorable to minorities. That city had been recently divided into four single congressional districts. Upon that division its clear democratic majority of 2000 fell into one of the districts, and the city is now represented in Congress by three native Americans and one democrat.

[Mr. WORDEN. Much the same thing. Mr. O'CONOR not noticing the interruption proceeded.]

There seemed to be a repugnance to enlarging the number of senators. He thought this repugnance, arising mainly from motives of economy, was not founded on just views. The Constitution of '77 provided that the number of senators and assemblymen should be gradually increased until the former should amount to 100 and the latter to 300. That instrument was drafted by one of the most learned and sagacious politicians our country had produced, (JOHN JAY.) He might be styled the father of our State; he sustained her best interests in the perilous days of our revolution, and laid deeply and surely in the soundest principles of policy, the foundations of her government. Well versed in political science, he adopted the best model extant—the unwritten code of England. He designed that our senate and assembly should bear to each the proportion of one to three, and provided that the former should be increased to a just and reasonable magnitude. This enlargement of the senate was designed with a wise regard to the importance of its duties as a legis-

lative body when the state should become populous, wealthy and powerful; and he (Mr. O'C.) thought we had now attained the condition that rendered such an enlargement eminently proper. It was impolitic, and anti-democratic to create or retain a legislative body having so much power, and consisting of so small a number. It exercised a full affirmative authority to initiate measures and an absolute negative on all legislation originating in the more numerous body. Seventeen members formed a majority, and nine of these by the decision of a party-caucus might control the will of the people. Nine men—not responsible to the whole State; but only to their immediate local constituencies, ought not to be invested with such high authority over the rights and interests of millions of people. Such a senate might suffice for very small States; but when constructing a government for the great state of New-York, he thought it, in the highest degree, unwise and impolitic thus to place her vast interests within the control of a small faction. It might be asked, why was the number of the senate fixed so low as 32, in our former constitutions? He would answer the question. The motive was easily discoverable. It was a sound one, but it was no longer applicable. The constitution of '77 provided that the senate, like the British House of Lords, should be the court of appeals in the last resort. The framer of that instrument either omitted to weigh that circumstance fully or he assumed that none of our senators, except those learned in the law, would participate in the judicial functions of the court. Such had long been the practice in England, and he might reasonably have expected a like practice here. If this expectation was entertained, it was disappointed. The senators generally sat in the court, their number gradually increased until it exceeded forty. Such a body was too large for a court, and consequently the Convention of 1801, and also that held in 1821, fixed its number at 32. This was not only prudent but necessary in reference to its judicial character. Indeed the wisest observers upon even that constitution of the senate, had always pronounced it too large for a court, and too small for a legislative assembly. Still, the second and third Conventions acted wisely in this respect—they had to bear in mind the two incompatible capacities of the senate, to reconcile opposing considerations and adopt the best medium in their power. In fixing upon 32 he thought they had acted discreetly. But, (said Mr. O'C.) we are now acting upon a different state of things. The fiat has gone forth, and will be obeyed—the senate is to be divested of its judicial power—it is to be discharged in a great degree, if not wholly, from its duties as an executive council to advise upon appointments to office. It is henceforth to be confined to its legislative functions. When so confined, an increase of its members is a measure recommended by the soundest considerations of policy. By that means alone can we make it a safe depository of the legislative power. It will be seen by the references made to our constitutional history, that all precedent is in favor of an increase of the senatorial body. A reference to the practice of all governments having two legislative chambers will show that the common opi-

nion of mankind is favorable to such a change. Viewing the question in this single light an increase is desirable. Under present circumstances it is especially desirable; for it facilitates the desired reduction in the size of the senate districts, and saves us from resorting for that purpose to the single district system, with all its evil concomitants. This single district system should not be applied to the senate, if it be possible to avoid it. It places us in a most unfortunate dilemma. On the one hand we must elect all our senators as well as our assembly men and governor, at one election, or on the other, we must adopt what has been termed the "ride and tie system" of election. The first changes the whole government at a single stroke—destroying the principle of continuity in the senate—the best, the only conservative feature in our constitution; the latter, it is thought, would let in intolerable evils. All who have spoken upon the subject maintain, that allowing elections for senators in the respective districts, in alternate years, would lead to the grossest frauds. If so, as we cannot rightfully adopt a course thus tending to corruption and depravity. If we must have single senate districts, we must adopt the former alternative. Is the Convention prepared to risk the dangers of such a course? If the governor, senators and assemblymen are elected at once, are not the rights, is not the safety of the minority wholly disregarded—placed without fence or safeguard of any kind, completely at the mercy of the temporary majority. He said without fence or safeguard; for in such a case the veto would not be used or would be ineffectual. What governor would veto the acts of his political associates—those who rode into power along with him and by the force of the same political whirlwind? We might be told that the veto power could be made a probable protection against unjust or improvident legislation by an arrangement that the governor should be elected at a different year from the senators. He could not rely on the veto power in such a case as that supposed. The veto power is of a monarchical character—it is greatly obnoxious to the jealousy of the people. Its continuance in our constitution, and its present popularity result from the sparing and cautions manner in which it has been exercised. It has never been employed to defeat the popular will—its action has almost uniformly coincided with the prevailing public sentiment in restraining legislative misconduct, in maintaining the constitution against encroachment—in giving effect to the will of the people. Let it become necessary to use it as an impediment to legislation, demanded by the strong voice of the majority, and its days would soon be numbered. The more inflamed that majority is, the more recent and sudden its formation, the more violent its tendency to trample upon right, the more impatient it would be of any interference with its will. The indignant people, if often thus checked, would strike the veto from their constitution as an odious relic of monarchical power. Neither would he be willing to rely in great emergencies upon the integrity and fortitude of one man.

The wise and virtuous are often timid; the bold and resolute are not always wise or good. He would not trust the safety of the State to this

single plank—the chance that one man would be wise, virtuous and firm enough to encounter the whole legislative department, and to resist the impotency and the indignant anger of a majority of the people. Indeed, the whole force of the veto power would be vain in times of high party excitement—the very periods of danger to the public interest—for on such occasions the majority is usually very great, and a two-third vote could be obtained for the desired measures. In 1838, one hundred members of Assembly were elected by the same political party. If we had had a Senate like that now proposed to be constituted, a like majority would have been elected by the same party in that body. The veto power could not have overcome such a majority, had the governor been inclined to exercise it; and but for the conservative power of a continuing Senate, what on that occasion would have saved the State from unlimited extravagance, ending in certain bankruptcy and shameful repudiation? Destroy that conservative feature in your Constitution, and such a political revolution followed by such consequences, may be apprehended every second year. Our present Constitution provides that any of the judges may be removed without impeachment by two-thirds of the Assembly and a majority of the Senate. Such a provision is necessary, and it is presumed will be continued. A strong majority coming into the legislature upon one of the political changes so common in our country, could, under the proposed system, remove the judges, and thus obtain complete control over the law making and law expounding power. Thus by the direct, and the immediately consequential results of a single election, the whole government, in its executive, legislative and judicial departments, might be suddenly put into the hands of men unused to power and flushed with triumph. Ought we to construct our government so as to facilitate such revolutions? The political guillotine once used in the manner supposed, its application would become habitual—the invariable concomitant of every political change. The party out of power, ever and anon becoming the strongest by accessions to its ranks from the disappointed among its opponents, the victims of to-day would become the victors of to-morrow. The repetition of these revolutions and counter-revolutions, would be apt to convert our State into a political Belgium—a battle ground over which would be perpetually advancing in triumph or receding in defeat, hordes of hungry office seekers and their more hungry partisans. A perpetual succession of wars for the spoils of political victory, is the natural fruit of short terms of office, and the removal of all restraints upon the action of temporary majorities. He was opposed to constructing our government so that all its departments could be thus chanced at a single stroke, by the sudden impulse of one popular election. By so doing we disregard the theoretical wisdom of sages, and the instructive lessons of experience. Between such a representative democracy and a pure democracy there was no appreciable difference. Where the will of the moment is the paramount law, and no checks are provided to delay action or to compel deliberation, the forms of a representative body are mere forms, the State is in effect a

simple democracy. A riotous mob usually selects leaders and executes its victims with some degree of form, by an executive committee; but this is not government. He had heard much in this Convention of the necessity of interposing checks upon the power of a majority lest the rights of minorities should be invaded. He admired the doctrine and hoped it would be acted upon in this instance. Although it is necessary that the powers of legislation should be vested in the majority, still it was unsafe to give to the temporary majority an absolute and uncontrolled power. The government could not be taken from the majority, but its power could be checked by constitutional limitations, its action delayed and time afforded for sober reconsideration. Such had hitherto been the policy observed in framing our State Constitutions. They had provided for us a representative democracy, with checks skillfully adjusted for the protection of the minority, among which the most efficient and most reliable was the principle of continuity in the Senate. He begged the Convention to adhere to this policy and not to overturn our representative government, and construct in its place, a simple democracy. Such a government he regarded as the most odious, and most terrible of tyrannies—knowing no law but the caprice of the many, and having neither responsibility, humanity nor conscience. It has but to tire of hearing Aristides called “the just,” and his banishment or his death is at once deemed justifiable. To be the most eminent and the most virtuous citizen of such a State, is to stand

in the greatest danger. He hoped that the Convention would not fall into, nor even approach the error of constructing such a government; that our State would continue to be a representative democracy; that the rights of minorities would still be protected by political guaranties of sufficient force to stay the action of temporary majorities. He hoped the continuity of the Senate would be preserved, and that the distinction between that body and the Assembly would be maintained. It was idle to divide a legislature into two chambers, if the members of both were to be elected at the same time and essentially by the same electors. In this view of the matter he would concur in the highest increase of the Senate that had been named, say forty-eight. He approved that number. He would prefer a three year's term. The least he could consent to was a two year's term, with double districts, one-half going out each year. This would avoid the supposed evils of alternate elections, by allowing all the electors of the State to vote at every election, would admit of a great reduction in the size of the districts, would bring the Senator sufficiently near to his constituents, and would avoid the dangers incident to a choice of Governor, Senate and Assembly, at the same election. Thus we should still have a representative democracy, constructed with substantially the same time-honored checks and balances which wisdom had devised and practice found available, to preserve the rights of minorities and to give stability and steadiness to the action of our government.

SPEECH OF GEN. MARVIN, *on the Legislative Department, and in favor of an increase of the Senate, July 29.*

MR. MARVIN said he was always reluctant to trespass on the time of the Convention, but he came here with the impression that the question of fixing popular representation, in the representative body, was one of the most important questions that could come before the Convention for its deliberate consideration; and although it was said that they had spent considerable time on this report, still he submitted that there had been but little time spent on the question of representation. Why had they come here to make a Constitution? It was an important part of their duty to devise a system of representation for the people, and to organize the legislative department for this great State, in a manner wise, safe and just, to all parts of it; and was it to be said that after they had talked about the matter for a day that it was idle to talk further, and that there must be no further debate upon a question of so vital importance? He should proceed to give, not his views at large, but a sketch of the substance of them, and he begged to call the attention of the Convention to some questions which have been but little discussed. He agreed generally with the gentleman from New-York, who addressed the Convention this morning, (Mr. O'CONNOR.) in relation to the principles of representation in popular governments. But he would say at the outset, that it was a cardinal point with him

to have single Senate and Assembly Districts, and he would not consent that they should be double. He insisted that the people of this State should have the right, or the portion which is entitled by its numbers, to choose its Senatorial representatives, and he insisted that every part and portion of the people having a sufficient number to elect a member of Assembly, shall have the right to choose that member. In the few remarks he had the honor of submitting the other day, he endeavored to show that it was important that the Senate should be increased in numbers, and that legislation was not safe in the hands of so small a number as 32, and that as a matter of fact, with such a number they could not bring the representative home to the people so that they should know his qualifications, and he their interests and opinions. There were other considerations, but he would simply say that his reading had taught him that liberty was safer in a numerous legislative body than in a small one. Oligarchies have never been favorable to freedom; and when the liberty of a great State has been placed in the hands of a few as representatives, where they have had the whole control and the whole power, freedom and liberty have been overthrown. Our ancestors understood this well, and it was a leading object with them to have a full and fair representation of the people—not so full and large as

to make the body inefficacious ; and he asked if 42 or 48 would be too large a body to legislate for the State of New-York. No man would say it was. They were not only to look to population but to *territory*—to the extent of a country over which a government was to extend, in order to form a proper judgment of the number of representatives which should be chosen. If the territory was small, if for instance, all the inhabitants of this State were confined to the limits of the little State of Connecticut, then 32 men could represent the wants and wishes of the people. But here we have a large territory, and had gentlemen failed to observe that out of 32 Senators five may be placed within a compass or circuit of three miles, thus leaving only 27 to be distributed through the rest of the State. The State of New-York is peculiarly and fortunately situated. He once heard it remarked by the present executive, that the State of New-York was more advantageously situated in reference to her territory and boundary than any territory of her size in the United States. Deprive her of a small portion of her territory on the southeast and thus cut her off from the Atlantic, or had her western boundary been established at any point east of Lake Erie, thus depriving her of a communication with those great inland seas, she would have been shorn of her fair proportions, and prevented from occupying the high position she now occupies, and is ever destined to occupy, as the most important commercial and agricultural State in the Union. Look at this great State, extending from the Atlantic to the lakes. On the east, from the commercial metropolis of half a continent, she looks out upon the Atlantic and surveys the commerce of the world, while on the west, from another city, rapidly rising in commercial importance, she looks out upon a succession of inland seas, extending into the heart of the continent, and whose waves wash more than two thousand miles of American shore. Thus eligibly situated, the State occupied a position commanding the most important channels of commerce between the Atlantic and that fertile and extensive region of the west, whose commerce centered on Lake Erie. What were they to anticipate for a State thus situated ? What but that the great commercial cities should increase in population, wealth and power, far more rapidly than the country, the agricultural portions of the State, and in time perhaps contain a majority of the whole population of the State. It had been said by one of the members of the committee, but the fact would bear repeating, that nearly one-fourth of the population of the State of New-York was within their chartered cities. The city of New-York, which is the pride of the whole country, is the metropolis of the commerce of the United States. It was not the State of New-York alone, by her power, and prosperity, and wealth, that had built up that city, but it was the wealth and commerce of the whole of the United States. Then there was the city of Buffalo. Was she built up by the wealth and productions of the State of New-York ? No ; not one-hundredth part was derived from the State of New-York. She derives her importance from the great country west of her, beyond the boundaries and control of this State, and already numbering more than three

millions of people. It was that country and its wealth that were to make Buffalo a great city. He looked upon Buffalo as soon to be the second city of the State, and he was not certain but she would be the second in the United States. And what were they doing ? What had they done ? He should not speak unkindly, but it was well to see things as they are. Was it desirable then that the representation at any future day, and at no distant period, should fall into the power of these cities, or that they should control the legislation of the State. Was it safe for the country, was it safe for the State, that they should become tributary to the large cities ? Look to the ancient Republics, where the power was in the cities. Look to Athens, look to Rome, and then say if it would be safe to give the representation to the cities. He would not say, with Jefferson, that great cities were great sorcs upon the body politic ; but he would say that liberty, that free institutions, were safer in the custody and under the control of the industrious, intelligent and reflecting population diffused through the country, where the farmer tilled his own acres, and where the mechanic was as free in his thoughts, words and deeds, as the air he breathed.

But how, say gentlemen, do you remedy this and avoid the danger ? You do not propose to create any difference between the representation of the cities and the country, but leave it to the operation of the same representative basis of population in each. It was true, no one at this time had proposed any change in that ; but the time might come—and that he left to the future—when it might be necessary to look after this great question. He proposed at this time to increase the number of Senators, with the view of obtaining a larger and more perfect representation from the country and avoid the danger arising from a too small body. It was quite too small as a legislative body to entrust to it the vast interests of the State. Small bodies could be more easily corrupted than larger ones. It was dangerous to attempt the corruption of numbers. All history showed that the liberties of the people were not safe when the power of making the laws was entrusted to a small body. He submitted that a Senate composed of only thirty-two, of whom seventeen were a quorum and nine a majority of a quorum, was too small a body to represent the great interests and territorial extent of the State. In such a body the power and influence of the cities, acting from a common impulse, their representatives united, will enable them to carry almost any measure, as the representation from the country will always be divided. They all knew the accumulating power of masses confined to a small extent of territory—a great city—and where vast wealth, which increased power, was constantly centering. Such cities always had had, and always would have great influence over the country whose commercial emporium it was. But to enlarge the representation, increased the numbers from the country and brought the representative nearer to the great body of his constituents, and widened the margin between the city and country representation. And although the ratio of representation would not be changed, yet the difference in numbers would be greater,

and the danger of legislation being influenced improperly by the commercial and popular interests of the large cities would be less. He repeated that the population of the incorporated cities in the State was already nearly one-fourth of the whole population, and the cities were rapidly gaining in population and wealth over the country, and would, from the causes he had adverted to, continue to gain rapidly for all time to come. Already the cities elected or controlled the election of one-fourth of the representatives. The whole population of the State in 1845, was 2,604,495. The city of New-York contained a population of 371,223, giving to that city alone four Senators, one-eighth of the whole number. Kings county contained a population of 78,691, of which the city of Brooklyn—in fact a portion of the city of New-York—contained 59,539, a large majority of the whole county, which elected another Senator. Thus five of the thirty-two Senators might be located within a circuit of three miles. Albany county contained a population of 77,263, of which the city of Albany contained 41,139, a large majority, and controlled the election of a Senator. Erie county contained a population of 78,635, of which the city of Buffalo contained 29,773, not at that time a majority, but the city was increasing rapidly and would soon have a majority. It could control the elections now and thus elect another Senator. Monroe county contained a large and thriving city of 25,265, and elected a Senator. Rensselaer contained the enterprising city of Troy, containing 21,709, and elected a Senator. The whole population of the incorporated cities in 1845 was 533,124. He repeated that these cities were to increase in population in a ratio greatly exceeding that of the country, particularly New-York, Brooklyn and Buffalo, which were to be built up by commerce from other States; as they increase in population they take a larger portion of the representatives and withdraw them from the country. He hoped the day would never come when the political power of this great State should devolve upon the cities.

In other States provisions had been made in their Constitutions, combining the principles of population and extent of territory, and thus avoiding the danger of undue influence on the part of large and populous cities. He found by the Constitution of Maine, that every town containing a population of 1,500 was entitled to a representative, and a town containing 3,750 was entitled to two members, thus enlarging the basis of representation, until the town or city contained 26,250, when it was entitled to seven members, and it was then declared that no town should ever have over seven members. Thus the city of Portland, though its population might reach to a hundred thousand, could never have over seven members. In Massachusetts similar principles were engrafted in their Constitution. It was provided in the Constitution of Pennsylvania that no city or county should ever elect more than four Senators, thus forever limiting the representation from the city of Philadelphia. In Louisiana the Senate districts were fixed by the Constitution. There were fourteen of them, each electing a Senator for four years, half of the districts electing every two years. Most of

the city of New Orleans composed one district and elected one Senator. A portion of the city was united with the country in forming another district, so that the city could never take any part in the election of more than two Senators, for it is declared in the Constitution that the districts therein established shall remain forever unalterable.

He had complained that the Senate was too small a body for legislation, and that the districts in the country were too large and the constituency too numerous. With only thirty-two Senators the ratio of representative population after abating aliens, paupers and persons of color not taxed, was 74,985, as shown in the committee's report, but the entire population gave over 81,000 to every senator. If the senate were increased to forty-eight, it would give a senator to every 49,990 of the representative population. If it were increased to forty-two, it would give a senator to every 57,131 of the representative population. He submitted that a constituency of 50,000 was quite numerous enough for any representative, especially in the country, where the districts must necessarily be large, and must, from the operation of causes, to which he had already adverted, under the present arrangement, continue at every rearrangement of the districts to include a larger extent of country. Look at the extent of the single district in which he lived, composed of Cattaraugus and Chautauque counties, some eighty miles in extent east and west, and some forty miles the other way, to be represented by a single senator for two years. He was not satisfied with the present arrangement, by which thirty-two senators were to be elected at the same time and continue in office for two years, and then all go out at once. It was a wide departure from all former principles. It was supposed that it was important that the senate, for many reasons, should be a continuous body, and that the term of office should be sufficiently long to give to the body that experience and stability which are as desirable in a republic as in any government. But those principles had been departed from, and they had also abandoned another important democratic principle: they had, by electing all the senators at the same time, and for the period of two years, placed it entirely beyond the control or influence of the people for two years. This was wrong. While it was desirable to construct the senate upon the principles of continuity and stability, it should be so constructed as to feel in a certain degree every year the popular pulse. Not that it should be overwhelmed and changed all at once by some popular excitement which might sweep over the state. By electing the senators for the term of three years—and one-third annually—the senate could be revolutionized with sufficient facility, and the people would have time for the "second sober thought." He had ever maintained that the entire people of this country, and all parties, were patriotic; but all were liable to excitements. They were attributes of human nature, and would occur in all free communities. Again, he was desirous of enlarging the senate that the country districts might be smaller, and he submitted to those gentlemen who desired to render the senate more stable and less changeable, that by increasing

the number of the districts in the country, and making them smaller, it would be more likely to effect an object which many desired—the re-election to the senate of those who had proved themselves faithful and patriotic representatives. To illustrate his idea, under the plan adopted there were only five counties out of New York that composed single districts; all the other districts were composed of two or more counties—the consequence was that in practice a senator would rarely be re-elected from a district composed of two or more counties, though he might be the De Witt Clinton or Daniel Webster of the state. Some other county in the district would claim that it was entitled to have the senator. This was the way the political managers and getters up of conventions managed the matter, and the great mass of the people had little to do with it. But make the districts smaller, bring the representative home to the people, so that they may know him and he them, and if he proved himself faithful and able, the people would much oftener re-elect him. By increasing the senate to forty-two there would be some fifteen or sixteen counties that would constitute single districts, and a much fairer distribution could be made in this way, by simply dividing three or four counties which would have too large an excess, and attaching a few towns to an adjoining county.

It had been conceded in the debate, that no fair system of representation could be had without disregarding county lines; and this was true. He was in favor of disregarding them. He had offered a proposition the other day by way of compromise, providing that the state should be divided by wards and towns into 126 Assembly districts, 3 of which districts should constitute a senate district, and thus elect 42 senators—one-third to be annually elected. This, in his judgment, would effect a great reform. It was admitted, that upon this plan, the repre-

sentation could be perfectly equalized, and justice done to all parts of the state. The whole plan was simple, and no more expensive than the present mode. The towns were a most perfect organization—a body politic—a complete state of government by themselves—each having its officers—a supervisor, town clerk, assessors, collector, &c. Not so with the counties; they were organized for judicial purposes. There was no reason why they should be confined to county lines in forming the representative districts. Make them single districts from towns, and they would accomplish another desirable object: they would break up the political cliques and centralized power at the county towns, which too often controlled the nominations, and people in a single district would attend to the matter themselves.

An attempt had been made to render the system of electing senators in alternate districts every second or third year odious. It had been called the "ride and tie system." There was no just foundation for the objection. Each senate district would be constantly represented, and one-half or one-third of the districts would be called upon each year to elect senators. This was the system of Pennsylvania, and several other states. The able chairman (Mr. TAYLOR) had shown that these objections were unfounded.

In conclusion, he thought there was a great principle involved in an increase of the senate. And the establishment of single senate and assembly districts was an important reform—calculated to bring representation nearer home to the people, and create an undivided responsibility on the part of the representative to his constituents, and to purify the political system of popular representation. He should vote for the motion to reconsider the vote fixing the number of senators at 32, with the object of securing a larger number, and a better and more perfect system of representation.

SPEECH OF MR. SWACKHAMER, *on the Judiciary, August 12.*

Mr. SWACKHAMER was anxious that some member, other than of the legal profession, would have preceded him in the discussion of the momentous question under consideration, but as this was the fourth day of the debate and no laymen, as they were termed here, had ventured to break ground on this mysterious subject, it was left for him, without the aid of the ministers or high priests of the law, to look beyond the veil which at the earliest period of our history seems to have been placed between the people and the administration of their laws. It was true that the gentleman from Monroe (Mr. STRONG) had addressed the committee, but even he was a *quasi* lawyer. He was aware that the feeble attempt he was about making to investigate this matter would be criticised by the legal profession, and every word that fell from him would be placed in the most unfavorable light by the advocates of the old decaying judiciary system. He also felt his inability to contend with able gentlemen, educated in the science of the law. He wished it distinctly understood, in

advance, that whatever allusion he might make to members of the bar, would not be in feelings of unkindness towards any gentleman, or with the view of drawing a distinction between persons of different occupations in that Convention. He was proud to admit that many of the greatest statesmen and purest patriots of the past and present age had arisen from amongst them. Besides, it was but fair to suppose that they were actuated by the highest motives, for they, in common with other members of this Convention, would henceforth become a part of their country's history. That every act, every speech and every vote given here would receive the severest scrutiny, not only of the present but of future generations. He felt thankful to the judiciary committee, for the reports they had laid before the Convention. Much had been said against them, yet it was his opinion that either of them, if adopted, would prove far superior to the existing system. While he conceded this, he was compelled to dissent from some of the conclusions to which the committee had arrived.

He regretted this the more from the fact that he considered the gentleman who presided over that (Mr. RUGGLES) committee, one of the purest men and most able jurists in this country—his associates were also men of great ability. It was under such feelings that he was half inclined to doubt the correctness of his own views, and yield to the conclusions of those of more experience. As it was decided that the merits of the whole question was under consideration, he had no apology for not confining his remarks entirely to his amendment; nor for following other gentlemen in the path they had marked out. The advocate from Ontario (Mr. WARDEN) opened the discussion in favor of retaining something in the new Constitution to perpetuate the memory of the deceased court of chancery, and when the gentleman from Genesee (Mr. RICHMOND) merely intimated his objections, on the ground he (Mr. S.) presumed that its character for equity did not stand sufficiently high, while living, to entitle it to so favorable remembrance, now that it was departing this life, he was sneeringly asked "what could he know about it? he had never studied law." Next we find the able advocate on the same side, from Columbia (Mr. JORDAN) contending for at least a small remnant of this glorious institution.—This gentleman alluded to some remarks submitted by him (Mr. S.) the other day, on another part of the constitution, when he (Mr. S.) expressed a desire to see it made as concise and intelligible as possible. He (Mr. J.) said that he (Mr. S.) presumed to think that our laws could be contained in a little book not larger than an almanac. "He thinks he (Mr. S.) could not have considered the subject—it must be an able yankee who could read and understand the science of law in one day. He further said that he would appoint him (Mr. S.) to codify the laws." He did not remember making the remark attributed to him, but he would now say that he knew of no better comparison in one respect, for he would feel about as secure in trusting his property to the fulfilment of a prognostication in an American almanac, as he would in the result of a suit in the court of chancery, no matter how just his claim, or how plain his case. There would be this advantage in the first game of hazard, you would be certain to know the result within a year, while in the other case it would be necessary to have your life insured, if you expected to live long enough to get a decision. With reference to his "nomination as a commissioner to codify the laws," he begged to decline the honor, for he had no idea that the appointment would be confirmed, especially if it had to be acted upon by the legal profession, for it was evident that the gentleman was of the opinion that all knowledge and learning was confined within its limits. Then again, it was questionable whether the appointment would stand law, under his (Mr. JORDAN's) judiciary system, as some learned lawyer might raise the question, whether it was made under the rules of law or equity, it having been repeatedly admitted here, that cases have been carried up through four or five courts, at an expense of thousands of dollars, in order that the concentrated wisdom of the judicial force of this State might determine where law ends and

equity begins. He found another able advocate for this condemned remnant of kingly power and of the civil law, in the gentleman from Allegany, (Mr. ANGEL.) He admits that we have been "progressing in judicial darkness ever since the adoption of the present Constitution;" yet he "sighs" for fear this precious "institution" will be abolished, and is "alarmed" at the thought of blending both systems into one; and as though his apprehensions were founded in the expectation that the "innovation" would lead to barbarism, he informs us that "under the civil law it was once the practice for creditors to dissect up debtors and distribute their bones amongst them." Seneca tells us of a powerful prince, who lived about the same period of the world, that was in the habit of ordering his most prominent subjects to place their sons in such an attitude as that their hearts might be used as targets. And in one instance, while the boy was weltering in his own blood, he required his father to cut out his heart, that he might see how near he had hit the mark. The same prince used to amuse himself by inviting his neighbors to feasts, at which he would furnish them with a variety of dishes, and after they had eaten, would inform them that they had been dining on their own children. The same monster kept a large number of fish ponds, for the pleasure of feeding them with live subjects. Perhaps the gentleman would contend that the institution of a code here would bring about similar results. It would be about as logical a mode of treating the subject. But the analogy was not fair, nor the reasoning just. He also thinks the non-imprisonment law and the exemption act have occasioned litigation. Here Mr. S. entirely differed with his friend. That humane laws founded on just principles could increase evils existing in society, could not be demonstrated by facts. He further says he can propose a plan for legislation by which many of the evils of our judiciary system might be remedied. Procrastination has always been the enemy of reform, and this was the way its opponents had always talked. But gentlemen might as well make up their minds to meet the question now, for no chance would be left by which they could evade it. Next in order, was the gentleman from Chautauque, (Mr. MARVIN,) and he hoped the gentleman was in his seat. It would be recollected that he (Mr. S.) made some remarks in answer to a speech of his, on a former occasion, and that no notice was taken of them by him (Mr. M.) until several days after, and that, too, during his (Mr. S.) absence, although he (Mr. M.) was in this room at the time they were made.

Mr. MARVIN: Does the gentleman pretend to say that I heard his remarks, as published, on the occasion alluded to?

Mr. SWACKHAMER: I do say the gentleman admits in his explanation that he heard a part of them, and if he did not hear them all, it was his own fault, as the gentleman was in the house the whole time, his (Mr. S.) remarks occupying only about ten minutes. But it was his wish to do every gentleman justice, and if he had misconceived the gentleman, he was glad to be corrected. He would, however, preferred that it should have been done while he was present.

The gentleman thought that some plans he had seen would do very well where justice was bought and sold. Does he allude to the amendment now before the Convention?

Mr. MARVIN: I do not; I referred to plans I have seen in the newspapers.

Mr. SWACKHAMER apprehended that no such system could obtain here, and for that reason he could not see the force or application of the gentleman's remarks to any plan submitted to the Convention. He (Mr. M.) was pleased with the remark of Mr. Van Buren, who said, while a member of the Convention of 1821, that they ought not to destroy, but to amend and improve. This was very well; but with the highest possible respect for the great man referred to, and his patriotic associates in that venerated body, he must be permitted to say that our judiciary system had been amended, or rather mended, in the manner condemned by the purest lawgiver known in history: which was that "no man putteth a piece of new cloth into an old garment; for that which is put in to fill it up, taketh from the garment, and the rent is made worse." So it was with the present judiciary system, it was "patched" by that Convention in the manner mentioned, and the truth was, that it had been continually growing worse. The same gentleman informs us "that in countries where the civil law prevails that it requires several years to get a decision." Under our system it takes a quarter of a century, and requires the expenditure of a fortune, to arrive at a result in our courts of law and equity. He illustrates his opinion that our laws are necessarily ambiguous and difficult to be understood, by a conversation which he had had with a Baptist friend, on the great variety of opinions amongst the various religious denominations. He did not consider the illustration a very fortunate one, for while christians differed in regard to questions of minor importance, all acknowledged the moral obligations resting upon every member of society, and knew that any violation of the divine law would receive merited punishment, while under our human law the guilty go free, and the oppressed seek in vain for that redress which well organized society owes to its most humble members. There was another branch of the gentleman's argument that he would notice previous to concluding his remarks. Before proceeding to pull down, to use the appellation now applied to judicial reform, he would say that he entertained as high respect and as much veneration for time honored institutions as any gentleman. But false systems and aristocratic establishments could find no favor with him, even though they were covered over with the dust of antiquity, and were coeval with the history of man.

He considered the court of chancery an institution of this character, and for this reason it ought to be abolished. It was a compound of aristocracy and despotism. It had its origin from behind the throne of kings—it had been insidiously grasping power and usurping authority unknown to any other legal tribunal, until millions of property and the rights and happiness of thousands of our citizens depended on the *dicta* of this one man power. It had been his fortune to call public attention to this dangerous,

and he had almost said lawless institution, years ago. But then it was in the height of its power and zenith of its glory. During the legislative session of 1842, he took the responsibility of submitting a resolution requesting the judiciary committee to inquire into the expediency of so amending the constitution as to dispense with this court. But his proposition was rejected by the Assembly without ceremony, and sneeringly hooted out of the house by members of the legal profession. There was an appeal taken—only one appeal—and that was from the legislature and lawyers to the people. The result was known to every member of this state—the people, in his judgment, had decided against that and other similar abuses; and in conformity with that will, from which there was no appeal, he found the majority of the judiciary committee reporting in favor of its condemnation, and many of the most able members of the legal profession sustaining the same side of this question. He did not know how human inequity could devise a better plan to defeat justice than our present judiciary system. It was generally admitted that if you get a suit in chancery it is a chance whether it will ever be got out. There were other objections to this court. It was enormously expensive—the expense attending suits in chancery were beyond estimation. He could not better illustrate the *expensiveness* and delay than by an anecdote of a friend, told to him on board a ferry boat. It seems that a certain able lawyer had united his daughter in matrimony to a young gentleman who was educated in the law, and qualified for his profession, except in one essential point, which the sequel would show. Having completed his studies, and entered upon the duties of a husband, he asked his father for a job. The old gentleman gave him a cause in chancery. This simple-hearted young man went honestly to work and settled the matter in a few weeks, and called on the experienced father for more business. "Father," said he, "can you give me another suit to try?" The old gentleman, with great surprise, answered, "I do not know, my son—what have you done with the other?" His reply was, "I have settled that some time ago." "Oh, my son," said the astonished lawyer, "my grandfather made a fortune out of that cause,—my father increased it—I have added still more to it, and I intended to leave it as a legacy for you. You have not finished your legal education, you are not a proficient lawyer, and I cannot give you any more chancery business." He knew that this might be considered by some as extravagant, but it was a difficult matter to give an adequate idea of the folly and iniquity of this system. Why, it was but yesterday that the gentleman from Oneida (Mr. KIRKLAND) informed us of a cause of which he had charge that required 7,000 folios to contain the evidence, and the charges of the examination amounted to \$3,000. *Three thousand dollars!* and all the poor woman finally recovered was \$1,000. Other cases without number could be cited, but it was not necessary. He had listened attentively to the speeches of the friends and opponents of this court, and he had not heard a single argument, or even sentiment, to recommend it to his favor. It had not been shown that it possessed one re-

deeming quality, and the only defence now left was that it should be respected for its age. It was scarcely necessary for him to remind the Convention of the vast amount of private property or money now under the control of the chancellor and his subordinates. Three millions had been acknowledged by that officer, besides other large amounts in a trust company—for *safe keeping*—not directly under his control.—One of the friends of this court had admitted to him that he had no doubt but that there was at least five (5) millions of property distributed about in the same manner. This *secret* fund had become so abundant that a large sum was appropriated to embellish the chancellor's library. Several efforts had been made by the legislature to procure light on this unseen part of this establishment, but they were always defeated by the emissaries of this dangerous court. The rattling amongst the dry bones the other day, occasioned by offering a simple resolution of inquiry would long be remembered by those then present. Why so much effort to keep the affairs of this court veiled in darkness, if all was right? Why fear the light unless something is wrong? The people had become justly alarmed, and nothing short of a thorough exposition of all its transactions would satisfy public expectation. Much had been said against the practicability of uniting law and equity jurisdiction in the same court. The utility of this plan had been demonstrated by gentlemen far more capable to investigate this branch of the subject than he could claim to be. No good could result from keeping up these two distinct forms; on the contrary, much injury and inconvenience had been occasioned by this practice. The proposition to blend the two systems into one was not an untried experiment. He knew of no civilized country where these separate forms of practice prevailed, except in Great Britain and in a portion of our American States, in which it had been transplanted from England.—And it would seem that it was not congenial either to our climate or soil, as the fruit produced here was even worse than that which grew there. Besides, liberty and despotism never could flourish together, and he was glad to say that the latter was yielding to the genial rays of the former. He could not refrain in this connection to redeem his promise to his friend from Chautauque, (Mr. MARVIN.) by showing the inconsistency of his position. He had proved himself to be one of the most able and decided friends of the distinct organization of this court and of separate forms of proceeding; yet the gentleman was compelled to make admissions which were anything but favorable to this side of the question. He (Mr. M.) had admitted that it was a tedious and expensive court, and that some time since he drew up a form which he believed to be correct—that it was very long, and a friend of his not having any, had rode 20 miles to procure a copy. Finding that it was inaccurate, he travelled all the way to Albany to obtain a new printed form—being very much frightened, as he knew the consequence of his blunder. He proceeded home with his new printed forms, but to his astonishment, when he was about to commence his pleadings before the immaculate chancellor, his highness inform-

ed him that there was a slight mistake in his form, and that he must dismiss his case, first taking care to have him foot up a heavy bill of cost. He (Mr. S.) had no comment to make on the gentleman's singular position, except to inquire whether it was any wonder that he was driven to the alternative of calling on the honored name of Judge Story to eulogize an institution condemned by the experience of every inhabitant of this state. There was another point to which he would call the attention of the committee before leaving this branch of the subject, which he trusted would be a satisfactory answer to all that had or could be said against the impracticability of blending the two forms and systems into one. It was that the court of last resort in this state, although not the most conveniently organized, exercised jurisdiction both in law and equity. He begged not to be understood as casting any reflection on gentlemen connected with the judiciary—it was a false system against which he was contending, and not the men who administered it. He would also abolish the supreme court as at present organized. He would not enter at large into the objections that could be urged against it. The mode of appointing the judges, the life tenure, or virtually so,—of their office, and the delay of justice, were sufficient reasons against its continuation. There are now on the calendar between ten and fifteen hundred causes, and the judge had been heard to say that no new case could be reached in less than ten or twelve years, so it is evident that this court does not afford such facilities for the attainment of justice as the people have a right to demand. The court for the correction of errors, too, must be dispensed with. True, it was not obnoxious to the same objections as the others, but it was too large and unwieldy for a court of appeals, and it was too expensive, the average costs of causes being over five hundred dollars. Indeed our whole system of jurisprudence was more costly than that of Great Britain. Another reason why this court should not be continued, was that it exercised two of the highest prerogatives known in civilized government—that of making and administering the laws. These functions were incompatible with each other, and too important in themselves to be blended together, which could not be done on any sound principles of government. Having accomplished this, the smaller courts would go by the board as a matter of course.

Mr. SHEPARD: "The gentleman from Kings has shown his hand at pulling down, will he be good enough to inform us how he would build up?"

Mr. SWACKHAMER was once cross-examined by a lawyer, but he could not extort anything from him but the truth. He would, however, excuse the gentleman for interrupting, and give him his plan in due time. But to proceed. He would complete the demolition of this antiquated but dilapidating structure, by driving out the last peg that held it together. The offices of surrogate, supreme court commissioner, masters and examiners in chancery, should be known no more forever. The first of these was unnecessary except to the occupants, whose fees amounted in one case at least, during the last year, to between 8 and \$9000. The worst feature of

which was, that this enormous sum was principally abstracted from the remaining support of widows and orphans. The second class done very well for taxing lawyers costs, as those who taxed the highest were sure of getting the most business. The third was useless although it was lucrative, and the fourth paid well, for it had been proven that in a single case the examination of witnesses cost \$3000, the expense of this part of the work being two-thirds more than the amount finally recovered, which was only \$1000. Indeed all these officers were well calculated for the promotion of political objects, and afforded good births for partizan leaders. If the courts and officers he had named be abolished, the remaining little establishments would soon give way to a better system, especially the court of common pleas, which like the Dutchman's horse, had "cost more than it come to," as far as we could learn from the returns received. Having finished this branch of the subject—he would proceed to answer the enquiry of the gentleman from New-York, (Mr. SHEPARD.) He would premise by saying that it was asking a great deal of one charged with being ignorant of the principles of law, as he was not familiarly acquainted with writings of Blackstone and other similar authors, to lay down a judicial system which had baffled the efforts of the learned and experienced judiciary committee, eleven of whom were eminent members of the legal profession. Inframing a judiciary system, he would not adopt the iron code of Lycurgus, nor the elastic system of common law, which was like the wind "that bloweth where it listeth, and ye hear the sound thereof, but know not from whence it cometh nor whither it goeth." It was the unwritten law, consisting principally in the decisions of all the courts that have gone before us, from Alfred down to the present time. It in effect assumes for judicial tribunals the prerogative of making, administering and enforcing law; and in that view was inconsistent with republican institutions, which were or ought to be based on written constitutions. The civil law had its origin in the brightest era of Roman liberty, anterior to the Theodosian code of A. D. 438, or that of the Eastern Emperors, as compiled by Trebonius.—But they were now about making a written republican constitution, and laws would be enacted in conformity therewith. It was therefore their duty to reject all that experience had proven to be injurious to society and wrong in principle, and adopt that which was just in principle and would prove conducive to the best interests of the human family. He considered that his amendment involved the first great principle of a correct judiciary system. It provides, 1st. "that the judicial power of the state shall be vested in one supreme court and such subordinate courts as are authorized by this Constitution." If this should be adopted, or the 3d section of the report of the judiciary committee, proposed to be stricken out, amended so as to conform to it, then he would follow it up with an additional section which would accomplish the object he had in view. There was this distinctive difference between his section and that of the committee's. They leave it optional with the legislature to create as many little mushroom courts as it may deem expedient, with a

variety of names, diversity of jurisdiction and divers forms of proceeding. It was not necessary for him to point out the evils of such a system; its baneful influence had long been deplored throughout the state. His plan provided for one harmonious system, known by the same name, with one plain, intelligible form of proceeding and of practice, whose jurisdiction could be understood by all—it was emphatically an American system.

2d. Substitute salaries in lieu of fees for judicial officers—if charges or fees are necessary, send them to the public treasury, and appropriate them toward defraying the expenses of your judiciary. Do this and you take from judicial officers all inducement to encourage litigation.—The fee or perquisite system was demoralising and corrupting in all its bearings—it had brought reproach on the judiciary and dishonor on its officers. Under this system justice might be bought and sold. Judges are but men, and if a lawiul fee was offered to allow an exception, or order an appeal, it would very likely be received. The ermine should be untainted by any such mean or grovelling considerations; its functions were elevated and noble, and should be kept as spotless as the sun.

3d. Limit the time within which decisions shall be had.—Delay was one of the most certain means for defeating the ends of justice. It was the common receptacle of the poor man's last farthing, who was compelled to resort to the law for the purpose of establishing his rights.

4th. Restrict suitors to one appeal.—He apprehended it would be difficult to prove how some half dozen appeals had any other effect than to enrich the lawyers and impoverish the litigants—to confuse, embarrass, and finally defeat the object desirable to be attained.

5th. Place the legal profession on the same platform with other occupations. Every consideration of equality and enlightened government demanded this reform. It was a remnant of the protective system that ought to find no favor here. People at this day were as capable of judging of the qualifications of their lawyers as of any other business man. The committee, in his opinion, had made a great mistake in supposing that this Convention would constitutionally prohibit men from presenting their own case before a court of justice, merely for the purpose of building up the interest of lawyers. The men who bore the parchment were not always the most capable to present the plain truth to an upright court. The seventh section of the report of the judiciary committee must be stricken out.

6th. Reorganize what are now known as justices' courts: elevate their character: extend their jurisdiction, and construct them in such a manner that they may constitute courts of conciliation.—He would engraft on the organic laws of this state, the principle of conciliation and reconciliation. He was not tenacious about whether it should be done in the way he had suggested, or in any other manner that should be deemed most advisable. It might not be out of place for him here to remark, that he never had a law suit. He had once a misunderstanding about a business matter, and it was mutually

referred to the arbitration of two gentlemen, who satisfactorily arranged the difficulty without the aid of lawyers or the law. He was aware that this proposition had been characterized by two able legal gentlemen, (Messrs JOHNSON and BROWN,) as foolish impracticable, and out of the question; and that it would do very well in ignorant and barbarous nations, but it was unfit for this enlightened community. He could not answer such forcible and logical arguments, but he had always thought that peace-making was of divine origin, and was an evidence of the highest state of civilization, while mischief-making was peculiarly characteristic of the profession of the law. As this proposition had originated with him, he would attempt to show the propriety of its adoption. And he wished to thank the gentleman from Seneca (Mr. BASCOM,) and the gentleman from New-York, (Mr. STEPHENS,) also the gentlemen from Oneida and Ontario (Messrs. KIRKLAND and WARDEN,) for the favorable consideration which they had given it. They had the liberality to look beyond their profession and sustain truth, though it originated in humble obscurity. It appeared from the Edinburgh Review that an institution of this kind was established in Denmark—in all other respects an arbitrary government—in the year 1795. There was an effort made to organize a similar court in the same country some forty years previous, but it did not succeed for reasons not now necessary to mention. Time would not now permit him to enter into a detailed statement of the organization and arrangement of the Conciliation Court of 1795, he would merely give the results. "During the three years preceding this institution there came before the courts of law 25,521 causes; and for the three years following 9,653, making the astonishing difference of 16,863 law suits." It seems the idea of this court was originally taken from the Dutch, among whom it produced the most happy effects. It also existed in other European countries, where it worked well. He begged to call the attention of the committee to the testimony of Mr. Weed of the Albany Evening Journal, respecting this admirable institution. He concludes an article on this subject in the following beautiful manner—"In the five months we passed in the dominions of the Kings of Denmark we had opportunities of observing the practical workings of "Conciliation Courts." Influences more benign can scarcely be imagined. We have felt, ever since the subject of Constitutional Reform was broached, a strong desire to urge the consideration of Conciliation Courts upon the Convention. It is a sublime feature in human Government. It divests litigation of its worst characteristics. It calms and tranquilizes the passions of men. It prevents most of the description of law suits in which neither party is benefitted.—And it arrests controversies which arise out of misapprehensions. Indeed communities protected by such enlightened Tribunals are exempted from most of the evils of excessive rapacious and destructive litigation." A committee in the Convention of New Jersey had made a report in language equally commendatory of the principle, and in favor of engraving it in the constitution of that State. He had heard it said that parties could resort to arbitration

without this constitutional provision. He did not deny this, but he still wished the principle recognized in the constitution of this State. It was desirable that an institution of this kind should be established, and its doors open to the whole people—it should be known and admired by all. It was not only the duty of government to interdict and punish wrong, but to encourage right. The supreme law giver had not thought it unworthy his high office to hold out inducements to invite men to upright and neighborly conduct towards each other. The highest honor is tendered to those who soothe the passions of men.—"Blessed are the peace-makers, for they shall be called the children of God."—The principle was founded in the christian spirit of kindness and peace. Friendly advice and kind words would very often accomplish what the law could not obtain—it would not only secure justice, but calm the anger of man. It was like the morning dew, the summer shower, it cooled and tranquilized the burning passion, leaving freshness and beauty in place of darkness and waste. He now came to the seventh and last proposition, which was

To Elect Judges by the People and deprive them of patronage.—He felt that it was due to the Convention, the people and to himself, to say that he had not assumed this very responsible position without much reflection and calm deliberation. There was good reason for a difference of opinion amongst the most enlightened minds, on this subject. It was comparatively an experiment. Many of the most liberal and able statesmen doubted the policy of the change. It was his duty, in view of these considerations, to place the question on high ground. He presumed the assertion that the governing power resided in the people would not be disputed here. That the government should be vested in three distinct branches was also generally conceded. These three parts constituted the whole government, and could with much propriety, in one point of view, be considered three in one—they are usually termed, Legislative, Executive and Judicial. The Legislative was the first and highest function of civilized government. The Executive was the second, and the Judicial the third. He who at this day would deny the right of the people to elect the two first branches of their government would be universally denounced as an enemy to the Republic and to free institutions; and they who doubt their capability to elect the third could scarcely be considered as the friends of either. He had been told that there was no precedent for this proposition, and no examples in favor of it. If there was none in favor, there was certainly not any against. But he contended that the precedent was established in the election of other high officers of state, and in the election of the members of the court of last resort; and that the adoption of this principle in the remaining department of government would complete the symmetrical and harmonious system to which he had first alluded.—Indeed the proposition involved the right of self government, and could be sustained on the highest principles of popular liberty. To question its justice or safety was to doubt the capability of the people to select, directly, their own agents—it was an insult to their intelligence and

a libel on republican institutions. When it was originally proposed to elect justices of the peace many men of experience looked upon it with alarm, yet no mischief had resulted from it to the body politic. True this court was not in every respect what it ought to be, but this was owing to the organization and the fee system, and not to the mode of selecting the justices. Whatever may be the opinion of gentlemen respecting the present organization of these courts, he apprehended that no one would venture to take the privilege of the election of justices from the people. He was not pledged to the election of judges, but he believed it to be the desire of the county he had the honor in part to represent. And here he must be permitted to say, that nothing but a high consideration of duty could induce him to place himself in an antagonistic position, to his distinguished colleague (Mr. MURPHY,) for he regretted to say that his friend differed with him on this important subject. The election of judges had been endorsed at an early stage of the discussion for a State Convention, by the people of his adopted village. If he was not mistaken this fundamental principle was first publicly proclaimed there. It was not the first time that the fire of truth had been enkindled in an obscure quarter, and spread until its purifying flames had consumed error, and left society in the full possession of liberal principles. The county, following in the footsteps of Williamsburgh, did, through the nominating convention, pass the following among other resolutions:—

“Resolved, That we are in favor of electing all judicial and executive officers by the people; believing that if we can be trusted to elect our President, no good reason can exist for restraining us from electing all inferior officers.” The resolutions adopted by the convention were directed to be communicated to the nominees by the Secretaries, and an answer required. In his reply, he did not accept the nomination, nor did he decline it, for his purpose was not to be a candidate unless his nomination should be unanimously confirmed by the county meeting, called to consider the report of the nominating convention. Neither did he pledge himself to any other course than such as should be dictated by an enlightened view and public policy. The tenor of his reply was, however, in conformity with the sentiments sustained by the convention as they met his unqualified approbation. But it would be said that the convention might have been “packed,” and that its conclusions were not the views of the county. His answer to this objection was, that at the county meeting referred to, the people assembled to the number of several thousands, and unanimously confirmed the nomination of the convention and ratified all their resolutions. The next ordeal through which they passed was the election, when the whole people had an opportunity of freely expressing their unbiassed will. Then again the nomination of his associates and himself was confirmed by an aggregate majority of about eight hundred, that too when Brooklyn alone had given nearly 1200 majority on the other side but a week previous. He believed that the judgment of his village and county was in conformity with that of the State. He submitted whether, after having been elected under such circumstances, he

was not in honor bound to sustain the view he did or else resign. But he felt no embarrassment in his position; it was as clear as the light of truth. It had been objected that the election of judicial officers would be the means of selecting political judges. He had no such fears, for he had but little doubt that if they were left without patronage, they would be elected for their capability and honesty and not for their political notions. The people were not in the habit of trifling with their best interests. But admitting, for the purposes of argument, that this would prove true, are you any better off with the central appointing power? Were not the governor and senators partizans? And have you had any other than political appointments to judicial office during the last twenty-five years. The ermine had been tarnished, and our judiciary system brought in reproach within eight or ten years past, by the appointment of a number of stupid and incapable men as judges, who were common political brawlers. Indeed, a rejection by the popular will, of failing politicians, had almost become a passport to the appointment to office by the central power. He was proud to know that they had as able judges in this State as there was in the United States. But no one could deny that a large number were unworthy the dignified post they occupied, and could never have reached it through the people. He supposed it was generally known how appointments were made now a-days; if not, he would give an example or two. It was customary for a political committee to meet together in some secluded place, where there was an appointment to be made, and quietly resolve that Mr. S— was just the man for the office. The matter was perfectly understood by the “knowing few.” If a “green ‘un” of the committee happens to make an inquiry respecting Mr. S—, Mr. S— at once becomes “a most excellent man—first rate—just the man for the place,” but then it is doubtful whether he will serve. The next step was to appoint a committee to wait on him and insist on his acceptance of the office. He finally yields to the solicitations of his fellow citizens at a heavy personal sacrifice. The resolution is signed by the officers of the committee, transmitted to Albany, and as it is against the rule for the Governor to look beyond the official proceedings of the committee, the appointment is made; and the plain Mr. S—, who no one knew, or if known, it was only as a small politician, at once becomes the learned Judge Squash. You may subsequently hear of the judge in this way. “The cause of Ignorance vs. Knowledge came up for a hearing to-day, in the court of Wisdom. The learned Judge Squash delivered an able opinion. Verdict for the plaintiff.” Perhaps the decision was in violation of both the constitution and laws, but no matter, it becomes a precedent, and was legally reported—it now becomes a part of the common law. There were other modes of procuring appointments, one of which was to secure the nomination of senators and assemblymen, who would “do the right thing” when they got to Albany. It was sometimes convenient to go to State Conventions to nominate a Governor, provided an appointment was desirable. He knew an instance where a person suc-

ceeded in procuring an office worth nearly \$9000 per year, by getting on a nominating committee but once. Abolish the appointing power, and you will have no more scrambling to get on nominating committees. You will elect good men to office, and politicians by trade will not exhaust their patriotism in serving on committees without pay. There were other objections to the present mode of appointment to which it was painful to allude. He would not now ask why the council of appointment was abolished in solemn silence. Neither was it necessary to inform the committee that men had been appointed to high judicial offices while they were responsible on the paper of the appointing power to the amount of thousands of dollars, and which the enrolser had finally to pay. He would not show how easy it was for an ambitious executive to perpetuate his power and promote his designs through his thousand offices, scattered throughout the State. Judges were not only appointed on party grounds, but they were also removed to subserve party purposes. Able and pure judicial officers had been removed by an ambitious executive to promote unprincipled political designs. This system of appointment was impolitic and dangerous. It was a canker-worm, eating out the vitals of our institutions. It must be abolished. He was sensible that what he had said would displease some, and could not find a response from all. He had spoken frankly his own opinion of what he believed to be the defects in our present system of jurisprudence, and had fearlessly proposed reme-

dies which he sincerely hoped would prove effectual. He was glad to see that the very able committee on the judiciary had submitted the most important part of the plan he had suggested by resolution, shortly after their organization, and he was happy in believing that the Convention would go still farther than the committee, and engraft on their Constitution other propositions which he had submitted. He considered the question then under discussion one of the most momentous that would come before the Convention. He had not rushed into it from the impulse of passion. What he had said was based on calm reflection, and though imperfect, was the result of careful investigation, and, he sincerely hoped would conduce to the establishment of correct principles. What was done of good or of evil would not be then confined within the borders of this State. The happiness of unborn millions might, and perhaps did depend upon the result of their deliberations. Great was the responsibility to all, and fearful the future to them, if any, who failed to discharge their whole duty at the present golden moment. It was in view of these solemn considerations that he had taken the position he now occupied—if he was sustained by the enlightened opinion of a free people he would feel grateful, if otherwise, he should not complain, leaving as he would, this capitol, conscious of having acted according to the dictates of his best judgment, and with the single purpose of humbly contributing to the prosperity of all.

SPEECH OF GEN. TALLMADGE on *Finances*, Sept. 10.

Mr. TALLMADGE said the report of the committee, now under consideration, and the course of this debate, had been exceedingly interesting to him, and it was calculated to be very profitable in many points of view. It awakens recollections, from the beginning of the measures and the establishment of the system of the canal policy, to the present hour. It was his fortune to have been one of its early friends. He bore a part in its early consultations. As its known friend, he endured, in 1818 and 1819, the gibes and jeers, on the floor of Congress, of open opponents,—the sarcasm of the appellation of the "Big Ditch"—and listened to prognostications, echoed forth by willing instruments, of the hopeless bankruptcy and total ruin of the state of New York, from her undertaking a scheme so wild, so mad, so desperate, as the Erie canal. The end is before us. The world bears testimony to the grandeur of the undertaking and the greatness of the exploit. Nullification has had its day—a monument was erected to its last remains by the late convention at Memphis! Internal improvements in New York have set the example, and with the encouragement of domestic industry and labor-saving machinery, are now working a revolution in the civilized world. Niagara, in its deep tones, murmurs its applause. The inventive genius of America has employed the lightning of the skies to herald the triumph of art, and out-

stripping the morn, to blazon forth and tell to the uttermost parts of the earth the deeds of the passing day.

This debate has been marked by great talent and intelligence. The past is past. It is unnecessary to draw upon by-gone days for purposes of recrimination. In this respect I disclaim all participation in the discussion. This debate has, however, afforded lessons of wisdom. It has established and settled that—

The canal debt on 1st July, 1846 was.....	\$16,944,815
The general fund debt of the state.....	5,889,649

Total debt.....	\$22,830,464
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Deducting the funds on hand, will leave this debt about \$22,000,000. It is not here to be discussed who incurred the debt, or by whose errors, or wasteful extravagance the necessary amount was so greatly augmented. The only question now is, how and when the debt can be paid? The debt is created, it must be met and paid.

The report (Mr. HOFFMAN's) states a plan to pay it off in 18½ years. This plan is without the enlargement of the Erie canal.

Mr. AYRAULT's plan is, by extended time to enlarge the canal, and thus to pay all the debt off in 23 years.

Mr. BOUCK's plan is also to enlarge and pay off in 25 years.

These plans are able and discreet, and either

will certainly accomplish the payment of the debt as proposed. The question is, which of the plans as proposed shall be taken? Such is the high character of the state for its responsibility and credit, that I think it is a mere question of time. Such plan ought to be adopted and made a fixture in the constitution, as will best accord with the concerns and general interest of the state. The plan of the report of the committee, which proposes to pay off the debt in eighteen and a half years, it will be observed, does not provide for the completion of the enlargement of the Erie canal. This system, if adopted, will leave the concerns of the state unsettled and unstable. The people of the west, and on the upper lakes, will continue their importunities, and worry the legislature to complete the enlargement. To provide at once for the enlargement, settles the policy of the state, restores order and harmony in all its concerns, and especially in its legislative enactments and proceedings. The proof and statements sufficiently show that the Erie canal, in its present condition, is inadequate for the present and the increasing business.—To enlarge the canal will enable it to perform a much greater amount of business—will increase its facilities, and thus prevent the diversion of trade to other channels of communication.—The enlargement of the Erie canal will double its capacity for business—will thus greatly augment the amount of the tolls, and can only thus be made able to allow a further reduction of the present rate of tolls. Should this Convention leave the enlargement of the Erie canal an open question, it will lead to every corruption in legislative proceedings. It will form combinations and 'log rolling,' and invite to a union of selfish purposes and improper objects with the petitioners for the enlargement; and thus combined, will control and command the proceedings of the legislature, and open the treasury at the will of any such combination.

Mr. T., said the remarks he was about to submit, were upon the distinct understanding, on the agreement of this Convention, that a provision shall be adopted against the creation of any future debt, and making ample provision for the payment of the now-existing debt. Under this view of the subject, Mr. T. said he had no hesitation to avow his intention to vote for the enlargement of the Erie Canal, and to apply for such purpose the surplus tolls beyond the sum necessary for the expenses of the government of the state. It was due to himself to declare he had always condemned as improper and indiscreet the passage of the law of 1835, for the enlargement at that time. What was then anticipated had now become reality, by an entire change of the circumstances of the country.—[Mr. HOFFMAN, will the gentleman allow me to enquire if the gentleman remembered his promise in writing in 1825, that the canal debt should be paid off in 1836?] Mr. T., yes sir, I do well remember all the proceedings of 1825, and I refer to them with pleasure, on every call from others. I do also remember the circumstances of 1824, when the credit of the state, by opposition from within and from without, was sorely pressed to procure loans to prosecute the work to a completion, and when at such a crisis the treasurer of the United States at Washing-

ton made an inglorious and an unsuccessful attempt to levy duties on the canal boats of New York.

I do remember in 1825, I signed as a member of the Canal Board, a statement and report of the canal debt, showing the ability of the state to pay it off in 1836. I do remember that shortly after that report, the infant canal was taken from its fond parents, and handed over, not to an unfeeling step-mother, but to those friends who had sought to slay the infant at its birth. Under their auspices, numerous lateral canals had been engendered and fastened upon the Erie canal.—The funds on which the payment of the debt in 1836 was promised, had been diverted to other objects; and yet, in 1836, the debt was in truth paid off, to three millions of dollars. The act of 1833, to issue stock to the amount of \$7,500,000 on the credit of the canal, to be loaned to the banks to save them from repudiation, appears on the statute book—a measure, perhaps at the time necessary for the banks, but a fraud on the credit of the canal. The present debt of about twenty-two millions, as above stated, has been built up in this manner.

Under the law of 1835, for the enlargement of the Erie canal, eleven millions of dollars had been expended before the suspension of the work in 1842. More than one half the work is stated to have been completed. This remains ineffectual, and will be unproductive till the remainder is completed, and larger boats can pass the locks and navigate the whole distance of the canal to tide water and to the upper lakes.—Without a consummation of the whole enlargement this eleven millions is a loss, and cannot add to the income of the canal.

I have from my own observation pronounced the law of 1835, for the enlargement of the canal and the expenditure of the eleven millions, as premature and precipitate. In 1833, I travelled through the then far west. The country at that time did not produce provisions sufficient for its then inhabitants and the influx of settlers. The steamboat in which I went from Buffalo to Chicago was freighted with flour and provisions from ports on Lake Erie, and taken to Lake Michigan for supply to its population. I continued on from Chicago across the desert prairies to Galena, on the Mississippi. The country then had but few settlers, and far distant from each other. The numerous prairie wolves then occupied the country, and their barking at the interruption of wheels and our horses alone broke the then solitude, where now the farmer and his abundant harvest hold the fields for agriculture and the pursuits of civilization. Several persons now on this floor inform me they were in that country in 1835-6 and 7, and agree with me that the then course of trade was *up* the lakes, and the settlers were supplied with Genesee flour and Ohio provisions. Since the opening of the canals in 1825 the western parts of this State, until the last few years, have had a better market for their productions on the Upper Lakes, than at Albany or New-York. The tide has turned: the current of trade has changed.—The vantage ground has been gained. The productions of the upper country now supply the inhabitants and the settlers—and the increas-

ing surplus of its fertile soil is now returning, for a market, and demands a passage through the canal. It is the returning course, of the super-abundant production of the advancing settlers in this upper country, which has so much increased the tolls and the business on the canal and rendered it a sure source of revenue.

The tolls received the last year were \$2,375,533—and the amount of business on the canal, has doubled in about every seven years. They have now arrived at a point requiring the completion of the enlargement of the canals; and as necessary to accommodate the amount of business, pressing to pass onwards. This increasing production and trade of the Upper Lake country, has already arrived at the important point of employing a greater amount of tonnage on the canals, than the tonnage of the foreign commerce of the country. Add to this another important fact, that the Lakes present a coast of navigable communication, bounded by the most fertile and productive soil on the globe, and which is much greater in extent than the sea coast of the United States on the ocean. It is the expanding commerce of such a mighty district of country, that the early friends of the Erie canal, foresaw, and sought to gain, to encourage and to accommodate; and thereby to lay the sure foundation for the boundless increase of the industry, the commerce, the wealth, and the population of the State of New-York. To keep up with the march and the enterprise of this country, the enlargement of the Erie canal must now be completed. The remaining work for its completion, can now be accomplished at a reduced rate of about one-third less expense than the costs for which the former enlargement had been performed.

But some of the well known friends of this great work of the Erie canal, all on a sudden, are very anxious for the credit and character of the state, and are alarmed, lest it may not be able to meet its debts and pay off the stock as it falls due. Let me tell such gentlemen, there is no need for their friendly anxieties. The credit of the state is unshaken, and stands so high, the holders of its stocks do not desire the payment. It would be better if the debt fell due the present or the coming year. It would be a profit to the state. A new loan could be made at a reduced rate of one or two per cent. interest, to pay off the present debt.

We have been informed in the course of this debate, by some, that there are apprehensions, the trade and business of the upper country may fail, or diminish; and some others have labored to show us, that the trade and business will be diverted to other channels of communication, and to other markets. "When the sky falls we can catch larks,"—when the trade and the business of the great west shall fail or diminish, we can do without its tolls on the Erie canal. Will not gentlemen perceive, that the country of the lakes above us, embracing several states in the progress of rapid settlement, constitutes the great table land of this continent. Its waters, and its business, flow downwards, and must pass the Niagara, and the Erie canal. The God of Nature has given us these natural advantages. New York must be faithful to herself; and must not forfeit, or lose them.

Do gentlemen point to a diversion of trade by the Welland canal? It is a long, tedious, and somewhat dangerous route—it is impeded by the winter as long as the Erie canal is interrupted. A voyage in the northern seas and the entrance into the St. Lawrence, is a voyage of difficulty and danger, in the winter season—the ice in the river forbids ascending to Quebec. That port is effectually closed by the climate, several months in the year. New York is always open and accessible from the ocean. It has been the regulations to encourage the colonial trade, and not any natural advantages, which have seemed to make Quebec a rival and a competitor for this lake and canal trade.

But the greatest danger seems to be apprehended from communications which may be opened from the lakes, to waters leading south, and to New Orleans. Let it be done. The natural advantages in our favor cannot be overcome. There is about one thousand miles difference in the internal communications, to New York or to New Orleans, and another one thousand miles difference in the distance of the sea voyage to Europe. Add to this it is in a warm climate, and on the gulf stream, which heats the cargo, and is liable to spoil the flour and provisions. To carry grain or provisions from the lake country to the south and a market, will be "to carry coals to Newcastle." The states south of the lakes produce provisions for themselves and the West India market; and the upper country, with the greater distances, dangers and insurance, can never come in competition in the southern market. They must look to New York and to Europe for a market. The cotton, tobacco and hemp of the south and west are already coming by way of the lakes to the Erie canal. Let the western lakes be tapped, and other communications be formed, it will bring in more business than it can divert, and all will enure to the benefit of the Erie canal. Cherish the Boston and Albany Railroad. Let Montreal be united to the Champlain canal. All will aid to swell the business and the trade on the Hudson.

Hearing the objections, Mr. President, and listening to the arguments, which have been urged in this discussion against the completion of the Erie canal, awaken the memory of the past, and call to my recollection the incidents with all their brilliancy of that great jubilee, on opening the Erie canal—when a free people came together to rejoice. It commenced at Buffalo, where the first canal boat with its party began its adventurous voyage from the waters of lake Erie to the Hudson and the ocean; an assembled multitude witnessed the beginning; the deep-toned cannon proclaimed the event; a crowded auditory with their full hearts sent up their shouts of joy; a dense population occupied the banks of the canal; as the boat passed onwards they rent the air with acclamations of joy. The aged rejoiced their days had been spared to witness the opening of this, their own great state work, and mothers came leading their children to see and remember the occasion. All grades of society, every city, town and village joined in the festival. Such was the continued progress of this voyage from Erie to the Hudson. There a fleet of steamboats and

vessels, decked in all their emblems of rejoicing, awaited the coming of their younger sister from the lakes, and amid continued and loud demonstration from the shores of full participation in the general joy, conducted her along the noble Hudson to the city of New York, which stopping its business and its sports, poured forth her full population to greet with ardent welcome this first emblem of the young commerce of the inland seas of the far west. Sir, my heart is yet too full to speak of the incidents of that great

occasion. The feeling then entertained in the cities along the river, on the line of the canal, and throughout the state, cannot be lost or forgotten. Should this convention fail to establish as a fixture in the constitution, provision from its own tolls for the enlargement of the Erie canal, and completion of this great work, a sensation will go forth, of which I fear to speak. Let it be the lot of others to describe the dirge which in such case will pervade this land.

SPEECH OF MR. KIRKLAND, *on State Debt and Internal Improvements*, Sept. 17.

MR. KIRKLAND said: Before proceeding, Mr. Chairman, to the discussion of the question under consideration, I will state what the precise question is. The Committee on Canals, &c. in their reported plan propose that out of the net revenues of the State canals, the sum of fifteen hundred thousand dollars shall annually be set apart as a sinking fund to pay the principal and interest of the canal debt; that out of said revenues the further annual sum of \$672,500 shall be annually paid forever into the treasury for the use of the State in liquidation of the (allege!) State claims for advances to the canals; that out of the last mentioned sum, five hundred thousand dollars shall annually be set apart as a sinking fund to pay the State debt, called the General Fund debt, until the same is paid; that the surplus of the said net revenues, after deducting the aforesaid sum of \$1,500,000 and \$672,500, (making an aggregate of \$2,172,500,) shall annually be applied to the improvement of the Erie canal, until such surplus shall amount to \$2,500,000.

The gentleman from Erie (Mr. Stow,) has proposed an amendment, providing for the setting apart out of the net revenues of the canals \$1,500,000 annually for ten years as a sinking fund for the payment of the whole debt of the State, (including the Canal and General Fund debts,) and after 10 years for setting apart \$2,000,000 out of those revenues annually for the same purpose, till the whole debt is fully paid. The plan of the committee and the amendment just stated show the question under discussion.

Our proceedings on this subject, Mr. Chairman, are watched with intense interest by vast numbers of our constituents, indeed by all who are anxious for the prosperity, jealous of the honor, regardless of the character of the State of New-York; and the subject is one which well justifies this intensity of interest. The question now to be determined is no more nor less than whether the unfinished public works of this State shall, by the Constitution be sentenced to an enduring suspension, be consigned to the sleep of death. For disguise it as you may, the proposition of the committee which thus takes from the net canal revenues the sum of \$2,172,500, a sum exceeding any net revenue they have ever yet until the present year produced, is equivalent to a proposition so to cripple and limit

expenditure on the Erie canal as practically to prevent such improvement as may be indispensable to enable it to maintain its present claim to the title of "the great thoroughfare" between the vast West and the Atlantic: and as to the unfinished canals, it is tantamount to declaring that they shall remain as they are for a long term of years at least; a term so long that its expiration will find them in a condition little if any better than if the first dollar had never been expended upon them. Propositions presenting results like these may well excite the deepest and most anxious interest here and elsewhere. I am glad, sir, that the amendment has been offered, for it seems to me to furnish to us a safe "middle way," a course which, while it will enable us on the one side speedily to extinguish the public debt without additional public burdens, will on the other conduct us safely, economically and with reasonable expedition to the required improvement of our "grand" canal, and to the rescuing the others from the dilapidation and ruin now impending over them.

I desire now, Mr. Chairman, to express in terms the most emphatic my abhorrence of public debt; my utter dissent from, and rejection of the doctrine that such a debt is a public blessing. The citizen of New-York who has witnessed the condition in which many of our sister States are now placed, the intolerable burdens devolved on them by the masses of debt under which they labor, heavy taxation, public faith violated, the fatal doctrine of repudiation become familiar, character injured at home and ruined abroad, none of us, I say, who have witnessed all this, can for a moment advocate the doctrine that a public debt is not an evil that should never be imposed on our people without great and powerful reasons; and when imposed, should be removed as speedily as the exigencies of our situation will allow. Such a debt may be useful in the monarchies of Europe, and it is said that the enormous debt of Great Britain, held as it is by all classes of her subjects, is one of the strongest ties that bind that people to their government—but in a republic, no such ligament is wanted to attach the citizen to its institutions, and its existence is to be regarded only in the light of a burden, to be imposed as seldom and to be removed as speedily as possible. The gentleman from Herkimer (Mr. HOFFMAN,) has often, during this debate,

painted in glowing colors the evils of "debt and taxation." In the sentiments expressed by him on this subject I entirely concur. And I utterly deny for myself and for those who with me on this occasion advocate the proposed amendment, all charge or insinuation that we thereby advocate in any manner or to the slightest extent the principle, which in common with that gentleman we earnestly reject from our political creed. In consonance with these views, I regard it as a duty we owe to the people of this State to provide for the certain and seasonable extinguishment of the public debt, and for this great and desirable object, the amendment in question most fully and effectually provides, as I hope to be able clearly to demonstrate. In devising the means to effect this object, we must of course regard our existing condition and make our arrangements accordingly; we are to be governed in this as in all other matters by facts as they are—not as we wish they might have been. Had we no Erie canal in the condition in which that work is, and no other canals in an incomplete and partly finished state, and had we in that event the same debt to pay and the same revenues to pay it with which we now have, our line of duty and action could not be mistaken. An immediate application of those revenues to the payment of that debt would be demanded by the principles above stated, principles entertained alike by the advocates of the plan of the committee, and by the advocates of the proposed amendment. But, sir, this is not our condition—we find ourselves with our "great work" requiring material improvement, and with other important works, on which very large sums have been expended, in an incomplete and useless state, and demanding, by every consideration of duty to the commonwealth and to tens of thousands of individual citizens, their resumption and completion, if that can be done consistently with the higher duty of providing for the certain extinguishment of the public debt within a reasonable period. In my opinion, our financial condition, our sources and means of revenue enable us safely and surely to accomplish all these objects; and by the adoption of the proposed amendment they will be effected in such manner as to preserve inviolate the public faith, and to impose no additional burdens whatever on the people of the State.

There has already been expended on the Erie canal enlargement upwards of \$13,000,000; much of which, in consequence of the suspension of that work, is of necessity producing no benefit; it is literally a "dead" investment. But of this suspension I make no complaint and it is unnecessary further to speak. But it will be conceded on all hands that material improvements in that canal and additions to its present capacity are indispensable; without them it will be vain to expect, that transportation can be so cheapened and facilitated as to enable us successfully to counteract the sharp and increasing competition, on the one hand of the southern and southwestern natural and artificial channels of communication, and on the other of the lakes, rivers and canals of Canada, for the magnificent prize of the trade of the West. What the expense of these requisite improvements and additions will be, and how soon it will be indispen-

sable to furnish them, it is not important, perhaps it is not practicable to determine; the gentleman from Herkimer alleges that every necessary expenditure to produce all the benefits ever contemplated from the most extensive enlargement that has been at any time previously suggested, would not exceed \$2,500,000. How nearly correct he may be in this statement it is not material now to enquire; it is sufficient to say that the plan proposed by him affords no certainty of furnishing at the proper and suitable times the required means, or any means available calculated to answer a call, on the compliance with which the momentous question may depend, whether the vast trade above alluded to shall be retained in, and brought to the Erie canal, and thus be made to keep up our rich revenues and to contribute enduringly to the wealth and prosperity of the State, and to the pre-eminence of our commercial metropolis, or whether, with all its varied and immense benefits, it shall be borne far off to the South and to the North, under the influences of that energetic, skillfully directed and ceaseless competition so forcibly described yesterday by the gentleman from Herkimer. It seems to me, sir, under these circumstances, that it is the dictate of prudence, nay, of self-preservation, not to tie up, and perchance to effectually prohibit the use of, the means and revenues, which our vital interests may absolutely require.

The plan of the standing committee, as has been seen, absolutely and effectually appropriates exclusively to other uses the net revenues of the canal to an amount exceeding the sum they have reached in any year prior to the present, and for all this we are compensated and consoled by the allegation of the chairman of the committee, that the aggregate increase of those revenues in a period of ten years will be \$2,500,000. But we are not assured by the gentleman that that increase, assuming it to occur, will happen at times and periods, when our necessities may imperiously demand it. It is the extreme of rashness as it seems to me, thus to jeopard and peril interests of such magnitude; and this too, sir, when no necessity demands it, and no argument deserving the credit of even plausibility has been or can be urged in its favor.

Considerations of great if not of equal force apply to the unfinished works, the Genesee Valley and the Black River canals. On the uncompleted part of the former the sum of \$1,802,000 has been expended; and to complete it, as appears from the report of the canal committee of the Assembly in 1844, the sum of \$1,322,000 is required, though in the same report it is stated that responsible contractors have offered to do the whole remaining work for one million of dollars. On the Black River canal, there has already been expended the sum of \$1,675,357; and as is stated in the Canal Commissioners report of 1843, the further sum of only \$436,000 will fully complete the work, including the Erie canal feeder, an auxiliary to the latter canal, which there is the best reason to believe will, at no remote period, be found indispensable. The question is not now whether these two canals shall be constructed; were that the question, it would doubtless receive from this Convention

an unanimous response in the negative; but it is, sir, whether we shall expend the sum of \$1,322,000 to complete the one, and \$436,000 to complete the other; in other words, whether it is worth while for the State (were the question now an original one) to obtain the Genesee Valley canal for \$1,322,000, and the Black River canal and Erie canal feeder for \$436,000. This being the true state of the case, and the real point presented and the requisite funds being obtainable from the canal revenues, without creating a dollar of debt or a shilling of taxation, I cannot hesitate to give an affirmative answer to the question, and to pronounce it as my deliberate opinion that, considered in a financial and politico-economical view merely, these works should be resumed and completed with such reasonable diligence as the funds applicable to that purpose will allow. On this branch of the case it becomes a relevant matter of inquiry, whether the revenues derivable from these works would pay the expenses of repairs and collection, and the interest on the sum now required for their completion; for if they would not do this, it might with plausibility be urged that they should be abandoned forever, though their completion could be effected without increase of debt or taxation, and notwithstanding the reasons of public faith and policy demanding their completion. Let us look for a moment Mr. Chairman, at this question of revenues from these works. Preliminarily it is to be remarked, that on every principle of common sense, of common justice, these works would in an estimation of their productive value be entitled to be credited with two classes of items: First, with the tolls received on them directly; secondly, with the Erie canal toll furnished by them. It has been often asserted that the lateral canals are a dead weight on the State, and that their contributions to the revenues fall ruinously short of paying the expense of their repairs, &c., and the interest on their cost; and this assertion arises from the fact that the direct tolls received on them have alone been taken into the account; but when they are credited with the amount contributed by them to the Erie canal revenues, a totally different result is exhibited and a brighter as well as truer picture is presented. Thus, the Comptroller's report of 1836 shows, that if the lateral canals then existing had been credited with the tolls they brought to the Erie canal, instead of there being a deficiency of revenue for payment of interest, repairs, &c., of \$43,000, there would be a surplus of \$73,000! The Comptroller says that much of this would have been transported on the Erie canal, had there been no lateral canals—this is in a measure doubtless true; but he gives no credit for the return freight they create, and it is a well known fact in reference to our canals, that any increase in what is sent to the eastern markets produces as a general rule a corresponding increase in the return or "up" freight. By the Comptroller's report of 1845, it appears that including the tolls received immediately from the lateral canals, and those which they contributed to the Erie, the excess of their revenues over and above the interest of their cost and the expenses of their maintenance, was for the preceding year \$347,000. Applying these just rules to the works in question, no reasona-

ble doubt can be entertained that they will each afford a revenue, adequate at least to defray their current expenses and the interest on the sums now required for their completion. In reference to the unfinished portion of the Genesee Valley canal, the gentleman from Allegany (Mr. ANGEL) has given us a detailed statement of facts, showing what may reasonably be expected from that work if completed. I will not repeat his statement. It will suffice to say, that the various products of the region through which it passes, the extent of territory that would be tributary to it, its connection with the navigable waters of the Allegany, must impress every candid mind with the conviction, that if completed, it would not fail on the principles I have stated to furnish a fund fully adequate to the payment of its expenses, and of the interest on the sum now required for its completion.

As to the Black River canal, the same proposition may be unhesitatingly asserted, if any confidence is to be placed in investigations made with the greatest caution by men of unquestioned character and intelligence. In the Senate Documents of 1836 is the result of such an investigation made by Messrs. H. A. Foster of Oneida, N. J. Beach of Lewis, and P. S. Stewart of Jefferson, gentlemen known to many members of this body to be as reliable and respectable as any within our borders. It cannot be amiss to read for the information of the Convention the following extract from that document, bearing the signatures of the persons I have mentioned.

Our information shows conclusively that the imports and exports for the past year of the district of country comprised of the towns of Lee, Western, Steuben, Bonville and one half of Remsen, in the county of Oneida, the whole of Lewis county, the towns of Champion, Rutland, Rodman, Watertown, Wilna, Le Ray, Pamela, Antwerp, Philadelphia and one half of Orleans and Alexandria in Jefferson, and Edwards, De Kalb, Fowler, Gouverneur and Rossie in St. Lawrence county, amounts in

Tons of merchandise to	2,233
" potash	1,240
" butter	1,217
" cheese	517
" pork and beef in barrels	1,052
" whiskey	350
" flour	911
" salt	3,117
" staves	40
" plaster	1,500
" wool	25
" cordage and hemp	125
" beer	60
" lumber, including shingles	6,258
" iron, iron ore and castings	2,167
" sundries	335

It is ascertained that upwards of 20,000 head of cattle have been driven to market the past season from this district, one half of which we may safely calculate would be slaughtered near Carthage—the beef barrelled and sent by the canal in tons

3,750

Many inquiries were made to ascertain the average transportation per family of grain of all description, flour, butter and cheese contracted to be delivered along the line of the Erie canal; stock, grass seed and the various articles not enumerated above, which do not find a market in the country where they are produced, but are sold at Utica, Rome,

and Ogdensburgh; the result by combining a great number of opinions is that the average is not less than one ton per family..... 9,940

To show the above estimate to be within the truth, it is proper to state that the town of Philadelphia, in Jefferson county, containing 278 families, has sent to market the present season upwards of 15,000 bushels of wheat, thus item alone making 540 tons, and the town of Lyme, in the same county, with a population of 3,816, has produced upwards of 52,000 bushels of wheat; these are but specimens of the productiveness of the country—many others might be added, showing an equal productiveness. Add for the towns of Hermon and Pierpont in St Lawrence county, not embraced in the above estimate in proportion to their population..... 583

Add for the north part of Herkimer co, which would get its surplus of salt, flour and plaster by the contemplated canal a like amount..... 583

Making a total amount of..... 36,113 tons.

Which at 9 mills per ton per mile on sixty miles, being the average distance to the Erie canal, will be in tolls \$19,501..... \$19,501

Your memorialists have taken due pains to ascertain the probable quantity of pine timber which would find its way to the Hudson immediately upon the opening of the canal, exclusive of what is now forwarded by different modes of conveyance, 15,000,000 feet, for 200 miles, including the additional transportation on the Erie canal, add 5 mills per ton per mile... 15,000
10,000 M shingles at 5 mills per ton per mile... 2,000
200,000 cubic feet of square timber in rafts, 4,000 tons at 1c 5 mills per ton per mile..... 12,000
The country upon the head waters of the Black, Moose, Independence, and Beaver rivers, and Woodhull, Otter and Lewis creeks, abounds with timber; we may safely calculate that 100,000 cubic feet will pass in rafts to the Hudson annually, to 2,000 tons at 1c. and 5 mills per ton per mile,..... 6,000

Making for the lumber business alone..... \$35,000
Add for merchandise, &c. 19,501

And we have for the first year's business..... \$54,501

If it is assumed that the preceding estimates are greatly beyond the reality, still it seems to me impossible to say that the business that will be furnished to the Black River canal, and through its means to the Erie, will not, in all reasonable probability, afford a full and perfect guaranty to the state for the comparatively small sum now required to bring it into use. It is to be also observed, as I have before stated, that one prominent motive, which induced the law authorising this work, was the supplying an additional feeder for the Erie canal; even now this addition to the capacity of that canal is often needed, and when it comes to be enlarged or improved, even to the extent intimated by the gentleman from Herkimer, I hazard little in saying that this feeder will be indispensable. The legislature were exceedingly careful to secure this subject—the very title of the act is “for the construction of the Black River canal and Erie canal feeder,” and its last section expressly provides for securing to the Erie canal, not only all the water required for the Black River canal itself, but all the surplus waters, and prescribes the mode of conducting these surplus waters to the Erie canal. It is known to all that it is a work of difficulty to furnish the proper supply of water for that level of the Erie canal into which the waters of the Black River canal would flow; on many occasions that level would

scarcely have been navigable without the aid afforded by the waters of the Chenango canal uniting with it at Utica; and I am just informed by my colleague near me, (Mr. CANDEE.) that in a single season the Erie canal was for the space of two months dependent on the waters of the Chenango.

Again, Mr. Chairman, viewing this question as enlightened men should view it, is it irrelevant, is it chimerical, to refer to the unquestioned benefits which the completion of these works would produce, irrespective of the question of direct revenue from them? Is it nothing, sir, to know that thereby extensive tracts of country would be opened to settlement and cultivation; that a vast amount of the productions of the forest, of the mines, of agriculture, now precluded from use by inability to reach a market, would thus be made a means of comfort and competency to thousands; that our population and wealth, our moral and physical power would be thus increased; and while the sum of human happiness would be thus augmented, this commonwealth would at the same time make more and more sure, more and more just, its title to pre-eminence among its sisters of the confederacy? I speak this, sir, in no visionary, no “new impulse” sense. I am not one of those who believe that, for the sake of the “glory” of the state, or for the sake of adding to its aggregate wealth and population by means of “public improvements” in localities, the treasure of the people should be expended and public burdens imposed; but, sir, I do believe that such considerations, among others, are properly to be taken into view, when the question is such as that now before us; and I believe that the most strenuous advocate of economy and retrenchment, if he has a single spark of humanity, philanthropy or patriotism in his bosom, will not disregard them.

We have heard much, sir, of “public faith” during this debate, but so far as that faith has thus far been discoursed about, it has had reference solely to the public creditor; in all that has been said I fully concur; but in my judgment there are other matters than merely the payment of debt, in reference to which there may be a “public faith.” If I err not greatly, this “faith” can be, and has been pledged, to others than public creditors; and this faith thus pledged has been relied on, and has been acted on by great numbers of our fellow citizens. The people of this state, acting in their sovereign capacity through the only agents and representatives of that sovereignty, the legislature, solemnly ordained and declared on the 19th day of April, 1836, that the Black River canal should be constructed with all reasonable diligence, and on the 6th day of May, in the same year, they made the same solemn declaration as to the Genesee Valley canal. The work was accordingly commenced, and has been carried to different stages of completion throughout the whole line of both. On these ordinances and declarations, on this pledged faith of the sovereign power, multitudes of men have relied; and so relying, have purchased their farms, built their houses, erected their workshops, expended and invested their money, made their arrangements for business and for life, abandoned their old re-

sidences and pursuits, and entered upon new.— And was there, sir, no “faith” here? nothing which could be violated—nothing that imposed any obligation? I say, sir, that there was; and while we sacredly and inviolably preserve our faith to the public creditor, let us beware how we break it to thousands of our citizens. Let me not be misunderstood or misrepresented; I do not for a moment pretend that the state was bound at all events to prosecute these works to completion; such a doctrine would be monstrous and absurd. Many circumstances might occur to forbid and prevent such a result; any unforeseen public calamity depriving the state of the means except by resort to debt and taxation; or even the inability of the state without the aid of general direct taxation; these and similar events I am willing to concede would answer all allegations of a violation of plighted faith in this regard. I do not believe that “internal improvements,” local in their character, are to be constructed through means of creation of public debt, to be discharged only by direct taxation on the whole people: I advocate no such proposition. But, sir, I do mean to say that when these legislative acts have thus been passed, when citizens in vast numbers have acted on the faith of them, and will be made to suffer inconvenience, distress and loss, by their not being executed, it is the solemn duty of the state to carry them out, if it can be done consistently with the principles I have above stated; and their needlessness, reckless abandonment is to every substantial purpose morally and equitably a violation of the plighted faith of the state, second only in turpitude to its violation in the case of the public creditor. Believing as I do, that by means of the canal revenues, without resort to taxation or to debt, and on the plan proposed by the amendment in question, these works can be completed in a reasonable time, I cannot refrain from saying that their abandonment, as substantially proposed in the plan of the standing committee would violate our faith, sully our honor, and sow far and wide the seeds of discontent and dissension. Further, sir, I wish that the members of this Convention, with my venerable friend (Mr. ALLEN) from New York at their head, could accompany me along the lines of these unfinished public works, including the Erie canal enlargement, and witness the scenes of desolation that would every where meet the eye; expensive structures going to decay, costly materials scattered along in shapeless masses, miles of canal here and there in a partly finished state, other miles entirely completed, but now deserted and rapidly filling up and choked with weeds and brambles, locks, firm and well built, crumbling under the influence of the elements—in fine, all the outward evidences that distress, bankruptcy, ruin, must have fallen with a mortal weight on that power, whatever it might be, that had thus commenced, and thus left these structures. What a spectacle for a citizen of New York! Again, sir, this is not all. In years gone by, persons clothed with the authority of the “sovereignty” of New York, entered on the gardens, and door-yards, and orchards, and beautifully cultivated fields of hundreds of your citizens, and there commenced to plough and dig and scrape, saying that they did

so by authority of the state, and consoling the citizen for this desecration of his estate by the promise and the assurance, that this was all for the public good, and that his eye should soon be rejoiced with the view of a beautiful artificial river, bearing on its bosom the varied productions of his and his neighbor's farms and forests, and workshops! Well, sir, this went on; the citizen quietly submitted to this intrusion, looking to the performance of the promise; and what now is the result? Why, sir, a miserable half-finished, mis-shapen ditch, marring and defacing his lands; useless materials strewn along by its side; his property depreciated; his comfort and his interests seriously affected. Now, sir, if my brethren of the Convention could personally witness these spectacles of desolation, they would say, not that debt and taxation should be incurred to remedy these evils, but that if without resorting to either, and by a judicious application of the resources of the state, these spectacles should soon cease to dishonor and disgrace us, they would with one loud accord say, let this state of things no longer continue, let the hopes and expectations of the citizen be realized, let the promises of the state be performed. Were it necessary, sir, for the persons who are thus suffering, to endure the existing state of things for the sake of some great good to the commonwealth, beyond all doubt they would patiently and patriotically make the sacrifice; but when no such necessity exists, or can justly be alleged, you may well imagine that they are brooding with no good feeling over the injuries they are enduring, and are looking forward with impatience to the day of their deliverance. The multitudes in various modes affected by this question are loudly calling for redress—this redress they are entitled to demand—and it is in the power of the state to afford it to them, gradually, perhaps, but certainly, by means of the canal funds and revenues remaining after the application of \$1,500,000 in the manner proposed by the amendment under consideration.

While it is conceded that the discharge of the public debt is first and at all events to be provided for, I contend that it is our imperative duty to secure the suitable and requisite improvement of the Erie canal, and the resumption of the unfinished canals, including the Oneida River improvement, if these latter objects can be accomplished consistently with our first duty to the public creditor. I appreciate the magnitude and importance of this subject in its various bearings; I have approached and examined it with a full sense of the responsibilities it involves, and my conclusions have been formed with the deliberation which it demanded. These conclusions are, that the proposition contained in the amendment presents a sure and safe mode in which the public debt may be discharged and the public improvements just mentioned completed in a reasonable time, and thus the public faith be preserved alike with the creditor and the citizen. To show the practical workings of the proposed sinking fund of \$1,500,000, and its sure extinguishment of the public debt within a reasonable period—namely, within 23 years—I will read the following table, prepared by the gentleman from Livingston, (Mr. AYRAULT,) as skill-

ful and able a financier as is found on this floor, and who vouches for its absolute accuracy.

Table showing the extinguishment of the public debt of this state, by applying thereto annually out of the canal revenues the sum of \$1,500,000 for 10 years, and \$2,000,000 thereafter:—

Amount of Principal Debt, July 1, 1846,	\$22,300,000
Int. one year at 5½ per cent,	1,226,500
	23,526,500
Payment,	1,500,000
Debt July 1, 1847,	22,026,500
Int. one year at 5½ per cent,	1,211,457
	23,237,957
Payment,	1,500,000
Debt July 1, 1848,	21,737,957
Int. one year at 5½ per cent,	1,195,587
	22,933,544
Payment,	1,500,000
Debt July 1, 1849,	21,434,544
Int. one year at 5½ per cent,	1,175,845
	22,612,388
Payment,	1,500,000
Debt July 1, 1850,	21,112,388
Int. one year at 5½ per cent,	1,161,180
	22,273,568
Payment,	1,500,000
Debt July 1, 1851,	20,773,568
Int. one year at 5½ per cent,	1,142,545
	21,916,113
Payment,	1,500,000
Debt July 1, 1852,	20,416,113
Int. one year at 5½ per cent,	1,122,855
	21,538,968
Payment,	1,500,000
Debt July 1, 1853,	20,038,968
Int. one year at 5½ per cent,	1,102,144
	21,141,142
Payment,	1,500,000
Debt July 1, 1854,	19,611,142
Int. one year at 5½ per cent,	1,080,262
	20,721,401
Payment,	1,500,000
Debt July 1, 1855,	19,221,401
Int. one year at 5½ per cent,	1,057,177
	20,278,581
Payment,	1,500,000
Debt July 1, 1856,	18,778,581
The interest for the ten preceding years has been cast at 5½ per cent. and \$1,500,000 applied as an annual sinking fund	
From July 1, 1856, the interest has been cast at 5 per cent. and \$2,000,000 applied annually as a sinking fund.	
Amount of Debt July 1, 1856,	\$18,778,581
Int. one year at 5 per cent,	938,929
	19,717,510
Payment,	2,000,000
Debt July 1, 1857,	17,717,510
Int. one year at 5 per cent,	885,875
	18,603,385
Payment,	2,000,000
Debt July 1, 1858,	16,603,385
Int. one year at 5 per cent,	830,169

Payment,	17,433,554
	2,000,000
Debt July 1, 1859,	15,433,554
Int. one year at 5 per cent,	771,677
	16,205,231
Payment,	2,000,000
Debt July 1, 1860,	14,205,231
Int. one year at 5 per cent,	710,261
	14,915,492
Payment,	2,000,000
Debt July 1, 1861,	12,915,492
Int. one year at 5 per cent,	645,774
	13,561,266
Payment,	2,000,000
Debt July 1, 1862,	11,561,266
Int. one year at 5 per cent,	578,063
	12,139,330
Payment,	2,000,000
Debt July 1, 1863,	10,139,330
Int. one year at 5 per cent,	506,166
	10,646,235
Payment,	2,000,000
Debt July 1, 1864,	8,646,235
Int. one year at 5 per cent,	432,314
	9,078,609
Payment,	2,000,000
Debt July 1, 1865,	7,078,609
Int. one year at 5 per cent,	353,950
	7,432,539
Payment,	2,000,000
Debt July 1, 1866,	5,432,539
Int. one year at 5 per cent,	271,023
	5,704,165
Payment,	2,000,000
Debt July 1, 1867,	3,704,165
Int. one year at 5 per cent,	185,208
	3,889,573
Payment,	2,000,000
Debt July 1, 1868,	1,889,373
Int. one year at 5 per cent,	91,468
	1,983,841
July 1, 1869, \$2,000,000 will over-pay the debt by,	16,139
	2,000,000

Any gentleman can examine this table at his pleasure. It can be understood by any one the least conversant with the commonest rules of arithmetic; and it furnishes an unanswerable demonstration of the important truth that the public debt will beyond casualty or peradventure be fully paid and overpaid on the first day of July, 1869, by creating the sinking fund we propose; and this too, entirely out of the canal revenues, without the creation of a dollar of new debt or the imposition of any additional tax whatever; while at the same time, as I will soon show, a liberal annual sum will remain of the surplus of those revenues, applicable to the improvement of the Erie and of the gradual completion of the other canals, and applicable also to other purposes of the Government, if it is just and equitable that they should be so applied. I must confess myself, sir, highly gratified at day.

ing been able to arrive at a conclusion so auspicious to the best interests of our State, and so well calculated to diffuse joy and gladness among so many thousands of our people. You have perceived, sir, that this table assumes the debt at \$22,300,000, and I affirm that this sum in fact exceeds the whole of the existing debt of the State, deducting therefrom the available means on hand. There has been for a long time a sort of 'mystery hang' around this question of the amount of the public debt; and I have heard frequent complaints that the accounts at the public offices are kept in such a way, and the statements furnished by them are made in such a manner, that it is quite difficult to ascertain what the precise and exact amount of our debt is. I believe I can now solve the difficulty and present an accurate view of this matter. The Comptroller, whose peculiar financial notions I do not wholly admire, but to whose capacity, integrity and fidelity I bear willing testimony, made a report on the 9th instant in answer to a resolution of the Convention, which furnishes the data for precisely ascertaining the present actual debt of the State over and above available funds on hand. This debt for all practical and substantial purposes may be stated at \$21,864,993 35 on the 1st day of September instant. I will state the mode by which I arrive at this result, and every gentleman can then form his own opinion as to its substantial accuracy.

The Comptroller reports the whole debt as follows:—

Canal stock.....	\$17,143,433 13
Railroad and canal stock.....	5,223,700 00
Comptroller's bonds.....	1,507,002 59
	\$23,874,140 72
Add Indian annuities for which no stock is issued.....	\$122,094 87
Also dues of specific funds.....	740,151 78
	802,946 65

Total.....\$24,741,957 37

From this aggregate of \$24,741,957 37, I deduct as follows:—

(1.) Amount deposited.....	\$198,022 56
(2.) Loaned to solvent canal and R. R. Co's.....	1,713,000 00
(3.) Available funds.....	505,442 14
(4.) Loan to city of Albany.....	30,000 00
(5.) Loan to Banks.....	314,445 02
(6.) One-half of "balance in Banks".....	15,476 30—
	\$2 876,989 02

Leaving as the true indebtedness... \$21,864,993 35

I will now explain the reasons for the preceding deductions.

Item No. 1, is deducted as being the amount stated by the Comptroller to be actually deposited in the Bank of the Manhattan Company in payment of State stock past due.

Item No. 2, is deducted because it consists of State stocks loaned to solvent companies, who have punctually paid the interest, and who, there is no reason to doubt, will continue to pay the interest and redeem the principal when it falls due. Some of these companies in addition to the payment of the interest, pay a certain annual sum for a sinking fund. This item (No. 2) is composed as follows:—

State stock loaned to—

Delaware and Hudson Canal Co.....	\$793,000
Auburn and Rochester Railroad Co.....	200,000

Auburn and Rochester Railroad Co.....	200,000
Long Island Railroad Company.....	100,000
Hudson and Berkshire Railroad Co.....	150,000
Tonawanda Railroad Company.....	100,000
Tioga Coal-Iron Mining and Manufacturing Company.....	70,000
Schenectady and Troy Railroad Company, ...	100,000

m \$1,713,000

Item No. 3, is deducted because in the same report the Comptroller states it to be the amount of cash on hand deposited in bank.

Item No. 4, is deducted because it is a loan to the city of Albany; it is classed by the Comptroller among "unavailables" for the reason that it was not paid at maturity. The city of Albany as well as the public in general will be astonished to learn that a debt of \$30,000 against that city is an "unavailable" demand. Had the Comptroller put the debt in suit, I am of opinion that the sheriff would before this time have made it "available."

Item No. 5, is deducted for the following reason. The Comptroller (in the same report,) states that "if the banks continue to pay their several contributions to the Safety Fund to the end of their charters, this sum will be paid as it matures from 1850 to 1853." Now I apprehend it may be safely affirmed that the existing solvent safety fund banks "will continue to pay their contributions to the end of their charters." I do not believe that this admits of any reasonable doubt.

Item No. 6, is deducted under the following circumstances. The Comptroller in the same report, among unavailable items, enumerates "balances in banks, \$230,952.60"—and on this item he remarks as follows: "Of the balance of \$230,952 60 due from broken banks, some portion will be paid from the safety fund and a portion will be lost." It may well be believed by all, who know the proverbial caution of the Comptroller and his disinclination to show the "sunny side" in financial matters, that under the statement I have just extracted from his report, it will be very safe to estimate his "some portion" at 50 per cent, and I have made the deduction accordingly. I have been thus particular, Mr. Chairman, in this statement, for the purpose in part of contributing my share to satisfying the public curiosity as to the real amount of our public debt, but mainly to show that this debt is not assumed at too small a sum in the table I had the honor to read.

For the sake of convenience I will call the total debt \$22,000,000, composed of the canal debt say \$17,000,000, and the General Fund debt say \$5,000,000; these sums of course are not precisely accurate, but for all the purposes of this discussion they are sufficiently so. It will be seen then that by the plan I advocate, the whole debt of the State of every kind will be cancelled, including the debts created by the lateral canals, by the defaulting railroads, &c., and that the debt denominated the general fund debt will be extinguished, by means of the canal revenues. This latter debt, as has already been stated, amounts to about five millions of dollars, and by paying that in this manner, the canal revenues pay to the General Fund that sum. It is beyond all doubt or question that the canals ought to pay to the General Fund, or in other words, to the State for general purposes, such

sums as have been advanced from that fund for the canals. The question what the amount of these sums is has been fully discussed on this floor by the gentleman from Herkimer, (Mr. HOFFMAN,) and the gentlemen from Albany, (Messrs. ANGEL and STOW;) the former contends that the debt due from the canals to the General Fund is 13 millions of dollars, the greater part of which is composed of the auction and salt duties and of compound interest. The latter gentlemen have most ally, and in my judgment most successfully argued, that this debt does not on any just ground exceed five millions of dollars, and that the auction and salt duties cannot on any legal or equitable principle be deemed a part of it. Without that part no one would contend that this debt exceeds five millions. I shall not perform the supererogatory part of repeating the arguments of the gentlemen I have mentioned, but if I mistake not, they demonstrated that the auction duties were mainly brought into being by the canals, that they were created by and for the canals specially, and that they were so levied and paid that they were in fact a local and not a general tax; that as to the salt duties they scarcely existed prior to the canals; they were raised 400 per cent per bushel expressly for the canal; and by means solely of the canals the manufacture was so increased as to raise a large instead of a trifling sum from this source; that from the very nature of the case, this tax was a local tax imposed on the western section of the State in consideration of the peculiar benefits they were to derive from the Erie canal; those and various other arguments adduced by these gentlemen, demonstrated, in my judgment, that these items could, on no proper principle, be used to swell the debt of the canals to the General Fund; and they thus showed that this debt does not exceed the sum of five millions. Indeed, sir, so strong is my conviction on this point that I would be willing to risk the decision of the whole question now pending, on the issue of a submission of these claims of the general fund against the canals, to the arbitrament of any impartial tribunal, of the present Chancellor or present Judges of the Supreme Court; and if on a fair view of all the facts, and after hearing the gentleman from Herkimer as counsel for the General Fund, and the gentleman from Erie in behalf of the canals, either of those tribunals would award against the latter over the sum of five millions of dollars, I would be almost willing to say that I would adopt the sinking fund proposed by the standing committee, and yield up that proposed by the amendment. And, sir, this is a matter not of idle theory or curious speculation merely, but of practical importance, for upon it the gentlemen from Herkimer mainly builds his argument in support of the sinking funds, which he has advocated and in behalf of the uses to which the latter of his proposed funds (\$672,500) should be applied. If the debt of the canals to the General Fund is only five millions, the gentleman concedes that this last sum should be reduced to \$250,000. The gentleman has repeatedly in the course of this debate, stated and assumed as a principle, that as between the canals and the General Fund, all that could be required of the former was to pay the debt justly due

from them for advances out of the General Fund; he has over and over again repudiated the doctrine that the canals should be burdened with the support of the government and the payment of its annual current expenses. I am not to say whether the views of the gentleman on this point are or are not sound.

I desire, in connection with this branch of the subject, Mr. Chairman, to call the attention of the committee to a fact that cannot fail to excite their unfeigned astonishment. The distinguished gentleman, to whom I have so often alluded (Mr. HOFFMAN,) has, as I have before remarked, often in this debate spoken in terms of just abhorrence of the violation of the public faith; he has insisted that that faith would be violated by the adoption of any plan that did not provide for the payment of the public debt as early as the year 1864, and all these allegations he has based mainly, at times apparently entirely, on the pledge, contained as he alleges in the famous act of 1842, that the public debt should be paid within 22 and one half years after that time. We have heard much now and heretofore, within and without this hall, of the vaunted "policy of 1842," as exhibited by that act and as manifested among other provisions of that act, by that above mentioned in reference to the final time of paying the public creditor. Now, Mr. Chairman, will it not excite your special wonder and that of all who hear me, when I state the fact, that the provisions of the proposed amendment not only do not violate the public faith by extending the payment of the public debt beyond the time limited in the act of 1842, but they actually preserve it more than inviolate by shortening that time three years! So much has been said on this subject, and so much reliance has been placed by that gentleman in various parts of his argument on that provision of the act of 1842, that it cannot be amiss, sir, to devote a few moments to demonstrating that that celebrated act extends the time of payment of the public debt to thirty years instead of twenty-two and a half—to 1871 or 1872 instead of to 1869, as is provided in the amendment, which the gentleman denounces as a violation of the public faith for the reason, as he asserts, that it postpones beyond the period plighted and pledged by the act of 1842, the payment of the just debts of the State.

That act was passed on the 29th day of March 1842; it provides among other things that the commissioners of the Canal Fund shall, "at the close of every fiscal year, ascertain and state the amount of canal debt now existing and authorized by this act, so far as the same shall remain unpaid, and distinctly the annual interest on said debt;" and that "the surplus of the canal revenues, after paying all just expenses, &c., shall, to an amount at least equal to one-third of the interest of the canal debt remaining unpaid, be sacredly devoted as a sinking fund," &c. The bare reading of these provisions of this act must satisfy any person ordinarily versed in the English language, that its true and only construction is, that the sinking fund thereby provided is a sum equal to one-third of the interest on the canal debt remaining unpaid at the close of every fiscal year. Besides, sir, is it possible to suppose that the author of that act, or the legisla-

ture which passed it, if he or they had intended that a fixed and certain sum should annually be set apart as a sinking fund, would have resorted to the clumsy circumlocution of saying that "it should be a sum equal at least to one-third of the interest of the debt," &c., instead of stating directly the sum itself. Yet, sir, the whole argument of the gentleman, that that act promised and pledged the public faith to the payment of the debt in 22½ years, is founded on the assumption that the true construction of the act is, that the sinking fund provided by it is a sum equal to one-third of the interest of the debt as it then was, instead of one third of the interest on the debt remaining unpaid at the close of each year. Sir, that debt as it then existed was well known—it was \$20,710,335—one-third of its interest was \$375,909.00—and if this latter sum had been intended as the fixed and permanent sinking fund, it is impossible to believe that the sum would not have been named and stated in the act. [Here the gentleman from New-York, (Mr. TILDEN,) inquired whether the debt would ever be fully paid on the construction given to the act by the gentleman from Oneida.] I answer the gentleman, by informing him that under the operation of the sinking fund provided by the act, an "infinitesimal" sum would remain unpaid after the expiration of 30 years—but if this is an absurdity, it is one for which the authors of the act, not others, are responsible. Besides, I will in a moment furnish the gentleman with an authority as to the construction of the act, with which he at least will be satisfied. I said, sir, that this act of '42 provided for the payment of the debt in 30 years and no sooner; and the following table proves the truth of my assertions. [See statement A.]

I promise, sir, to furnish the gentleman from New-York with an authority, to which he at least would bow with reverence—and that authority is no less than the present Comptroller. In the annual report of that officer for the year 1845, he expressly asserts the precise construction for which I contend; and he ascertains the sum of the sinking fund for that year accordingly.

The following is his language:—

The act of 1842 provides that the Commissioners of the Canal Fund shall, at the close of each year, make a statement of all the expenditures on account of the several canal funds, and also a statement of all the canal revenues, and of the canal debt, and the amount required to pay the annual interest thereon.

The annual statement made out according to the requirements of the law referred to, shows a surplus of canal revenues, beyond the payments made, as provided in the same law, for the fiscal year ending on the 30th September last, (1844,) of \$373,445.35. The annual interest on the canal debt remaining unpaid at the close of the year, is \$1,126,397.90—one-third of this sum is \$375,465.96, and the 12th section of the act of 1842 declares, that the canal surplus, shall, to an amount at least equal to one-third of the interest of the canal debt remaining unpaid, be sacredly devoted and applied as a sinking fund for the redemption of the canal fund.

It will be seen that this officer states the sinking fund for that year to be \$375,465, being one-third of the interest on the debt remaining unpaid at the close of the preceding fiscal year, instead of \$375,909, one-third of the interest on the debt as it was at the time of the passage of the act of '42. What could be more explicit?

and what then becomes of the argument of the gentleman from Herkimer, based as it mainly is, in many of its vitally important parts, on the assumption that the act of '42 pledged the faith of the state to the payment of its debt in 22½ years?

Having, as I trust, sir, incontrovertibly demonstrated that by the plan proposed in the amendment the entire debt of this state would be certainly extinguished in the year 1369, and this great and primary object being thus secured, I will proceed to consider the effect and bearing of that amendment on the farther great and important question of the Erie canal improvement and the completion of the unfinished canals.

[The gentleman from Clinton (Mr. STETSON) here inquired whether the act of '42 contained any provision necessarily postponing the payment of any part of the public debt as it falls due; and intimating that such was the effect of the amendment under consideration.]

I inform the gentleman that in this respect there is no difference between the act of '42 and the proposed amendment: neither of them contains any such provision, or anything bearing any resemblance to it.

The net canal revenues of the present year may be safely stated at about \$2,200,000; deduct from this the proposed sinking fund of \$1,500,000, and it leaves the sum of \$700,000 to be applied, if desirable, to the works in question, or to other state purposes.

[The gentleman from Herkimer (Mr. HOFFMAN) inquired how the current expenses of the government were to be provided for under the amendment?]

I ask the gentleman if he has not often, in this debate, asserted, and if he does not now maintain, that these expenses should not be charged on the canal revenues? [Mr. H. replied in the affirmative.] I then answer the gentleman that, if his position is correct, these expenses would be provided for in the ordinary manner in which this government and all other governments provide for such expenses; but I go farther, and say that this question does not arise under this amendment: it should be a subject of discussion and adjustment under some subsequent amendment to be proposed.

If a portion of this surplus should justly and properly be applied to, and should be required for, the ordinary support of the government, still there would be a large and available sum to be devoted to the improvement of the Erie and the resumption of the unfinished canals. Should there be no increase at all in these net revenues, the surplusses in six years would amount to the sum of \$4,200,000, a sum which would accomplish much, perhaps every thing, for these works, while at the same time it might liberally contribute to the current annual expenses of the government, if such contribution shall be required by justice or policy. But, Mr. Chairman, there is no rational doubt that the average annual increase of these net revenues will be large, and the gentleman himself states the increase in the aggregate, for the ensuing ten years, at \$2,500,000, and he declares that it is not improbable that they may in that period exceed \$4,000,000. Assuming, sir, the smallest

increase contemplated by that gentleman, and for six years take one-half of that increase and add it to the \$4,200,000 above stated, and you have, under the plan I propose, within six years, an aggregate of \$5,450,000 of surplus, while at the same time the sinking fund of \$1,500,000 is silently and surely gnawing at the vitals of the public debt, and preparing the certain way for its final consignment, at the prescribed period, to a grave, from which, I agree with the gentleman from Herkimer, there is to be no resurrection.

This, sir, is no sketch of fancy, no gathering of flowers from the field of imagination; it is simple, sober reality—necessary results from facts which cannot be disputed, and from figures which cannot lie.

Again, Mr. Chairman, we are told, and we agree, that the canals are one system; that they are parts of a whole. It is on this ground that the Erie canal, after honestly paying every dollar of its cost, has been, and is still, called on to pay, or to furnish the means to pay, for all the lateral canals. To save the general fund from the burden of the cost of the lateral canals, that burden has been cast on the Erie, on the ground that all were parts of a system, members of one body; and well and nobly has she responded to the call and borne the burden. All we ask now is that the principle be continued and carried out, and that the unfinished works be regarded as they always have been, as parts of this great system, and as such that they may, from the same source, receive the same aid and sustenance that has been extended to the other parts. And who can complain of this? Not the taxpayer, for nothing is asked of him. Not the creditor of the state, for he is already superabundantly secured, and his security is in no degree to be affected. Not the Erie canal, for she is able and ready to answer the call. No, sir, justice requires that this call should be answered, and consistency and duty alike demand that the system should be completed, and thereafter that all its parts should work together in harmonious union, reciprocally aiding and assisting each other, and all diffusing their blessings and their benefits, directly and indirectly, throughout every part of our proud "Empire."

I will briefly consider some of the objections, which have been urged by the gentleman from Herkimer against the proposed amendment, and the results it is designed and calculated to produce. I trust I have already sufficiently answered the argument as to the violation of the public faith. I have shown it to rest mainly on a foundation of sand. It is true, if it can be proved that a debt existing in '42, and on which sundry payments have been made, is the debt remaining unpaid at the close of any given number of years thereafter, then it is true, that by the act of '42 the public debt was to be paid in 22½ years; but if it is impossible that such a statement can be true, then equally impossible is it for the gentleman to sustain his argument of "violated faith."

The gentleman has argued that it would be unsafe to limit the sinking fund to so small a sum as one million and an half of dollars; and he argues thus because he apprehended that after ten years the tolls may diminish. But, sir, at

the same time the gentleman tells us that at the lowest computation they will increase to \$3,500,000 at the end of the ten years, and I believe the gentleman himself would hardly be willing to rise in his place on this floor and assert a belief, that for the remainder of our term, namely, the thirteen years immediately ensuing the first ten, the tolls would so diminish as in any one of those thirteen years to bring them down to \$2,000,000, the annual sum which we provide for our sinking fund during those thirteen years. But sir, it is unnecessary to dwell on this point; those who heard the able expositions of this matter, given by the gentleman from Erie, and the gentleman from Chautauque, (Mr. MARVIN,) must regard these apprehensions, if sincerely entertained, as wholly groundless. No one who will for a moment look at the map of our country and ponder on the illimitable resources of the western world beyond us, yet in its early infancy, and notwithstanding the immaturity of its years, already exhibiting what would in any other country be deemed the resistless energy and giant strength of mature manhood, no one who will look at facts as they are, and as they are certain to be, as surely as time continues, can unite in the fears and forebodings expressed by that able, but, as I respectfully insist, on this occasion, mistaken gentleman.

Again, sir, the gentleman has dwelt at length, and repeatedly, on the great amount of additional interest required by the plan contained in the amendment, and he has, with an appearance of gravity, presented to us a statement showing the amount of debt to be, not only the debt as it exists, but that amount with millions of interest added; as if, sir, in truth the man who has given his bond dated this day for one thousand dollars, payable in ten years with interest, is this day a debtor to the amount of seventeen hundred dollars! We do not pay the debt now for the simple reason that we in fact save nothing by doing so; we retain and use the money—we pay our interest at maturity, and in the meantime make profitable use of our funds. Again, sir, by the very statement of our proposition, the interest to fall due hereafter is adequately, certainly provided for, and then it becomes wholly immaterial in any practical sense; and it can in no manner be regarded, as the gentleman's fancy seems to view it, as some awful evil to fall upon us and strike us down at a future day.—The gentleman's views on this point seem to me very analogous to those of the man, who after having nearly completed his house should stop short and refuse to finish the roof, because forsooth he owed a debt payable at a remote day, and he proposed to invest the cost of the roof in a sinking fund to provide for the payment of that remote debt and its interest; the elements in the meantime having free access to his house, and performing their work of destruction upon it.—In truth, if the gentleman's doctrines are sound, it would seem inevitably to result, that the better policy were to sell our canals at once for the amount of our existing debt, because on the gentleman's computation of interest, according to his own plan we should save \$15,000,000 of interest. I do not pretend to be versed in the mysteries of finance; but if all the gentleman's expositions of his doctrines are correct, I for one should desire

to be delivered from further acquaintance with a science so occult and so extraordinary.

The plan of the gentleman himself assumes the existence at the end of each of several years of "deficiencies," as he denominates them, and the consequent addition of interest; our plan does the same—there is no difference in principle. In fact, sir, the question and difference between us is purely one of time—and that time merely the brief space of five years. He proposes to extinguish the debt in 13 years, we in 23. With his plan of 13 years, the result would be an inefficient, feeble, uncertain provision for such improvements of the Erie canal as the gentleman himself admits may be required by the most persuasive considerations of duty and of policy; his plan involves the abandonment of the unfinished canals for ten years at least, and such a delay, under the circumstances, I regard as equivalent to their abandonment forever.—When that period shall have expired, time and the elements will have accomplished their task of decay and dilapidation—and those costly structures, on which so much of our treasure has already been expended, will have sunk, as I apprehend, to rise no more.

On the contrary, with the proposed plan of 23 years, reasonable means are afforded to do much, if not all that may be required, toward the Erie canal improvement, and to commence and gradually to continue the completion of the Genesee Valley and Black River canals, and thus to

perfect our canal system now so near its consummation. At the same time that these wise and salutary and beneficent results are secured, provision the most ample, as I have already shown, is made for our entire and absolute exoneration from public debt.

The path of duty, then, Mr. Chairman, is plain before us; and why shall we hesitate to walk in it? Are we called on to refuse to enter it in obedience to some favorite financial theory, or for the purpose of gratifying some morbid fancy or some apprehension of the bugbear of accumulating interest? Or is it, sir, that we are to be frightened from it by the cry of "Debt and Taxation," when no debt and no taxation are in it or about it, or can by possibility enter it, shielded and guarded as it is by the secure barriers which the plan we propose throws around it?

Seriously, Mr. Chairman, I apprehend that much of the opposition to this plan arises from a sort of "point of honor," from pride of opinion, from a set of ideas and sentiments so long entertained and dwelt upon, as to have become as it were second nature, and therefore proof against the light of truth and the force of argument. Sir, this opposition may succeed, and the plan of the standing committee may be adopted here; but should this unfortunately be the result, it has yet to undergo the ordeal of the ballot-box, and there it will, I believe and trust, be met and overthrown.

STATEMENT A.

Showing the manner in which a six per cent stock will diminish by applying "one-half the amount of the interest of the debt remaining unpaid," to accumulate at six per cent as a sinking fund, according to the provisions of the law of 1842:—

No. years.	End of year.	Amount of debt unpaid.	Interest on debt unpaid.	One-half interest on debt unpaid.	Interest on sinking fund.	Amount of sinking fund.
		\$ cts. mills.	\$ cts. mills.	\$ cts. mills.	\$ cts. mills.	\$ cts. mills.
1	1842	100				
2	1843	98	6	2		2
3	1844	95 92	5 88	1 61 84	12	2 09
4	1845	93 75 68	5 75 52	1 61 84	21 48	2 16 32
5	1846	91 50 7072	5 62 5108	1 87 5136	0 37 4592	2 21 9728
6	1847	89 16 7355	5 49 0424	1 83 0141	0 50 9373	2 33 0717
7	1848	86 73 4050	5 35 0011	1 78 3347	0 61 8058	2 43 3305
8	1849	84 20 3412	5 20 4043	1 73 4681	0 79 5037	2 53 0638
9	1850	81 57 1549	5 05 2204	1 68 4063	0 94 7795	2 63 1863
10	1851	78 83 4411	5 89 4232	1 63 1430	1 10 5707	2 73 7138
11	1852	75 98 7788	4 73 0064	1 57 6688	1 26 9935	2 84 6023
12	1853	73 02 7300	4 55 9267	1 51 9755	1 44 0732	2 96 0458
13	1854	69 94 8392	4 33 1673	1 46 0516	1 61 8362	3 07 8908
14	1855	66 77 9662	4 19 6903	1 36 5634	1 80 3095	3 16 8730
15	1856	63 45 0549	4 00 6779	1 33 5593	1 99 3220	3 32 8-13
16	1857	59 98 5883	4 80 7050	1 26 9016	2 19 2919	3 46 1966
17	1858	56 39 8439	3 58 9332	1 19 8777	2 40 0167	3 60 0144
18	1859	52 64 3977	3 33 3306	1 12 7768	2 61 0643	3 74 4462
19	1860	48 74 9737	3 15 8638	1 05 2579	2 84 1361	3 89 4210
20	1861	44 69 9727	3 92 4981	0 97 4994	3 07 5015	4 03 0010
21	1862	40 48 7717	2 63 1983	0 89 3994	3 31 8016	4 21 2010
22	1863	36 10 7226	2 42 9233	0 80 9754	3 57 0733	4 38 0191
23	1864	31 55 1516	2 16 6433	0 72 2144	3 83 3566	4 55 5710
24	1865	29 18 2547	0 91 6545	0 63 5515	4 05 3154	2 36 8961
25	1866	21 34 97-0	1 75 0952	0 54 3-50	4 21 9171	75 65 0220
26	1867	19 32 7105	1 46 0936	0 48 3662	4 53 9013	80 67 2595
27	1868	14 10 0130	1 15 9026	0 38 6542	4 84 0373	85 87 9810
28	1869	8 66 4199	0 84 6011	0 28 2003	5 15 3988	91 33 5801
29	1870	3 00 4101	0 53 9551	0 17 9950	5 48 0148	96 99 58 9
30	1871	0 00 0612	0 9 0123	0 3 0041	2 90 9876	99 93 5-16

A SKETCH OF GEN. TALLMADGE'S REMARKS *in the Judiciary.*

Mr. TALLMADGE rose to address the committee. He said that the gentleman from Chautauque, (Mr. PATTERSON,) had referred a day or two since, in this debate, to a bill of charges by a county judge.—In that bill he had charged \$78 for one day's services, and in another he had charged upwards of \$140 for two or three day's services. All these charges were *legal*; and many others, much worse, that have been made at different times, were also legal. He had risen, not to allude merely to this point in the abstract, but to say this much to the Convention, in order to show them the necessity for more discreet legislation hereafter. When he (Gen. T.) spoke of these charges as legal; he meant that they were lawfully made according to existing laws; and that there were many more that were much worse cases than those which had been presented by the gentleman from Chautauque, (Mr. PATTERSON.) Why, so recently as the year 1845, an act was passed by the legislature of this State, entitled "an act to reduce the number of town officers and to facilitate the auditing of their accounts;" this act in its 21st section, takes from the District Attorney the discretion which he had hitherto held, and for the due exercise of which, he had been responsible to the supervisors and the public, and makes it mandatory that when a criminal cause is put off, the District Attorney, the prosecuting officer, shall recognize all the witnesses to appear at the ensuing court; by which there was at once a Pandora's box opened for the commission of great wrong; amongst which might be, and frequently was, the increase of fees and the unnecessary imprisonment of witnesses that could not give security. Another abuse was opened, growing out of the business of the Attorney's office; and multiplying the fees of subaltern officers and police magistrates. He alluded to this in charity to the legislature, which passed such a law—under such a title; but he thought it afforded sufficient evidence that it was a trick or fraud on that legislature, which, perhaps, was busy with something else than merely thinking: (laughter.) some of them probably, absent occasionally to some place for refreshments, (much laughter.) By looking at the 19th section of the same act, gentlemen would see that it helped to swell the mass of fees, and opened the door for corruption, fraud, and a train of evils, which it was not necessary now to enquire into. That we must all have offices, looks too much like the English system of primogeniture, and by providing for the younger sons of the nobility in the army, navy, &c.: This system of our judiciary, with the numerous judges, clerkships, and other officers, provides a like result. In England all that class of persons are thus amply provided for; but our more economical and prudent republican system will not allow that plan to be attempted here. We must conform our institutions to the new state of society into which we are placed by our new form of government.

The debate which had arisen on this judiciary question he regarded as one of the proudest and most valuable that had yet taken place upon this floor; and he commended it most heartily

for the talent, the spirit, the learning, the good feeling, and the assiduity by which it had been characterized. He regretted that the gentleman from Cayuga (Mr. SHAW,) should have felt it necessary to offer a resolution to limit this debate; and he (Gen. T.) hoped, that resolution would be laid to sleep on the table.

In the commencement of this Convention, he had forewarned the members against the bad policy of appointing nineteen standing committees. He said then that it would lead to difficulty, and the result had verified the truth of his predictions.

He had urged then, that they ought at the most to have had no more than eight standing committees, one for each article of the Constitution, and indeed, in his opinion, three committees would have been enough, one for the Judiciary, one for the Executive, and one for the Finances. And by means of the labors of these we would immediately have gone to work, and the leaks in the great vessel of State would have been soldered up as the public had demanded. The Convention, in its wisdom, had spent six weeks of the session in the reception and discussion of resolutions, revolutionary in their principles and tendencies, and not one of which would ever be brought to maturity. This it was that he had disapproved and early protested against; and now at the end of twelve weeks we find ourselves in this position, about to cut off debate for want of time. For one, he was proud to see it was now understood. To stop debate—the previous question—to cut off amendments—a reference to a select committee to report complete—are all contrivances, not well suited to the consideration of this Convention, and the discreet formation of the articles of a new Constitution.

He, however, thanked the committee for many points which they had presented, and which would be beneficial; at the same time they could not be expected to have acted with any great unanimity. It was a by-word in the country, that if you want to get a body that can never agree upon any possible subject, get a jury of lawyers! (laughter,) and here we had a jury of twelve or thirteen lawyers; and the proud result at last has been, that after many weeks of discussion, two of them have been brought to agree upon a report.—(much laughter.) That a prophecy should have brought about a result of such unity, almost made him fearful of a prosecution for witchcraft! (laughter.) We have seen these minority dissenting reports as grand sprouts springing up from the roots; all so diverse in character and form that the most skillful botanist in the world could not attempt to classify them.

We are still interchanging ideas, and when we have finished this discussion; when each point is fully canvassed—we shall then go to voting, and as he hoped with the best results. That we may not be mystified in our work, let us commence it in regular order, and begin at the foundation; that is, with the justice's courts. He bowed with great commendation to the wis-

dom of the gentleman from New-York, (Mr. MORRIS.) who the other day proposed a modification of justice's courts, to one justice and clerk, and limiting their jurisdiction to one town. It did not seem to have occurred to that gentleman that there were towns of at least twenty miles in extent in some parts of the State. Go to the county of Dutchess—there was the town of Fishkill, about twenty miles in length, one way, and many other towns of nearly as great an extent, in that county. These courts must be multiplied for local convenience in the several neighborhoods, and were even more essential to the newer than to the older counties. No one court of general jurisdiction, with a clerk and other officers, can supply the local convenience of these tribunals of an individual magistrate. The county courts were required, and he would make them the best kind of courts that they could possibly be made, but he would still preserve them for local convenience. His attention in early life, had been turned to practising in the Courts of Common Pleas, and his feelings were very early interested in favor of these courts. He looked back with admiration, love and delight, to the good old plain, honest, business doing, common pleas court of Dutchess county. On the bench of that court had sat able lawyers, withdrawn from business, retired merchants, and men of ample talents and liberal education; and all of them proud to be judges of the common pleas of the county of Dutchess. We never wanted a court of the highest possible compensation; for in those times of simplicity, the court received honor from all, and few appeals were made from their decisions. It was quite possible that in new counties this may be different—he could not say he took gentlemen at their word, although dark in description. My scheme would be, not to destroy them, but to elevate the court, to improve it, and perfect it. The system of justices' courts, common pleas and king's bench or supreme court, is one derived from antiquity. You can draw an outline of the plan and leave the legislature to fill up the details. He would be willing, and he advised to leave to each court **ORIGINAL JURISDICTION**; it was necessary for local convenience. Let the supervisors be made a local legislature to fix the compensation, and perhaps many other useful regulations. Self government ought thus to be confided to the people. He knew that in the county of Dutchess it could and would all be carried into effect, and meet with general and public commendation.

He would now allude to the supreme court and to the contemplated reorganization of that court. It was indispensable to continue a county court with criminal jurisdiction to a certain extent, as evidently necessary for its local business. It had been thus continued, and with civil jurisdiction, for seventy years, and since the foundation of our government we derived our justices, county, and supreme courts, from the experience of several centuries in England. There would be no other reason to take the civil jurisdiction from the county courts, than to increase the business in the supreme court, and thus justify an increase of the number of the judges of the supreme court and augment the patronage of party politics, by giving such an increased number of judges to popular election, and which

must come to the lawyers only. If the civil jurisdiction of the county courts must be destroyed to justify the enlargement of the supreme court, yet he would urge that even this numerous supreme court could not so well perform the small local business. It might please the lawyers and judges to be all elevated in their business to the grade of the supreme court—yet he was confident it would lead to the establishment of numerous minor and local officers, and the increase of fees. He would form the supreme court upon that consideration which would require a less number of judges and a diminution of expense.

The committee proposed thirty-two judges, and to the city of New-York four more, for extra business, and four others for the court of appeals and to hold circuits. Although my worthy friend who sits near me was greatly excited the other day when it was argued that the judges would require to have \$3000 each as an annual salary; yet, he said that it was indispensably necessary that these judges should be all kept on an equality. And in order to call for the talent requisite they must have liberal and appropriate compensation. Will \$3000 answer? Certainly not less than that sum. And when you send them travelling on circuits, they must have a liberal allowance for their travel fees and expenses. He was certain, therefore, that it would not be less than \$3000, and confident that the liberality of party would soon swell it to \$4000. He would make no objection to it. But when we ask the people to take the constitution, my word for it, they will begin to calculate the cost. Forty judges with \$4000 each, is \$160,000 to start with, as a judiciary, besides the many minor officers. The people would begin to count the cost as compared with the present system. It is said the clerks' fees are over \$40,000. For his own part, his preferences were for a smaller supreme court with a well organized county court and with original jurisdiction: which he (Mr. T.) thought would suit the whole people much better and be more economical.

Having thus intimated, in order that I might not be misunderstood in any part of my remarks, my preferences for keeping the justices' courts substantially as they are, a court subject to legislation, and which can be amended, changed or altered, by that power—having done that, and having constituted, as he would suggest, these county courts,—he would leave the legislature to make such judicious arrangements as were deemed desirable with regard to the criminal business which these courts have to transact. He would prefer a supreme court of twelve judges; the state to be divided into four districts with three judges to each, to hold circuits, and one of them from each district to constitute a supreme court over all. It would be very easily arranged, then, that they could come together in banc for the supreme court, and that mode would satisfy him, and be one of economy and local convenience. It should be remembered that a court of twelve judges can hear and decide causes no faster than a court of three judges. A division of the judges to hold courts in the four districts, in addition to the circuit courts in the counties, is equal in effect to a four-

fold increase of the present judicial strength of the state. It will be entirely adequate to do the whole business of the state; including that of the court of chancery, when simplified and brought to trial as common causes before a jury. He should not object to elect the judges; nor would he differ from those who might prefer their appointment; if an approved appointing power can be provided. But if the judges are to be elected, he had no hesitation to say, the election ought to be in the several senate districts, they being thirty-two, and corresponding with the number of the proposed judges. To create judicial districts, and unite the election of four judges in each, will not bring the election home to the electors, and a personal acquaintance with the candidate; nor produce so sure a scrutiny into his fitness and character. I urge the election of the judges in the single senate districts as a much better test of his character and adaptation to the duties of the office; combined on a general ticket with others less scrutiny will be had, and less fit men will get on a ticket, and may be elected.

The objection has been made that an election by single districts may bring the election of a judge within the influence of popular excitement in some local districts;—of abolition—anti-mason—anti-rent, or some other *ism*. This is no objection. One or two out of thirty-two will produce no evil. I hold, said Mr. T., that minorities had better be represented in all our elections, and even among the judges. While party formerly elected the three inspectors of election from one side, the other side made complaints of unfairness in decisions. But now, since the law provides for a ticket to contain the names of only two of the three inspectors, one of the minority must be elected. It is thus represented in the board, and entire satisfaction has been the result. If the election of the judges was in single districts, and if any should be elected by any local excitement, it would not impair the court, while all partaking in the local excitement, feeling their views were represented in the tribunal, would have confidence, and more readily yield to its decisions. It is important that our judicial tribunals shall not only administer justice, but that it be done under such circumstances that the parties and the public believe it is justice.

May we not say that the impending downfall of the present courts has greatly arisen from the entire monopoly, for several years past, of judicial appointments from party actors and agents; and also of all the clerkships and offices of the courts, with receivers of the fees and perquisites; and all has been dependent on, and coming from, the courts. One-half the community have thus been embodied in their feelings against the courts. Clients often believe and say they must and do employ party lawyers to gain a fair hearing of their cause, before a court of party judges—judges arising from and sustained by party politics. Incongruities in the service of counsellors have been thus exhibited, and business and courts have experienced influences arising from collateral causes. Ambition has heretofore showed itself willing to gain the place of a judge as a stepping-stone, to gain some other promotion—governor, or president,

&c. Ineligibility for appointment during the term, with compensation not to be varied by increase or diminution, must be unalterably fixed, to secure the independence and the integrity of the judges. These fixtures have been prevented, and are not provided in the article of the new constitution. The judges will remain to be selected from party politics, to continue to have party feelings, in elections, and will be open to ambitious desires for further party promotion. Party nominations will ever make judges with party feelings, and will impair public confidence in the impartiality and integrity of their judicial decisions. Ineligibility to any other place during their term, could only prevent this evil, and make them impartial. It would admonish and instruct them to abstain from party politics during their judicial term of office, by the inability and the impossibility to gain any other place during the term of their judicial election, and its acceptance by a judge. Mr. T. regretted to see all these prudent precautions against management and intrigue on the bench, were not well received in certain quarters and in certain political circles. Opposition to these measures of prevention to judicial intrigue and seeking for other appointments, was but too apparent. It was a notice that judges nominated by a party would continue with party feeling and party ambition for some other place, and open to party influences.

Before going any further he would briefly allude to the Court of Errors. Look for a moment at this court. It was established in the constitution of 1777, to consist of the senators of the state and the chancellor, or the judges, according as the appeal was from either court. He eulogized the operations of this court from its commencement, and said that it stood at the convention in 1800 in good odor with the people, and which had been continued from that day to the present, sustained by public approbation, and was respected for its integrity. Its decisions would compare in wisdom and legal principles with any other tribunal in our language. Thus it stood also in 1821—half a century after its foundation;—and it was left untouched by that convention. This was the highest eulogy that could have been pronounced. It is not the system, but the administration of the system, which has been matter of remark and reproach.

After 1821, and to 1846, in the latter part of this history, its reputation has changed, and the interests of the state have been made to give way for personal and political conflicts. The causes of this change he would not here allude to.

In suits between individuals its integrity and its intelligence had never been doubted; in cases of party conflicts and political controversies, its liability to swerve had latterly been sometimes questioned. He here alluded to cases in relation to election laws, banks, &c., as instances of the weakness of that court at present and for the last four years, and as the causes for an opposition which had been got up against it.

Sir, we trust we have purity in this tribunal. It is not only necessary to have justice done, but to believe that it is justice, and make the people believe so. The community at large must be

made to believe that the adjudications of the courts are to be taken for truth, and for the reason of their absolute purity.

To do this we must have a tribunal free from doubt, formed in a manner free from suspicion. And here let me remark, that I differ from the provisions of the committee widely in the manner in which they have constituted the court of appeals, and in requiring four judges of the supreme court to form part of the tribunal, with four to be elected, and who could never hold an affirmative against the four judges of the supreme court. He (Mr. T.) would have no judge who tried a cause in a court below to sit on an appeal from his own decision. It destroyed confidence. It awakened a doubt. Their minds, from the fallibility of human nature, would naturally be biassed, having prejudged; and even if they were not, the people would never give them credit for being disinterested and impartial. A calm review by a new set of men is essential to a submission in feeling.

He would be told that we should have four judges, to be elected by the people, to operate as a check on these other four. But these four elected by the people must be lawyers, to be able to hold circuits. Their judgments would, beyond doubt, be influenced by their deference to the superior legal attainments and experience in legal matters of the four from the Supreme Court bench. Why have them to endorse only? Better have eight new and impartial men as the court of appeals, and thus have entire confidence—all to be free from suspicion.

To such a court of appeals—one-half from the Supreme Court—he would never for a moment acquiesce. It would be better, and he would prefer, to have the decisions of the Supreme Court final, and there let judgment stop. This, therefore, he considered to be a radical defect in the report of the committee, in fixing this court of appeals, with one-half not impartial. Therefore I most respectfully urge, that the public will command that you give them either no appeal, or constitute this highest tribunal so that it shall be kept entirely distinct from the Supreme Court—free from suspicion, constituted of free and original material—new men, not committed or prejudiced by a former opinion.

If you will provide such a court of appeal, then you will have that kind of justice which will not only be right, but in which the public will believe and place implicit confidence. If you take a contrary course, it will inevitably lead to contrary results and public dissatisfaction.

I hope I will not be understood as making personal remarks, or intending anything unkind to the honorable gentlemen who have advocated this plan. It is not my purpose to do so. Yet I must allude to some practical lessons adduced from the history of this state, to impress more fully upon the committee the utter impropriety and impropriety of such a court of appeals.

About 1340, or a little before that time, there were cases in legislation and business that aroused public feeling; and here I do not hesitate to say that the abolishment of imprisonment for debt, by the act of 1331, aided to create a new state of society—opened new causes for adjudication—tore asunder existing society, and

brought a new classification of litigation, and I fear a change of moral sentiment.

In your old tribunals, if you had a debt against a man and prosecuted him and recovered judgment, the ordinary course of proceeding was, you had a right to imprison him, the debtor. It was his business and interest to satisfy the creditor of the integrity of his transaction, and to show that misfortune had led to his insolvency, and in that way he was often able to induce his creditors to compound the debt, and where he could not pay the whole of it, for him to pay half, or two-thirds to sign off, or to submit to imprisonment until he could take the benefit of the act. And when he came to take the act, he was called upon the stand and there he stood in the presence of all his accusing creditors:—there he stood the test of a searching investigation of the combined wisdom of the court—the sharpened intellect of the deeply interested crowd around him—and if he sustained the truth, and showed that misfortune—not improvidence or dishonesty—had led to his present condition, then he was absolved in the face of the court and the world, and went forth to society again a new and yet an honest man!

What was the result when they abolished imprisonment for debt? It let loose a wild spirit of speculation. It increased the litigation in the state three-fourths; and it opened that Pandora's box of a creditor's bill in chancery for disclosures and discovery of property hidden.

This turned an immense mass of business on the chancery jurisdiction. Before that time the supreme court and the other courts were able to do all their business. There were but five judges as a supreme court, and with but one chancellor. Soon your calendars were blocked up by this mighty accumulation of business; you had opened new inducements to bad morals in the debtor, with no accountability, and a course of profligate expenditure, and leading to vast and disastrous consequences. Mr. T. made no objection to this thing; if you please, he agreed with it all. But such were some of the mighty causes and results by which our judiciary system was overwhelmed; and the calendar of causes which averaged from 125 to 150, soon afterwards rose up from 700 to 900 causes—such was the alteration and sudden course of business in our courts of justice. It had been productive of important consequences and curious results, especially in the transfer of property.

What next took place? The court then decided "that possession must ever accompany a bill of sale of property," which gave rise to and adopted the distinction between "fraud in law and fraud in fact;" the one to be determined by the court—the other to be left to the decision of the jury. This was fatal to the interest of wild speculation, irresponsible adventurers, and of men in commercial pursuits, with a lax state of morals. It ended by "lobbying" arrangements, procuring a law from the legislature that there should be no "fraud in law and fraud in fact;" but that all should be left to the jury to be decided beyond the control of the court. This led to perplexity and confusion, and unsettled the commercial dealings and the integrity of the country. The supreme court would not conform

and did not bow to this course of legislation. Collisions thus arose and insubordination existed between the court and the legislature. It is not necessary to say which was right, or who was to blame. My purpose is only to show such collisions have always and will often arise between the judiciary and the legislature.

Let us go one step further. In 1836-7, the spirit of speculation pervaded us all. We were all getting hastily rich. Millions of capital were invested here and there; even the state itself entered into it, by the issue of its stocks for its works of internal improvement and various public measures; sometimes wise and sometimes otherwise. What followed then? The legislature failed to extend all its power and resources to save the banking system, or else to submit to the disgrace and stain of repudiation.

What did the senate then agree to do? The assembly had passed a bill in 1833, appropriating a million of dollars, notwithstanding the bankrupt credit of the state—and the senate passed the bill exceeding it to four millions instead of one million. There came a special message from Gov. Marcy recommending an issue of state stocks "for the canal purposes," to the amount of 6 or 8 millions of dollars, and which sum thus obtained on the credit of the canal was to be loaned to the banks to sustain them from ruin; upon which the act was actually passed, providing for an issue of state stocks, for seven and a half millions of dollars for such purposes. (See message, Senate Journals, 1833, page 450, and page 459.) The Journals of 1833 show a

This state of things continued until the public liabilities amounted to eleven and a half millions. It then became necessary to arrest this career, in order to save the country from ruin, if not from ruin. He then alluded to the policy under the law of 1842; how they called in capital, made a change in the entire business of the state, and as a consequence, increasing litigation to such a degree as to overwhelm and bury your courts. He would not enter into the discussion as to whether this or that course of policy was right or wrong. He proposed only to allude to the facts as history had presented them, and as showing the causes which had led to the call for a reform in our judiciary.

The legislature, to relieve the public from this real yet artificial distress, passed the act for PRIVATE BANKING. The plan was to call forth capitalists and induce them to restore a circulating medium to the country, and thus to regain public confidence. The measure aided the object in a degree, and a change soon after took place in the pressure on the public credit.—The abuses of the past were thus charged on the banking system, and the tone of public sentiment was made to call for their destruction. To all in this object, was the high road to popularity, into which many rushed forward.

Your supreme court then, in conformity with public clamor, decided this law for private banking to be unconstitutional. The question was carried to the court of errors, the senate, and they reversed that decision. It was then objected and said that they were the identical senate that passed the law, and that their determination must be disregarded. They having pronounced the decision, it was the law for the time

being, and the subordinate tribunals were bound to have assented to it as the law of the land. The supreme court then disobeyed—they refused to acquiesce—they combated—they would not yield to the decision of the court of errors—what followed?

The private banking act required the bills of the banks to be issued by the comptroller, on deposit of security, and which was done accordingly—the issue of the bill being thus founded on consideration received. A man was tried before one of the judges of your supreme court for counterfeiting these bills so issued by the comptroller on consideration. He was convicted by the jury, after a fair trial; but the learned judge of the supreme court decided the private banking act to be unconstitutional and void; and that therefore to counterfeit the bills thus issued by the comptroller of the state, was no legal offence; the convict was thus discharged—and the villain gathering up the tools and implements of his business, walked in triumph out of your courts of justice, and stood under the law of the day an honest man in community. The court of errors (a second time) repeated their decision of the legality and the constitutionality of the act for private banking; and yet their decision is not regarded as the law of the land by certain other tribunals of the state. Such is now the harmony of our judicial proceedings.

This conflict of decision is now ascribed by some to the fact that the court of errors, the court of appeals, in that case being called on to decide as to the constitutionality of their own acts as members of the legislature. And for this reason and radical defect in its organization, it is now urged to abolish the senate as a court of appeals; and in the same breath and by the same speaker, and from the report of the same committee, this Convention is gravely called upon to make a new court of appeals, including in its organization the same radical defect of four, and bring one half of the judges to consider and reverse as members of the court of appeals, their own decisions as members of the supreme court. He insisted that it presented a farce too ludicrous to be entertained. And especially as a justification for giving such extraordinary powers both of original jurisdiction as a supreme court, and a financial power as a court of appeal. With such double authority as a supreme court and a court of appeal, this supreme court would stand not only independent, but would command and control both the executive and the legislative departments of the government. It cannot but lead to abuse.

The court of appeals without any original jurisdiction, and only a power of determination on an appeal, and to be composed of *new men* elected by the state, would be salutary in all its tendencies; affording satisfaction to suitors and an harmonizing influence to the other branches of the government, and it would be indifferent and able to check all the collisions to arise between the various departments. Such a court of appeal, made independent by a fixed compensation, and impartial by ineligibility to any other appointment during the term of their office, would command public confidence. But these cautions and preventives are all opposed in this

Convention. They were rigid for young ambition.

These facts strengthened him in his objections to the court of appeals, as proposed by the committee. He would have no man on an appeal to sit in judgment on his own acts. My purpose is not to say that all this is wrong, but that it was unworthy of the dignity of the state, the purity of our judicial system, and the character of our legislature; and that we ought not to adopt it. He again urged his objections to the court of appeals as proposed by the committee, and therefore had no hesitation in saying that he would prefer that the decision of the new supreme court should be final. It was not worth while to impose upon the parties the expense of the farce of an appeal, before the same judges that had pronounced the first decision. If we were to have a court of appeals, he desired to have one that would not be influenced by legislative cabals or executive influence. He would have them come from different regions of the State, selected solely for their capacity and private worth.

The cases in legislation in the supreme court and in the court for the correction of errors, and especially on the great question of fraud in law and fraud in fact, with mandatory laws, and the disregard of the decision of the highest court for correction of errors, abundantly showed that collisions must arise in the progress of the government, between its different branches, and one unwilling to be commanded by the other; and abundantly demonstrates the necessity for the ultimate tribunal or court of appeals being held separate from either department of the government, and made independent of either executive, judicial, or legislative power and authority. They would then stand firm and isolated, to hold the scales of justice not only between suitors, but also to determine any conflicts that may arise between these three great branches of our government. To secure their independence to perform this high duty, they should be made ineligible to any approach either by executive patronage, legislative bounties, or judicial influence. To secure such objects the members of the court of appeals should be made ineligible to any other appointment during the term of office, from the executive, to any increase or diminution of salary from the legislature—and all possible approach from the feelings and influence of other judicial tribunals.

The next great question is the *Court of Chancery*. Mr. T. here adverted to the rise of the court of chancery—the conquest of England by the Normans—and of a division of the land and property among the soldiers and followers of the victorious monarch. For a long time the power of arms and of physical force was the only guarantee for the security of property. As time progressed these things changed, and men were found in conflict with the King.

When the court of chancery was first organized, in this state, it was composed of one man of energy sufficient for the limited business which then found its way to that court. But from the causes to which he had alluded, that court had now become blocked up and overwhelmed with business, for the disposition of which the judicial strength with which it was

originally invested, was wholly inadequate. His friends around him had instanced cases of great distress. To some of the favorable causes which led to the great accumulation of business in this court, especially to the non-imprisonment act and various other acts of legislation, he had before alluded. The chancellor, especially, had toiled with uncommon industry, and the several vice-chancellors, he believed, had also performed their duties—yet it was too apparent on this floor and elsewhere that public opinion demanded the abolition of the court, or its entire reorganization. It had thus become unnecessary to remark on the alleged causes of the public opinion. My plan therefore, would be, to transfer the jurisdiction of the courts of chancery to the supreme court. The twelve judges, divided in the four districts, would be adequate to the performance of the business, this being simplified as trials at law. The county courts could aid much in the business otherwise pressing on the supreme court. He (Mr. T.) had been appealed to in the early part of this discussion to explain why the convention of 1821, had abolished the then supreme court, and removed the judges, whose tenure of office had been guaranteed to them till they were sixty years of age. Mr. T. said it was not his purpose to undertake to explain the causes. Different members might have acted from different reasons; it was due to himself, however, to say that he had remained silent, whilst this convention had already expended two days in the enquiry, why the convention of 1821 did not receive written reports of the reasons for the action of the respective committees. It was not his purpose to explain, but it was sufficient to remark as a curious and interesting fact, that that convention had been held in times of high party excitement, when there the lion and the lamb appeared side by side, laid down together and united in purpose and in action—they had with unity and unanimously torn away three of the great pillars of the government—the council of revision, the appointing power, and the judicial power,—without assigning any cause for an action so extraordinary. Yet, those who lived in that day could not but well understand the causes which then influenced public feeling—and those who wished to make enquiries would find abundant reasons, whilst history was written by the penny-aliners of the day with the pen of the goose and the hope of a special reward, the story of the development of that mysterious action would not take place. But when history should be written by the pen of truth, guided by intelligence and the hand of integrity, the causes would be made to stand forth in all their deformity, and present a great moral lesson for posterity. It was not his purpose to anticipate that coming event. But to return again to the report of the committee, which he thought with the modification of the court of appeals to which he had alluded, and a like ineligibility to take any other office during the term to be extended to the supreme court, it would be, all things considered, the best system of a judiciary we could now adopt.

A few moments more on the subject of the court of chancery. He approached the subject with a great deal of anxiety, and begged leave to tender his thanks to the judiciary committee for

their enlarged and liberal project of bringing equity and law jurisdiction to the same tribunal.

My learned friend from Essex (Mr. SIMMONS) poured forth volumes of learning the other day, in eulogies on the court of chancery. I go with the committee in its abolition of that court. My learned friend has shown us and read to us the eulogies that have been pronounced on this court from age to age, and hence he would address to us, that we had better keep it a separate and individual system. The learned gentleman ought to have remembered that when we read a eulogy of a man, and above all when you read the eulogy of a system, you must read it with the attendant circumstances. You must read it with the attendant circumstances of the age in which it existed and happened. When the British government had little or no parliament, and the great leading effort of the day was to guard the people against the usurpations of the crown,—when operating under that principle, the court of king's bench was provided with a writ of habeas corpus, it was a great tribunal of liberty. But at that age legislation was not so far matured as at present; legislation at that time had not got strong enough to prevent abuses in the rights of the people; and in no other way but by an appeal to the court of chancery could a man get his just dues. Therefore, when the gentleman read these eulogies let him read them with all these circumstances in view, and not fall to mediocrity.

Now, legislation was powerful enough to clear enough to guarantee to individuals and to society equal rights and equal justice. The very principle to which the gentleman referred, was, in judgment, irrelevant and inapplicable to the present, and by no means proves that the court of chancery should be adopted, but directly the opposite. We of the present day have undertaken to make new orders in society. We want new civil institutions, and above all a new judicial system. We must have them. What came next in the progress of the history of this proceeding? The King himself sat in majesty, he dispensed justice in person—when the suitor came to complain against you for having wronged him, the king sent his mandate to bring you before him. What he did was right. His imperial majesty could do no wrong—he was not obliged to summon a jury. So, for a long time stood equity in the hands of majesty. What next? The subject comes to complain of his neighbor to the king—that he had broken his bargain—not paid him his money—or not executed his deed. These claims became frequent, and the king found it a great tax upon his time and his patience. What next? He then appointed first a clerk of the court, and afterwards one of his nobles to do this business for him; thus was the court of chancery ultimately established. At first it travelled with the king wherever his tent was pitched; until at last the accumulation of business required that it should be made stationary. The court at last grew a necessary and convenient thing to the king as head of the country. It became a source of revenue to him. There were guardianships, dower, and estates, under its guardianship, which were convenient in seasons of need; and he was

at the head of all the charities of the nation. Such was the beginning of the court of chancery.

His imperial majesty was particularly careful that the property in equity of infants and femme covert, should be properly guarded. It was a mode of filling the coffers of the state, particularly useful in the dark ages; the femme could thus be easily plundered—his majesty could take her estate, and when she was getting to age he could take her and give her away in marriage to one of his dependants, and thus cancel the debt. Such were the early stages from which chancery and equity arose. It has progressed through time until it has reached its present condition. It will be safe to bring it out to light and a jury and an open trial. He then adverted to the court of chancery in this country, and this state, and to the immense amount of funds in that court; the chancellor showing in his possession \$3,000,000; and then tells you that he had not got any returns from his subordinate officers as to the other amounts in their possession. This goes to show that this court, even here, retains some of the powers for holding on to money which distinguished it in the other country. Again, this court was a vestige of monarchy, without a jury—repugnant to the principles of our institutions, and if the convention did nothing else but abolish that court, it would deserve the thanks of the community.

Mr. T. here went into an examination of the present manner of proceeding in the court of chancery, and of the mode of taking testimony—its great expense and delays, and the complication of its proceedings: all of which he considered as entirely useless, and as a remnant of the past. Dollars were expended where cents only were necessarily required.

It ought to be remembered that the legislature have, on several occasions, attempted to reform, to simplify and economise the proceedings in this court of chancery, and also in the supreme court. Finding themselves involved in the labyrinth and darkness, they have some years since directed that the chancellor and the judges of the supreme court should perform this duty, and reform and simplify their respective proceedings. The result has been, that when the present chancellor came into office there were about 16 rules of the court, and now they were simplified into about 220; a simplification of somewhat like nature has been provided by the supreme court. In truth, much of the blame and public dissatisfaction of the present day in relation to the courts of justice may well be charged upon the respective judges, for their omission in the exercise of their powers, and in not accommodating the proceedings of their respective courts, to keep up and in accordance with the advance of public feeling. The parliament of England had some time since abolished by one act 54 ancient and obsolete writs, and the courts thence had wiped away much of their lumber of antiquity. The legislatures and courts of several of these states had long since reformed and simplified their respective proceedings, and eradicated the ponderous forms and usages of the dark ages. It is in the intelligent and enlightened State of New-York, where reforms are defeated, and the adaptation of its legal proce-

dings to the condition of the people, have been unsuccessful. Had a judicious reward been observed in relation to these matters, the present convention would never have been convened—charged with a reformation and new organization of the courts of justice.

It has been asked in the course of this debate, why is it that our people have so much litigation? They are certainly not naturally a litigious people; yet, the truth is, that in the state of New-York, with a population of three millions, we have as much litigation as England, Scotland and Wales, with a population of seventeen or eighteen millions.

It is a remarkable fact, which at the first view should make us shudder and hang our heads with shame. But this was a mistaken

view to give of the subject, and yet it was proper. To illustrate, look at our larger commercial or manufacturing establishments—in proportion to the number and to the capital, very little litigation is found. In its agricultural districts, society is fixed, and property stable and distinct. With this class of people there is very little litigation; men of wealth are never litigious. It is the *mediocre* ranks of society, struggling for wealth and advancement, that have their strifes and generate controversies. May we not turn for an example to Lowell, which has perhaps its hundreds of millions of annual business, with thousands of persons employed, and yet it would be found to have less litigation than perhaps the livery stable and its accompaniments in the adjoining village.

SPEECH OF MR. CORNELL, *on Colored Suffrage, October 2.*

MR. CORNELL moved to amend by adding at the end of the section:

"But the privilege of the elective franchise herein conferred, shall not be construed to apply to any person of color except such as shall be seized and possessed of a freehold estate as required in this section, on the day when this Constitution shall go into effect. And no person of color shall be subject to direct taxation unless he shall possess the privilege of the elective franchise."

At an earlier period of the session Mr. Cornell had intended to have examined some of the propositions reported to the Convention by committee number four, especially those which related to negro suffrage, somewhat at length. But the subject not having been reached until after the Convention, from the press of business upon its hands, had found it necessary to adopt a fifteen minute rule, under the operation of which it was of course impossible to examine a question of this nature; indeed there could be no greater folly than to suppose that any thing at all worthy the name of a discussion of the merits of a question, so grave and intricate as this, could be had under it. He should therefore merely allude to some of the principle points of argument, and to some of the facts and circumstances upon which the question must turn and be decided.

He differed with the gentleman from Erie (Mr. Srow,) who, if he understood him, held it to be purely a question of expediency and public policy, who we would entrust with the possession and exercise of the power of voting in the state, while he agreed with the gentleman from Seneca, (Mr. BASCOM,) and the gentleman from Wyoming, (Mr. YOUNG,) that it was one of natural and inalienable right. How then, it might be asked, could we exclude the negroes, or as gentlemen call them, our colored fellow citizens, without a gross violation of right and justice, by which we should forfeit all just claim to democracy or republicanism, and give to the negroes just cause and right revolution. If time permitted him to give this subject the examination which it merited, he should think it proper to go into a critical analysis of the supposed difficulties which beset the practical operation of this natural and inalienable right of all men to political equality, not doubting that they would be found to have no real existence.

The doctrine promulgated by the Declaration of Independence, "that all men are created equal—that they are endowed by their Creator with certain inalienable rights—that among these are life, liberty, and the pursuit of happiness: That to secure" (the *practical* enjoyment of) "these rights," that "governments are instituted among men, deriving their just powers from the consent of the governed;" or, in other words, "That any and every government instituted or existing, derives all its just powers from the consent and action, in which it has its entire entity, as an organized institution or being in the state, from the consent of the people, governed by means of its operation, as their agent, for that purpose." This was to him no mere abstraction, destitute of practicability. On the contrary, he held it to be a part of the fundamental basis of the true science of government, and civil society, and of *American* constitutional law.

In perusing the pages of history, he found that the capacity and necessities of mankind had reared the civil state in several different forms, with many differences of detail—but upon a close examination, it would be found that there was but one power in operation, and that there were but two principles upon which it did or could operate. The attributes of God were proportionate one to another. Man was created in his image, with the privilege toward God, but toward his fellow, the rights of life, liberty and the pursuit of happiness, to be held by the race in perpetuity, necessarily bringing with them the power of providing for their security—and as no power was adequate to that end, but that which was supreme, absolute, sovereign, it followed of necessity that sovereignty, except as toward God, existed in man, coextensive with his rights—and as sovereignty was in its nature a unit, indivisible, it could be vested in and operated by man, but upon two distinct principles—first, upon the American principle of the sovereignty of the people, or all men, upon which the individuals, as held by Justice WILSON, and other eminent writers upon government and constitutional law, were joint tenants in the sovereignty

of the state, and the right of co-participants in its exercise.

This was the elementary principle—the fundamental basis of democracy.

The second and only other principle upon which it could exist and operate, was that commonly known as the divine right of kings, or absolutism, which differed from the first, *only* in that it assumed a divinely conferred sovereignty, exclusively in one person, or in a number of persons, in perpetuity. Although this doctrine had been exploded, principally because it involved the necessity of man's existing without rights, or of his rightful existence without a rightful or legitimate title to the power of existence in perpetuity, which was the same thing; yet he was aware that it was still held to be true, and practiced upon in many nations. He believed that all the various *forms* of government would, upon a careful examination, resolve themselves into one or the other of these two principles, and that the *estates*, technically so called, which enter *formally* into the composition of what is called mixed government, would be found to be held of grace from the sovereign, he permitting their existence and exercise or not, at pleasure. The *estates*, or *orders* in the English nation were so permitted to exist; the functions of sovereignty which they exercised were not original in them, but the exercise of those functions was merely vested in them by the *sovereign*.

It was not necessary to his present purpose to allude to the various conditions incident to special absolutism, such as abdication, *regency*, &c.; sufficient was it to say, that it differed essentially from the true theory, only in that it necessarily held all human rights and power to be *alienable*.

If the people were sovereign, if all the persons composing the people were joint tenants in the sovereignty, wherefore, it was asked, do we exclude females and children of a certain age, &c., from voting? or from participating in the action by which the sovereign speaks?

Time would not permit him to reply to this objection at length, to examine in detail the elemental condition, or if he might be permitted the expression, the physiology of the State, or what constitutes its perfection or imperfection, in what condition it is complete or incomplete, its positive or male side, its passive or female side, their embryonic condition, &c. He would merely remark, that the conditions and limitations to the practice of conventional rights and powers must be conventional. To the practice of those rights and powers which were natural, the conditions and limitations must be natural. The peculiar mode of exercise of the sovereign power to which the several natural elements of the State were entitled or confined, the positive and direct, or the passive and indirect, were indicated and determined with great precision and certainty, by their capacity to its full and continuous exercise; but of this there was no time to speak, or of those conditional and subsidiary elements, which were necessitated to *non user*, the limitations of which were found by the natural rule of general average.

He believed that the great point of this doc-

trine should be declared in the Constitution. At an early period of the session a resolution had, upon his motion, been adopted, asking committee number eleven "to enquire into the expediency of embodying in the Constitution a clear and succinct statement or declaration of principles, as to the origin and ground of government in this State." But the famous debate upon the qualifications of the Governor had cured him of all expectations which he might have entertained that it would be practicable for this Convention to do so. But this was not the only great truth contained in the Declaration of Independence. Toward the end of that immortal document we read the further declaration "that these colonies are, and of right ought to be" not only separate, but "free and independent states," &c. Now what was the condition of a free, sovereign and independent state—a separate, distinct and independent nationality? It was a condition of complete and unlimited power, to admit individuals, of the people of other nations, to enter and sojourn within its territory as aliens, and to privilege them as it chose, *so far* and *so long* as it thought proper, or not at all; and also to naturalize or consolidate into itself all such alien sojourners as may consent thereto; or such races and national descriptions of them, and such only, as it chose, or none at all.

The right of nations to do that, and the entire destitution of right in other nations or the individuals thereof to do any thing inconsistent therewith, cannot be denied without opposing the clearest conclusions of reason and common sense, and the best authorities upon natural and international law. That being the case how were we to understand the democratic principle of the political equality of mankind, in connexion with nationality, and in that connexion alone. All men who are of the people of New-York, were of right equal one to another, all men who were of the people of Spain were of right equal one to another, as to their nationality. There was no other political equality.

Who were the people of a state? Who were the people of New-York? The true answer to this question is given by the publicist, "since every state is constituted by men's submitting their wills to a single person or to an assembly, they principally have a title to the name of members, by whose covenants the society were first incorporated, and they who regularly succeeded into the place of those primitive founders," and such others as they admit to consolidation with themselves. Now who were the founders of this state? Who were "the good people of this colony" by whose authority it was founded? They were a portion of the British people; they were British subjects up to the day of its foundation; not *quasi* subjects merely, subject to obey the laws by reason of their inhabitation by permission within the territorial jurisdiction of the crown, but full and free subjects, in the so to speak, technically national or political sense of the term.

To this condition, the negroes, whether of trans or cis-atlantic birth, were never admitted by the British nation prior to the revolution. They were an alien people on the day New-York assumed existence as a sovereign state,

and he denied that it could be shown that the state of New-York had ever naturalized or consolidated into itself a single negro, while the power to naturalize was continued to be exercised by separate state action,—nor had it been done by any other state.

It was well known that Congress, in accordance with the spirit of the federal constitution, and the universal understanding and well known intention of the people of the States, at the time of its adoption, had expressly provided against their naturalization. Nothing could be claimed on account of their having been soldiers in our revolutionary and other wars, beyond what might be done for any other aliens, if so much—seeing they were in most cases governed by their masters, whether for or against us, and could not have been deemed capable of treason in any event.

No one pretended that an alien of extra-territorial birth could be naturalized without some express act in his favor, declaring or recognizing some rule as to its effect upon his descendants of heritable blood; yet it seemed to be supposed that the son of an alien, even though he might be extraneous, would be a citizen, if born within our territory, in the absence of any express provision on our part in relation to the case, even in the face of an express exclusion of the father. But this he apprehended was not the rule.

He was willing to admit that the negro, like any other alien, might be privileged beyond true alien rights; and that such privileges might be identical in *form* with the rights of the citizen; but these privileges were subject to revocation. Massachusetts had privileged the negroes in that form; and some supposed she had naturalized them into herself, and constituted them citizens of the United States, in the proper technical sense of the term. Nothing was farther from the truth. Those privileges did not reach beyond the bounds of that state.

The subject of the political grade of the free negro population of the United States, had been supposed to be full of difficulties. For himself, he could see none of an insurmountable character. He could indeed see many anomalies in our legislation upon the subject; but he believed that upon a careful examination of the matter, they would prove to have arisen more from a misunderstanding of the elementary principles of our political institutions, and from a strange disposition to overlook the existence of the conditions of extraneous alienage and the various stages of *quasi* citizenship intermediate between the condition of chattel slavery, and that of complete technical citizenship, than from the intrinsic nature of the case itself.

He regarded the privilege of voting granted to the negroes in this State, by the constitution of twenty-one—on condition of their owning a freehold estate, to be of that special character, subject to revocation. It was conferred upon them as an experiment for their improvement; but it had failed to produce any other effect than to mislead the public mind as to their citizenship, and create an odious and aristocratic distinction among themselves, at war with the theory of our institutions, and of evil example and tendency. For these, among other reasons, he

had voted for its entire abolition. But the Convention by a strong vote had decided to retain it, not, as he understood, that it was right and proper in itself, but expressly upon the ground that these negroes who had become voters under the encouragement held out to them by the provisions of the old constitution, had an equitable claim upon us to continue the operation of these provisions in their favor. He could not concur in that opinion, but he had been overruled upon that point.

It had also been decided, that no attempt, should be made to naturalize them, or to privilege them with what, to them, would be really and truly the privilege of the elective franchise, or suffrage, upon the condition of their humanity alone, or upon any other terms or conditions than the possession of a freehold estate. The Convention had also seemed to consider that direct taxation without representation, should not apply even to the individual resident, though an alien. In accordance with these decisions of the Convention his amendment had been drawn. If adopted it would work the gradual abolition of the requirement of property as a qualification for voting, to which principle we all professed to be opposed, saving at the same time the privileges of the present negro voters, and leaving all other negroes who could not hereafter acquire that privilege, free from direct taxation, even though they should acquire property, far beyond the value of two hundred and fifty dollars, on the same principle which the old constitution applied to those who acquire an amount of property less than two hundred and fifty dollars. This provision, based as it was upon the decisions already made by the Convention, was, it appeared to him, eminently wise and beneficent, and could not fail to meet the hearty approval of the people of this state. To the decision of the Convention, that it would make no attempt to consolidate the negro into the people of this state, he heartily agreed, believing that the people of this state had no right to attempt it under the Federal Constitution, if indeed it were possible to do so successfully under any circumstances. He believed it would be impossible by reason of the antipathy which nature had interposed between the races, as an impassable barrier to social amalgamation into consanguinity; he believed that it would be against the manifest spirit of the Federal Constitution, to privilege the negro with any direct voice in our political affairs, and that it would be dangerous to our welfare, and to the union of the States.

If the principles involved in the case were such as he had indicated, it would be seen at once, that there was no question of democracy and equal rights, or of aristocracy, embraced in its consideration or connected with it, any more than there was in the question of consolidating the aborigines of our country with ourselves, or of the naturalization of Europeans, otherwise than that an attempt to consolidate the negro with our own race, must, so far as it was successful, operate to deteriorate, corrupt and wither our democratic institutions, while on the other hand, as from the nature of the case might have been expected, the admission of Europeans had operated to sustain and strengthen them. But if the negroes were to be admit-

ted, on the principle contended for by the gentleman from Madison (Mr. Bruce,) and others upon this floor, upon their humanity alone, irrespective of nationality and race, operating throughout the world of mankind at large, establishing one great cosmos, it would in the present condition of the world, instead of carrying out and establishing the principle of democracy, work its entire and complete overthrow, and of nationality along with it.

But the Convention he was sure would not sanction a principle like that; were we, in anticipation of the long looked for millennium, about to proclaim ourselves citizens of the world, cosmopolites, destitute of patriotism, and all the world and his wife promiscuously citizens of our own state? He trusted not, he trusted the decision of the Convention in that respect would be adhered to.

If the state retained the power to naturalize them, or even the clear right to privilege them as proposed, it would, he could not doubt, be highly inexpedient to do so; but he should not discuss that branch of the subject, not doubting that chattel slavery was destined to cease, leaving some three millions of those people to be disposed of in some way; he could not deem it wise to tie them to us in any manner whatever.

He believed that slavery had been permitted in the providence of God, as a means of preparing a portion of the Ethiopian race for the great mission of civilizing the tribes of Africa, a work which had failed in the hands of every other race. He would do every thing to prepare them for that great work but nothing to retard their entrance upon it at the earliest possible day

SPEECH OF MR. CLYDE, *on the subject of Feudal Tenures.*

Mr. President—I rise to advocate the proposition now before the Convention, contemplating an important change in our laws regarding the holding and leasing of Real Estate. Being a resident of one of the counties which have manifested the most lively interest in the fate of this proposition, a county which has been deeply convulsed and taxed by the consequences of the system which this measure is intended to remove, having been elected with special reference to my well known opinions on this subject, and with the expectation doubtless, that I should, so far as my humble abilities will permit, commend those opinions to the favorable consideration of this Convention. May I not ask, Sir, that the Convention will for a few moments give me that attention which I have not often presumed to solicit, and which I would not ask on this were I not satisfied that my experience of the practical evils which this measure is intended to remove, is somewhat more extensive, probably, than that of the majority of this Convention. The question also is one of such momentous interest, not alone to my immediate constituents and those of the adjoining counties, but to the whole people of the state, that I feel that I should prove recreant to the trust reposed in me, if I should not now open my mouth in vindication of them and their cause.

I am fully aware that at the mention of grievances endured by the Manorial Tenants, or rather of the whole community in which they are located, a sneer of incredulity and scorn naturally exhibits itself on many faces. 'What!' asks an opponent, 'do you pretend here to maintain that this Tenantry is *really* aggrieved and wronged?' Yes, sir, that is my position. 'But have they not agreed to pay the rents demanded of them?' Yes, sir; and so do the victims of usury agree to pay the exorbitant interest exacted of them—which the state and the law say they shall not pay—so do the victims of the gambler agree to pay the sums of which they are fleeced; so did some of the tenantry on the great feudal estates of France agree that the chastity of their daughters should be among the

'first fruits' reserved to the use of the lords of the soil.

The question here however is not what a class of poor and ignorant men of by-gone generations agreed to do, but what the men of the present day *ought* to do—what the state should compel them in future to do. I maintain that most of the rights so called, of the landlords of these manors, originated in power and craft, if not by fraud on the one side, and ignorance and simplicity on the other, and that they have now no such rightful existence as should entitle their holders to overrule the just and true policy of the state.

I desire gentlemen of this convention to bear in mind, that when the great original mistake of assuming to give away the soil of this state, several hundreds of square miles in a body, to this or that favorite, was made by the Dutch or English colonial authorities, *no real consideration was given therefor by the grantees.* A stipulation to settle so many immigrants was generally the nominal consideration, and this usually executed itself, so far as executed at all. One cent an acre would doubtless be a large average for the actual cost of these lands to the grantees, while there are very few acres on which at least two or three hundred times that amount have not already been paid as rent. I say then, that I see no obstacle in natural justice to such just provision affecting the mutual rights of these landlords and tenants as the true and abiding interest of the state appears to demand.

And now Sir, permit me to merely glance at some of the practical evils of this system preparatory to urging the adoption of the proposition before us as a remedy in future. The existence of these manorial estates creates, as they were intended to create or to perpetuate, two radically different classes in society—a numerous class subsisting meagerly on a part of the proceeds of their own ill rewarded labor, and a smaller and socially superior class living idly and sumptuously on the proceeds of the industry and toil of others. I certainly need not adduce proof of this—it is demonstrated by all that is urged on both sides

in this controversy. A great champion (Mr. Cooper) of landlordism throughout, regards the existence of a social aristocracy as inevitable, and would shape the legislation of the country accordingly. The great mass of the people, on the other hand regarding this aristocracy of luxurious idlers as incompatible with the integrity and perpetuity of our republican institutions, solemnly protest against it, and feel bound to struggle for its extinction. But it is said that the distinctions of rich and poor, idle and industrious, have their origin in the nature of things, and must always exist. Admit, if you please sir, that disparities of fortune are inevitable, still I ask you not to inflame them by making the consequences of a freak of fortune the very pillars of our social and political edifice. If some must be rich and others poor, it does not follow that the God-created means of human comfort and sustenance should be made or continued the exclusive property of the few. One child is born with his hands only; another is the heir of vast treasures; the former is compelled to cultivate the soil for his livelihood; the latter can live without working on the wealth transmitted to him from his ancestors.

Here steps in law-cherished landlordism to say to these men, "You that have no need of working shall be the exclusive owner of twenty or thirty miles square of the earth, on which no other man can do a day's work, but by your permission; and then, not without being bound down by degrading and slavish covenants—while you that must work or starve shall have no privilege to purchase at a fair price—no right to cultivate one foot of soil, but at the caprice, by the good pleasure, and as the serf of him who is above all necessity, and upon a stipulation to pay him what he chooses to demand for the privilege." Mr. President, is this fair and just? Is it for the interest of community, or for the enduring prosperity of the state or country? And shall it longer be permitted?

This Sir, is no casual difference of circumstances that we are now considering, but a fixed and enduring disparity of condition, which several generations have experienced. Who does not see that its direct tendency is to create and perpetuate class distinctions and class interests, incompatible with the pure and high spirit of republican freedom? And yet this system, blighting as it is to the interests of individuals and community, is sanctioned, and either loudly or secretly praised, by some who boast long and loud of their democracy!

Sir, read one of these manor leases, and note how skilfully, cunningly devised appears every requisition to make the tenant class directly and sensibly the inferiors—mere serfs and vassals, hewers of wood and drawers of water. The restrictions on the right of alienation—the reservations of wood, water, minerals, mill-streams and privileges—the quarter-sale, the two fat fowls, and day's labor drawing manure—the covenants requiring the tenant to go to the landlord's mill on pain of forfeiting his whole estate—also to trade at his landlord's store on pain of forfeiting his whole estate—and the thousand and one other little, mean degrading covenants, a violation of *any one* of which by the tenant, works a forfeiture of the whole estate—the right

stipulated for the landlords to do whatever they please, and the covenants exacted of the tenants that they shall do nothing as *they* please—is all of a piece from beginning to end. Aristocracy is the essence and aim of the system.

Sir, I will not say that all these manor leases contain all these odious covenants and exactions, but I will say that I know that many of them do. And now I ask gentlemen of this Convention to consider how plainly incompatible these exactions are with the free spirit of an independent yeomanry, and how certain it is that one or the other *must* give way.

This Convention is now called upon to say which of them shall succumb!

Sir, when you are asked to note how small is the rent per acre exacted on these manors, I beg you to consider how meagre and restricted are the privileges accorded to the tenants—how utterly valueless was this land until their unpaid labor rendered it productive—how great a portion still remains so, and how much of it can never be otherwise, on account of the mountains, precipices, ravines, marshes and rocks.

I could show you sir, very many of these tenant-farms from which you would wonder how the livelihood of a family could, by any industry, be extracted without paying rent at all; yet from those farms an annual rent has for one or two generations been paid, far exceeding the entire cost thereof to him who claims to be its landlord, where it cost any thing at all.

Now, Sir, consider for one moment the effect of this manorial system on the industry of the people—on their energy, thrift, education and proper ambition. Here is a community whose members have grown up tenants with the ideas and habits which the relation creates. It almost seems to them an ordinance of Providence, that they and their successors were born to toil on in poverty and in a subordinate condition. Should any one excel in industry, and good husbandry and frugality, he knows that his labor but enriches the land of another, and that *that* other will reap a large share of the proceeds. His children feel this if he does not, and knowing that their parent is bound down by the chains of leasehold servitude, sink into the routine which seems to befit their condition. Sir, I must insist that this system is *uncongenial* with the spirit of our institutions—a damp and mildew upon the interests of every community where it exists, and poisonous to the best interests and prosperity of the state, and should be guarded against in future by constitutional provision.

Mr. President, what then is the most desirable form of land-holding? That form which it is the policy of states, and especially of free states, to encourage and promote? Is it not manifestly that of the freehold, in which the owner and cultivator of each farm is one and the same person? Is there a man in this Convention, aye, in this state, who does not realize that our state would be stronger, richer, more populous, its people more independent, more intelligent, more happy, better educated, and feel a deeper and stronger interest in the prosperity of our government, if each head of a family were the owner of the plat of ground from which the sustenance of that family must be drawn?

I think no one will deny the proposition I

would establish, and who cannot see that the adoption of the sections before us would have a tendency to this result? If, then I ask, it is the essential purpose of government to promote and secure the well being of the people, and thereby strengthen its own security and endurance, why should not the manner of holding and conveying real estate be an object of primary concern in the framing of a Constitution of government? If government may laudably endeavor to discourage immorality and vice, even when they do not immediately and violently interfere with the rights or happiness of any one but the transgressors. 'If a state may forbid usury, and blasphemy, and lewdness, and gambling, why may it not, why should it not, discourage the purchasing up of thirty or forty square miles of the soil of the state by one or two individuals, for the purpose of renting out in a way and manner to make serfs and vassals of the many, if that, too, is found incompatible with the highest public welfare? Will any man contend that to deny any citizen the privilege of such a monopoly, and for such purposes too, will any more abridge his natural rights than does the forbidding him to take exorbitant interest, or to keep a gaming house now does? In either case the privilege denied him is that of doing acts deemed inimical to the public well-being. Can any good citizen desire and struggle for such a privilege as this?—Surely not.

The fundamental question to be settled, then, is this: Does the system which this proposition aims to subvert operate injuriously to the public welfare? This is the question which I now proceed to consider. It appears to me that many words need not be wasted to show that there is in all civilized society a natural tendency toward monopolies of this kind. All history is full of this. The rise, greatness and decline of a people may generally be summed up thus: A few capable, intelligent, courageous persons are impelled by national calamity, by religious or political tyranny, or by a mere spirit of adventure, to migrate to some region where there are few or no civilized inhabitants. They form a new community or state, which prospers and expands perhaps for generations and seems likely to endure for centuries. But there is a worm at the root of all this towering, imposing greatness. Wealth increases, not the wealth of the many but of the few, and though the bounds of the country expand, the number of its freeholders diminish. Land increases in rental or value as the many who need it become more and the few who own it become fewer, until the cultivator class gradually sink to be the virtual serfs of the great landlords—their passive and hopeless dependents. Succeeding generations see the rent of land increase while the reward of labor is diminished until the great mass are led to feel that they have no country to defend—no rights to maintain. Such a country is ripe for the sway of the next desolating conqueror—the next barbarian horde, that shall consider it worth the easy labor of subjugation. Such has been substantially the history of all the great nations that have perished, especially of Rome. In the days when her generals were the farmers and owners of a few acres of freehold—when they were taken from the plow to lead her hosts and re-

turned to the plow from victory—then was Rome resistless and impregnable. Centuries passed, and with four times her population in the days of Cincinnatus, she fell a prey almost without resistance, to barbarian hordes whom she would have utterly despised in the days of her early vigor. But her soil had now become the patrimony of a few lordly aristocrats—her campagna no longer the property of her citizen soldiery, had become the estates of a few non-resident nobles—the home of serfs only. When conquered, her one million two hundred thousand people were the tenants and dependents of less than two thousand families. A like process is now visibly going on in the chief nations of modern Europe, save in those like France, where they have been checked by a great social as well as political revolution. Sir, we see Great Britain in the plenitude of her wealth, activity and power, convulsed with sudden changes of ministry and of policy, her hungry millions looking for relief in the statesmanship of Pitt or of Fox, of Canning or of Gray, of Russell or of Peel. One day parliamentary reform, next extension of franchise, and then repeal of corn-laws is the proper panacea. Yet each is tried without abatement of the cancerous disease which is gnawing at the very vitals of the nation. Some thirty thousand persons are the owners of nearly all the soil of that island, whence twenty millions must draw their sustenance; and the number of landlords is yearly diminishing. Unless a remedy for this disease be found, the sun of England is near its setting. Her prisons and poor-houses are already full to repletion—at least one-sixth of her people are virtually paupers, and the proportion steadily increases; wages dwindle away as rents become more and more exorbitant, and the farmer who is required to pay a rent for his land which will absorb two-thirds of its entire produce, at length gives way to despair!

The plowman whose family must be subsisted on seven or eight shillings per week, and whose daily fare is confined to oat meal porridge, or coarse bread and lard, with no prospect for his old age but the union work-house, how can he be expected to cherish patriotism, morality and a love of intellectual improvement? How can it be expected that he should ever feel that he had a country? No interest in the soil—no prospect of obtaining it—a mere serf, worse fed and lodged than the beasts that perish, with cares and anxieties from which they are happily exempt how shall we expect to awaken and keep alive in his breast the exalted sentiments of a rational, immortal being? How shall he be expected freely to pour out his blood for a country in which his birthright was famine and despair? Whenever the crimes of England shall meet their just recompense in her prostration and decay, the degradation and despair of her laboring class will be one of the most important instrumentalities in working out that retribution.

And who shall say, sir, that the spectacle now afforded by Great Britain conveys no admonition to us? By what device do we hope to arrest at will the tide which is now bearing us along in the current down which she has sailed before us? Look around you and see if there be not in this manorial system an inevitable tendency to the

same results. Look at the numerous degrading, anti-republican covenants and exactions in most of these manor leases.—Many of the tenants in a boasted republican country reduced almost to the condition of serfs.—Travel over this otherwise fair portion of our state, and you will not fail in a moment to discover the legitimate effects of this withering, scorching, blasting, burning curse.

Sir, many of my immediate constituents and thousands of others in our state, groaning under the chains forged by this blistering system, are looking to this convention for some relief. They ask for nothing that is wrong—they ask you to violate no just contract—to destroy no vested rights. They ask you to engraft upon the constitution of your state the proposition now before us, which will prevent this curse in future, and will be the means of wearing out and destroying in time the present existing evil. Shall this down trodden and oppressed people ask in vain? It appears to me that every man who loves his country and desires the peace and prosperity of the state—who is a republican in principle and practice as well as in name, will rejoice to see the proposition before us adopted.

Mr. President, I will not detain the convention with any detailed account of the peculiar grievances of a portion of my constituents and those of the adjacent counties, for I am admonished that the time allowed me to speak has very nearly expired—many of them I have alluded to already, and I presume the convention is in some degree familiar with them all. I would not, however, have gentlemen on this floor fall into the mistake of fancying the abuses I would guard against, merely local and temporary subjects of excitement—an excitement which a few more months will efface, without applying the proper remedy. Much, very much, growing out of the excitement of the past is to be deeply regretted and deplored, and none regret and deplore it more than the great mass of tenants—they have never encouraged the violation of law and order—they have never asked or wished for any thing wrong or unjust—they are honest and industrious, and feel a deep interest in the prosperity of the state, and all they have ever asked or wished for is just and equal laws and equal rights. I know, sir, that by some who are directly or indirectly interested, they are charged with every thing that is wrong—and I also as well know, that their motives have been misrepresented—their principles have been misrepresented, and they have been most grossly slandered and libelled. But, thank Heaven, a brighter day begins to dawn, the wrongs of the down trodden and oppressed, and the principles for which they contend are better understood, and the enlightened and patriotic every where sympathize with them, and are ready to come to their relief.

Sir, I have endeavored to show that the evils I combat, either are or may be experienced anywhere—that time or circumstances may precipitate their development, but that their origin must be traced to that unwise policy which parcels out the earth to a favored few, and permits that few to bind down the many during their

lives by the chains of leasehold servitude. So long as this system shall continue, there will be in our land luxury and pride, balanced by want and degradation, with a constant tendency to the increase of them all. I hold it to be one of the most important duties of this convention to provide efficient safeguards against the aggravation and effectual remedies for the existence of the evils I have only had time to glance at. Give us some assurance that our children shall be permitted to eat the bread produced by their honest toil, and not be compelled to labor two days in the week for themselves and four for him who rents them the right to barely subsist upon the earth.

Sir, I will not detain the convention with any argument in favor especially of the proposition now before us, for after the kindness already extended to me, I cannot consent at this late hour of the session, to trespass farther upon its patience—but if adopted, as I hope it may be, no one, I think, can fail to perceive at first glance that it would secure effectually against this unwise system in future, and that under it the existing evil must eventually melt away.

And now, sir, permit me to ask, if the peace and quiet of our state—the great interest of agriculture—the virtue and intelligence of the sovereigns of the state where all power rests—the improvement of society—the wrongs and sufferings of the oppressed—and the safety and enduring prosperity of our state. Do not all demand from us the remedy proposed against this uncertain, corrupting, debasing, degrading and slavish system of land tenures?

Let us then extend the broad shield of constitutional protection, and thus show to the oppressed and down trodden of earth, that we sympathize with them, and in the true spirit of patriotism and philanthropy come to their relief, and the relief of the whole agricultural interests of the state.

I am thankful, sir, that my ancestors were among the hardy sons of toil—that my early education and habits of life were formed under such influences, and that they who ate their bread in the sweat of their faces ever taught me to look upon agricultural pursuits as among the most honorable occupations of life. Partially to these influences, among others, no doubt, do I owe my sympathy for those of my constituents whose wrongs I have attempted to represent.

And now, sir, after mingling as I have done for months with some of the most talented, patriotic, and independent men of our state, and witnessing as I have done their persevering and untiring efforts to frame a constitution worthy of themselves and the people they represent, I can return to the quiet of my home with the full consciousness of having honestly and faithfully, according to the best of my poor abilities, discharged my duty to my constituents, and can behold in the new constitution which we shall have framed the provisions which are now sought to be engrafted upon it, the days of my retirement will be the happiest of my life, and to have contributed in an humble degree to the consummation of this object, as much honor as I shall ever desire.

SPEECH OF MR. LOOMIS, *on Bank Currency.*

Mr. LOOMIS remarked that the state of his health had prevented his being present yesterday, when this section was adopted; and perhaps the objections which presented themselves to his mind, on the consideration he had been able to give the subject, might be removed, but to him they seemed insurmountable. The article on the subject of banking, as reported by the chairman, and as adopted by the Convention, seemed to contemplate a system of free banking, that is, it proposed to allow all persons to embark in the business of banking, by complying with certain provisions and regulations to be established by law;—it contemplated no exclusive privilege to be granted to certain favored individuals by special act of the legislature, but proposed that all men should have equal privileges of incorporating themselves, and carrying on this business under such general regulations and restrictions as should be applicable to all alike. The article as reported, and as adopted, did not propose to define these regulations and restrictions in the Constitution. What these should be was a question upon which we might differ very essentially, and was a matter proper to be left to the legislature to settle. They might prohibit the issuing of bills as money, unless the bank should have specie in its vaults to an equal amount, and by that means make all paper money actually represent an equal amount of specie for its redemption at all times. In such case paper money would be at a small premium.—This to him seemed practicable and desirable, yet it was an opinion merely, and might not be found to be advantageous on trial. He apprehended that it would not be adopted at present, whatever might be its future success. He understood the views of the distinguished chairman of the committee (Mr. CAMBRELENG) to favor free trade in banking, under general regulations. In this he fully concurred; but to him it seemed inconsistent with such views to limit by positive enactment the extent of that business. If every man and association of men were at liberty to embark in the business, and to issue bills under such securities and regulations as the law shall deem adequate and safe, he did not see that we could, with propriety, say that the aggregate amount of business should not exceed a certain fixed sum. We proposed also to allow persons to incorporate themselves for other purposes: for instance, for the manufacture of cotton goods. Would it be consistent or proper to pass a law limiting the number of yards of cloth

which should be made by them? This seemed to him precisely analogous. Under such a free system, properly regulated as to the securities required, banking, like other business, might, and ought to be left to accommodate itself to the business and the capital of the country. If the securities required should be specie in the vaults of the bank for all the paper issued as money, dollar for dollar, he believed no one would apprehend an excess of paper money, and there would be no more necessity for a restriction on the aggregate of issues than there would be to prevent too great an amount of gold and silver. The amount of paper issues would necessarily depend, as the amount of specie now did, on the business and wealth of the country. Again, it seemed to him impracticable—how was each particular bank to ascertain whether the aggregate amount of circulation by all the banks in the state, at any time, was up to the aggregate limitation in the law, in order to know whether or not it might lawfully issue more bills? Should the legislature parcel out at the commencement of each year the aggregate amount of issues among all the banks then existing? It could not in that way secure the object, because institutions might arise during the year, and if more bills were wanted the number of banks would multiply to meet the demand. This fixing the amount each year, and apportioning among the several banks, was to him the only conceivable mode of even approximating to an aggregate limitation. The result of this would be to invite the united power of all the banks each year to make common assault upon the legislature to increase the amount of bank issues. Such, to his mind, would be the worst of all imaginable systems. He was unable to see or to devise any suitable restraints upon the over-issues of paper currency, consistent with equal privileges to all alike to embark in the business, other than to fix the privilege of issuing paper as money, under such regulations as to make it no object of gain to any bank. And he could see no mode of securing this object, other than requiring a specie basis to the full extent of the paper substituted for it. This would necessarily make paper money command a premium, and would secure a currency whose aggregate amount would be regulated by the demands of trade, the prices of property, and the wealth of the country. He was, for these reasons, opposed to the section as adopted, and hoped it would be reconsidered.

SPEECH OF MR. RICHMOND, *on the Judiciary.*

Mr. RICHMOND said that he had hoped, at the commencement of the discussion upon this question of the judiciary, that the committee would have commenced with the justices' courts, and first settled their powers and duties, and next the court of common pleas, if we were to have one—and so on, to the supreme court and court of appeals. But he had been overruled in this, and the discussion had taken a wide range, embracing all matters connected with our present judicial system, and also the plan proposed by the majority of the judiciary committee, and some six or eight other plans, submitted and laid upon our tables, together with the suggestions of the several members who had addressed the committee, as to some amendments which they thought should be adopted, provided any one of the plans which had been presented should be adopted, in whole or in part. Such being the present condition of this most important and interesting discussion, he hoped the committee would pardon him if in the few remarks he was about to submit he should follow some of the many gentlemen who had spoken on the question, without any particular reference to the order in which they spoke, or to the particular branches of the several reports. As he had but few notes of what had been said, he would first speak on those branches now more immediately in his mind, lest he might neglect to refer afterwards to some of them which he deemed important. And firstly he would say, that in listening to the able speeches of gentlemen on this subject, they had called the attention of the committee mainly to the delays and hindrances of our present system of administering justice, while the great and crying evil of the costs and expenses of our courts, growing out of the fact that a large proportion of the time of most of our courts is employed in reversing, non-suiting, delaying, and thwarting each other's decisions.

He said it had been well remarked here, by more than one gentleman, that one of the great objects the people had in the calling and assembling of this Convention, was the subject of judicial reform. In this he said he fully concurred; but he begged to say to those gentlemen, that the people would not be satisfied with any system, however new it might be, the machinery of which was to be carried on by means of all the technical, wordy, nonsensical, unmeaning pleadings now in favor in our courts, and so well adhered to by both courts and lawyers. Neither would they, in his judgment, longer submit to the interminable and ruinous expenses forced upon them by the almost innumerable number of appeals, certioraris, demurrers, and other legal inventions, well calculated to strip the laborious farmer or mechanic of the hard earnings of his labor, to fill the pockets of the lawyers, judges and clerks of the different courts. Mr. R. said that he had, some days since, stated to the committee his views with reference to the court of chancery, and he would not now repeat them, as he believed, from what had already taken place in this committee, that that court which had so long afforded such rich pickings

for solicitors, masters, examiners, clerks, trustees, &c., was destined to a speedy and certain death, without any hope of a resurrection.—Should this be the case, (which God grant may be so,) he would be disposed to tread lightly upon its grave, and pass on to the living. And now, Mr. Chairman, said Mr. R., lest he might be misunderstood in what he had, or might say, in regard to attorneys and bills of costs, would take the present occasion to say, that he had no personal hostility to the profession; many of them were his most intimate friends—but gentlemen must remember that the interests of the profession and those of the great laboring and producing classes in this country are somewhat different. He knew that the honorable and high-minded of the profession were above all censure—and among that number he was happy to class the legal members of this Convention. He believed they had come here with the determination to aid, by their powerful intellect, in framing a Constitution that shall confer blessings upon the anxious millions of this great state. He said he knew those at home, who are possessed of those same high qualities, and have a high reputation for honor and integrity. But when he said this he felt bound to say that there was another class of the profession, of whom the people had formed a very different opinion. He meant those who live by the imprudence and misfortunes of their fellows. Those who are ever ready by their advice and management, to embroil otherwise peaceable and quiet neighbors in all the expenses, ill-feelings, quarrels and contentions growing out of the prolonged and ruinous suits at law which they had by their management succeeded in embroiling the parties in. The objects of these men do not seem to be to enable their clients to get cheap and speedy justice, but to so manage as to take advantage of all the technicalities and crooks of the law, so as to run up a large bill of costs to benefit their own pockets. To this particular class, he said, was to be attributed the greater portion of the opposition to a radical reform in our judiciary system. Mr. R. said he believed that two of the greatest evils of our present system was the crooked and almost useless forms of pleading now in full practice in our courts, compelling the party to state almost everything known in our language but the truth, and the facilities which were afforded by our system for bringing appeals, certioraris and motions, to be argued before the higher courts, all of which give fine fees to attorneys, and after involving the parties in large bills of costs, generally result in being sent back for new trial, for the purpose, as is alleged, of remedying some great defect in the former proceedings. He said he had looked over the report of the majority on this subject, and he had not been able to see anything there to prevent as many appeals as in our present system. Although he understood from some of the committee that the costs of these courts were to be very much cheapened by the legislature to come after us, whose first business would be to simplify the manner of pleadings in these courts. He confessed gentlemen had more confidence in

the legislature than he had, for he well recollected the people had been asking the legislature for the last eight years to do this very thing, and because they had not done it, they had called this Convention, expecting that something would be done here in accordance with their demands. Mr. R. hoped they would not be disappointed, but that all their expectations for cheap and exact justice would be realized. He believed the jurisdiction in justices courts should be increased to \$250, that such courts should have equity and law powers, that for all judgments rendered in such courts of 100 dollars and under, the party dissatisfied should appeal to the town court of the same town, or of some adjoining town.—Town courts to be composed of all the justices in town, and to meet four times in each year. Either party to have the right to call a jury on the trial of the appeal cause, but if neither party desire a jury, then the justices to decide the cause; the decision of the town court to be final, from which there shall be no appeal. The jury for such courts to be drawn from the list of county jurors from such town, which said list is now by law filed in the town clerk's office. He said there were now fewer appeals from the justices courts in proportion to the number of causes tried by them, than there were from any other court, not excepting even the circuit courts or the decisions of the supreme court. These town courts making final decisions in all matters of \$100 and under, will very much relieve the higher courts from a considerable amount of business that now finds its way there, and the giving these courts of justices of the peace jurisdiction in the sum of \$250, will also do very much to accomplish the same object. The effect of these contemplated changes will be to elevate the character and standing of the justices courts. The people will know when they elect their justices that they are to make important decisions, and they will be likely to see to it and get good men. It is a libel upon the intelligence of the people in the several towns in this state to suppose that they will not elect men for justices when three of them associated together shall not be qualified to decide finally a matter of \$100 or under. He asked if there was a man in this Convention that did not believe these justices were more capable of deciding matters of deal between farmers and mechanics, than any of your supreme judges could be. They were more conversant with such matters, as they were generally in their line of business. They would see and hear the witnesses testify, would know what kind of confidence to place in them, whereas if the cause was allowed to go up to the higher courts, it would be decided on paper statements, and sometimes by men who were entirely unacquainted with such matters of trade and traffic as this kind of litigants dealt in. He said this system would be cheap to parties and cheap to the public, for he believed usually these courts would not be in session more than one day at a term, and it would not be necessary to pay them more than \$1.50 or \$2 each, per day, for their services. The expense of final decisions in this way was not to be compared with the expense under our present system. He cited one case of appeal from the judgment of a justice (in an adjoining town to the one in which he, Mr. R.,

resided,) which occupied the greater part of two terms of the court of common pleas in Genesee county. In both trials the jury could not agree, and it was yet undecided—although "the first judge of that county said it had already cost the county and the parties one thousand dollars, yet the matter in dispute which was appealed from was only about thirty dollars.

The gentleman from Chautauque (Mr. MARVIN) had vindicated the character of these courts, when he said there was not one cause in five hundred decided in the justices courts of his county, that were ever appealed from. The gentleman from Herkimer (Mr. LOOMIS) tells us that this convention is not the place to carry out details by fixing the matter of appeals, and says we can here only set up the skeleton or frame work, and leave the legislature to carry out the details. Mr. R. said, should that gentleman's suggestions be carried out, and this whole matter turned over to the legislature, he apprehended it would be after this time when the people would realize the reforms they have so long demanded, and he begged the Convention to consider well before they should adopt so extraordinary a course. The gentleman from Tioga, (Mr. J. J. TAYLOR,) who addressed the committee a few days since, adverted to justices' courts, and stated a case in his county of two neighbors lawing in those courts about two calves as to whom they belonged. Jury after jury was called, but they continued to disagree. He said he had it from the magistrate that it cost them nearly 300 dollars, and the neighbors finally had to settle the matter themselves. Mr. R. said he had no doubt such had been the fact as stated by the gentleman. But he would call the attention of that gentleman to a case that happened some few years since in the county of Steuben, not far from that gentleman's own county. Two men got into the law; the matter in dispute was only twelve shillings; after going through a justices' court, it was carried through all the superior courts, and contested in each branch with all the skill and ingenuity that able counsel could bring to bear, and was finally decided in the court of final resort, at an expense of more than \$1400 cost, and justice was so complete and satisfactory in the matter, that both parties found it necessary, (in order to get rid of this bill of cost,) to run away, which they did, the one to Ohio and the other to Michigan. Now, sir, allowing these to be extreme cases, still they are not uncommon. The gentleman from Tioga will discover that the costs of what may be justly called hard lawing, is at all times as five to one in favor of the higher courts. In the two cases cited, his among the justices and the one mentioned by him, Mr. R., there is a difference of about \$1100 in favor of having the matter kept in and decided in the justices' court. And he believed this rule would be found to hold good in most cases. The gentleman from New York, (Mr. O'CONOR,) some days since named a case that was tumbled about from one court to another in the shape of exceptions, demurrers, and a great many other legal quibbles, until after several years of delay, it was finally sent back where it started from to be tried anew, at an expense of some 1500. The gentleman from Columbia (Mr. JORDAN) said that under such a system as the one

now before the committee the whole expense of such a case as the one mentioned would not cost over 100 dollars. He, Mr. R., could not see how this was to be done, as he found as many places of appeal in this plan as there were in our present system. Perhaps the lawyers were to work cheaper than they have heretofore done. This he said he should believe when he saw it put in practice, and not till then. He had never known them to work a great length of time for nothing and find themselves. Like other men, they will demand pay for their services. He said that should he ever become embroiled in a suit that bid fair to go through all the courts, he should certainly employ that gentleman, for he had all the ability that could be required, and would work at that rate for less than two dollars a day and find his own roast beef. Mr. R. took up and examined the plan of Mr. CROOKER, for a county court, as he said it seemed to find favor with many. His objections to it were that it had all the paraphernalia of a court of judges, sheriffs, constables, jurors, clerks, criers, &c., but had no jurisdiction in civil causes. It was designed only to hear matters coming up from justices courts and to try all criminal causes arising in the county where the penalty for the offence shall not exceed the term of ten years confinement in one of the state prisons. Now, he thought, that a court which had sufficient ability and discretion to make decisions involving the liberty of citizens, ought to be competent to decide matters of dollars and cents between individuals. There could certainly be no reasonable objection, if we were to have a county court at all, that we should have a good one. And he believed, unless a better plan was presented, that we should make the first judge a salaried officer, have him do the duties of surrogate, and pay all fees into the county treasury. This he believed would enable him to devote his time to the business, as he would be well paid, and would have plenty of business to do. He would have two side judges elected to sit during the trial of causes, to be paid by the day for their services. With such a court as this, he said we would be enabled to dispense with one-half of the army of supreme judges provided for in the report of the committee. The 36 supreme or district judges, provided for in that report, with salaries (as was said by some) of \$3,000 each, would not, he believed, take well with the people. They were not prepared for such an avalanche of judicial wisdom. He said he would now notice a remark that fell the other day from the gentleman from Ontario, (Mr. WORDEN,) a gentleman for whom he, Mr. R., had the highest respect—he had had the honor of a seat on this floor with that gentleman in a different body, and had always found him a faithful and able representative. That gentleman stated that the gentleman from Genesee, alluding to him, Mr. R., has given us a tirade against equity proceedings, and yet he (Mr. WORDEN) doubted whether he had ever read a single work on proceedings in law and equity. Now he, Mr. R. would only say in reply to this that he had always been taught to read such works as would be beneficial to himself and to his fellow men, and his reading had always taught him when he made a statement to make it in a plain and unvarnished

manner, whether written or oral. But he feared this was not the case with the reading or the writing of his friend from Ontario. That gentleman, in his business as a lawyer, if he were going to tell you the story, Mr. Chairman, of Tom's striking Dick over the shoulders with a rattan as big as your little finger, would tell it something in this way: And that whereas the said Thomas, at the said Providence, in the year and day aforesaid, in and upon the body of the said Richard, in the peace of God and the state then and there being, did make a most violent assault, and inflicted a great many and divers blows, kicks, cuffs, thumps, bumps, contusions, gashes, hurts, wounds, damages and injuries, in and upon the neck, breast, stomach, hips, knees, shins and heels of him the said Richard, with divers sticks, canes, poles, clubs, logs of wood, stones, daggers, dirks, swords, pistols, cutlasses, bludgeons, blunderbusses and boarding pikes, then and there held in the hands, fists and clutches of him the said Thomas. Now, Mr. Chairman, said Mr. RICHMOND, if that gentleman's equity reading teaches nothing but such rigmale as this, he, Mr. R., had reason to thank those who had the care of his early education, for having so carefully kept from his view all works so well calculated to mystify and mislead the human mind.

The gentleman from Chautauque, (Mr. PATTERSON,) the other day, while discussing this report, took occasion to say, that he (Mr. R.) had discovered in the third section a provision which would allow the legislature to appoint examiners in chancery; and said he did not believe the same discovery could have been made by any other gentleman in the Convention. Mr. R. said the discussion at the time referred to was on the third section, and he would read it, and the Convention could see for themselves how the matter stood between them. He read as follows:

§ 3 There shall be a supreme court having the same jurisdiction in law and equity, which the supreme court and the court of chancery now have, subject to regulation by law.

Mr. R. said if there was a legal member in the Convention who would rise in his place and say there was anything in the section to prevent the legislature from appointing as many officers as they saw fit to do that kind of business, he would sit down.

Mr. PATTERSON here said that the 9th section provided distinctly that the testimony in equity cases should be taken before the judge.

Mr. RICHMOND resumed by saying that as the question at the time was on the third section, he had no intention of having his mind drawn from it by any promise of something that was to be done bye and bye, in some other shape. He was not in the practice of putting his foot into a trap knowingly, at all events not without knowing how he was to get out again without injury. He said the gentleman (Mr. PATTERSON) had also said in his published speech that he hoped no other bugbear like this would be found in the report of the judiciary committee. Mr. R. said he thought the gentleman (Mr. P.) had the other day found the greatest humbug of all, in the shape of a miserly county judge, which was of so alarming a character as to bring some half a dozen of the committee promptly to their feet.

REMARKS OF MR. O'CONOR, on the proposed section in relation to the separate property of Married Women, October 5, 1846.

Mr. O'CONOR called up the question on reconsidering this section. He remarked that the sudden manner in which it had been first brought up had prevented full discussion; had allowed no time for deliberate reflection, and led the Convention to form a hasty judgment. He had not argued the point then, but rather than permit so important a revolution to be wrought *sub silentio*, he would endeavor to compress within the allotted fifteen minutes argument enough to induce reflection. And he was sure that due reflection would induce a majority to reverse the former vote. He regarded this section as more important than any which had been adopted—perhaps than all the rest of the constitution. If there was anything in our institutions that ought not to be troubled by the stern hand of the reformer, it was the sacred ordinance of marriage and the relations arising out of it. The difference, he said, between the law of England and that of most other nations, was that it established the most entire and absolute union and identity of interests and of persons in the matrimonial state. It recognized the husband as the head of the household, merged in him the legal being of the wife so thoroughly, that in contemplation of law she could scarcely be said to exist. The common law of England was the law of this country, and both were based upon the gospel precept—"they twain shall be one flesh." Pure as its origin—the fountain of holy writ—the common law rule upon this subject had endured for centuries; it had passed the ocean with our ancestors, and cheered their first rude cabins in the wilderness; it still continued in all its original vigor and purity, and with all its originally benign tendency and influences, unimpaired by time, undiminished in its capacity to bless by any change of climate or external circumstances. Revolution after revolution had swept over the home of married love, here and in the mother country; forms of government had changed with Proteus-like versatility; but the domestic fire-side had remained untouched.—Woman, as wife or as mother, had known no change of the law which fixed her domestic character and guided her devoted love. She had as yet known no debasing pecuniary interest apart from the prosperity of her husband. His wealth had been her wealth; his prosperity her pride, her only source of power or distinction. Thus had society existed hitherto. Did it need a change? Must the busy and impatient besom of reform obtrude, without invitation, its unwelcome officiousness within the charmed and charming circle of domestic life, and there too change the laws and habits of our people? He trusted not. He called upon not only husbands, but brothers, sons,—all who held the married state in respect, to pause and deliberate before they fixed permanently in the fundamental law this new and dangerous principle. No change should be made in the rules affecting the relation of husband and wife. The habits and manners built upon these rules, and arising out of them, could not be improved, and ought to be perpe-

tuated. The firm union of interest in married life, as established by the common law, occasionally, in special cases, produced deplorable evils, but its general influence upon the members of society was most benign. This was exhibited in the past history of England and our own country; it was visible in the existing condition of our people. Why change the law, and by a rash experiment put at risk the choicest blessings we enjoy? Husbands in America are generally faithful and true protectors of their wives; wives in America are generally models for imitation. The least reflection must convince that this state of manners amongst us results from the purity of our laws for domestic government. These laws ought not then to be changed, lest manners should change with them. The proposition came in an insidious and deceitful form; it came with professions of regard for woman, and thus won a ready access to the favor of all good men; but like the serpent's tale to the first woman, it tended, if it did not seek, to degrade her. He thought the law which united in one common bond the pecuniary interests of husband and wife should remain. He was no true American who desired to see it changed. If it were changed, and man and wife converted as it were into mere partners, he believed a most essential injury would result to the endearing relations of married life. A wife with a separate estate secured to her independent disposal and management, might be a sole trader; she might rival her husband in trade, or become the partner of his rival. Diverse and opposing interests would be likely to grow out of such relations; controversies would arise, husband and wife would become armed against each other, to the utter destruction of the sentiment which they should entertain toward each other, and to the utter subversion of true felicity in married life. Did time allow, he might illustrate by exhibiting the thousand shapes and forms in which these conflicting interests would operate mischievously. And though each might seem trifling in itself, in the aggregate they would form a mighty force—in their oft-recurring presentments they would form a fatal means of irritation and dissension. It might be said that the utterance of this thought was an unmerited reproach upon American wives and husbands. Nothing was further from his purpose. It was the perfection and purity of their relations, as now actually existing, that commanded his admiration. His object was to defend those relations against the imputation that they could be improved or reformed. Married life, as it was, he wished to protect—homes governed by laws of divine origin; it was in this country as perfect as human institutions or human nature could be made, and he wished it to be left untouched in all its sacredness and simplicity. The state of society in this respect under the existing law, was no proof that it would continue the same under a law precisely the reverse. On the contrary, it was evidence in favor of the existing law. None could deny that the great funda-

mental laws of a community, in respect to property, have an essential influence even upon the workings of human affection within the domestic circle. In England the unnatural law of primogeniture prevailed, but there, as with us, the parent having property might dispose of it as he pleased; yet an English father, though loving his children with an equal affection, almost invariably gave the bulk of his estate to the oldest son. In conformity with the law—accustomed and approved—he confers wealth upon one child, and in violation of the dictates of natural affection, puts off his younger sons with places in the army or the navy,—his daughters with a sorry pittance. In this country, the opposite law produced exactly the opposite result. A father here would consider himself violating a moral duty if he made any discrimination or preference in the division of his property, unless indeed some special cause should give one an equitable claim to a better provision than the others. [Here the hammer fell—but by unanimous consent Mr. O'C. had leave to proceed.] Mr. O'C. said that he would not unduly trespass upon this indulgence. A law like that proposed was unnecessary. Whenever the particular circumstances of a family rendered it proper, special settlements could now be made to secure the separate estates of married women, and that was sufficient for any useful purpose. Indeed the utility of that power was very doubtful; for although it secured married women from being dependent upon the affection of their husbands, it was to be feared that it too frequently secured them from the enjoyment of any such sentiment. It grew up in the hot-bed of wealth and luxury, and it had never emigrated; it flourished there only. It affected not the humble cottage, nor any great portion of society. Many doubted the wisdom of allowing separate settlements in any case; but he would not enter into that question. The theatre of their action was limited, and lay among those who had many sources of enjoyment, and he would not change the rule on that subject. He would leave separate settlements to take effect only by the special act of the party. Then they would have no effect upon society at large. It is as the general law of the state,—the laws operating alike upon all classes, and that law only—which worked its way into the very frame of society, became a part of the natural constitution of the people, and permanently influenced for good or for evil the habits, manners and morals of a country. The occasional acts of individuals have no general influence, but the general law of society, if it were not the offspring, would always become the parent of a general morality conforming to it. He asked the Convention to look at the state of society in the nations of continental Europe governed by the civil law, where the estate of the wife was kept separate, and to compare it with the beautiful and divine simplicity of the married relation in England and this state—to contemplate high life, with its separate settlements for the wife, its thousand luxuries and few real joys, and to compare it with the domestic relations as they existed in the ordinary walks of life, where this device of man's enemy was unknown. After such a comparison, would any man say that a change from these to those was desirable?

In reference to the system of marriage settle-

ments, by which in special cases that relation is established between man and wife which this section seeks to make universal, Mr. Justice Platt says—"It tends to sever in some degree the marriage union; because it not only renders the wife independent of her husband as to her fortune, but bars him of a participation in it, by new and increased impediments, as if he were presumed to be her worst enemy. If matrimony is not desirable without these trammels, and fences, and reservations, I say marry not at all! The ancient rule of the English common law was adapted to the state of English manners in early times, and accords best with the general simplicity of society among us at this day. I know that particular cases often occur when such restraints would be salutary, but as a general rule their operation would be unfavorable to conjugal happiness. A benign policy would not admit a rule which impairs the union and lessens the attributes of holy matrimony. It is better that confidence between husband and wife should sometimes be abused than that it should not exist in that relation. We often see acts of tyranny and cruelty exercised by the husband toward the wife, of which the law takes no cognizance; and yet no man of wisdom or reflection can doubt the propriety of the rule which gives to the husband the control and custody of the wife. It is the price which female wants and weakness must pay for their protection. That a woman should contemplate her intended husband as likely to become her enemy and despoiler, and should guard herself against him as a swindler and a robber, and then admit him to her embraces, presents a sombre and disgusting picture of matrimony. Marriage justly implies an union of hearts and interests; and the modifications of that relation, which excessive refinements have introduced, form an excrescence which should be extirpated." Mr. O'C. continued: The same ideas, in still stronger terms, are enforced in the same case by Mr. Chief Justice Spencer.

This was the opinion of the pure-minded Jonas Platt, of the venerable, wise, and profoundly learned Ambrose Spencer. If this Convention should change the laws, invade the sanctuary of domestic love, and trench within it the fiend, pecuniary self-interest, he believed it would ultimately change the whole character of the married relation in our country. He spoke for posterity, not for the present generation. If the members of this Convention, and the people, acted unwisely in this matter they would go down to the grave unpunished; for the evil would not come in their day. Laws might be changed in an instant, but manners could neither be formed nor subverted suddenly. The present tone of society in this respect was too well fixed to be soon changed. It was the result of centuries of human existence under a wise law. The wives and the husbands of the present day would retain the manners that law had created, long after the law itself was abolished. But if this new rule should be adopted, the student of history in after times would condemn the act. From amid the less pure and incorrupt habits and manners of domestic life as then existing around him, he would look back to the present day, with emotions akin to those which affect our minds when contemplating the first family, in happy Eden, before the tempter came.

REMARKS OF MR. HOFFMAN, *on the Finances, Sept. 11.*

Mr. HOFFMAN said, commanded by the order of the Convention to make a parol report without writing, upon complicated finances, I am obliged to solicit the indulgent attention of the committee. After so long a struggle for public debt, and with finances carried for long years through that struggle, to write such a report would be sufficiently laborious and difficult—but to speak it, seems to be a duty never before imposed on any one. I do not advert to these circumstances to complain, but to show some ground for an indulgent hearing, while I endeavor to treat, not the first section only, but the whole subject of our debts and the means of their extinction.

In the legislature, and again in this convention, complaint has been repeatedly made that the public accounts are complicated and obscure. The real complaint should be that our debts and dealings are great and multifarious. The public accounts of these are kept with the greatest simplicity that can possibly state them with fairness. No merchant, mechanic, or farmer, can keep his own with more simplicity. To make them useful, he must make them show his income and expenses with each of his adventures, jobs, fields and crops, and the united results of all his operations. So the state must keep an account of its revenue and expenses in each department of the public service, and with each of its canals—and show the yearly result of all its operations, including its large and multifarious debt, absolute and contingent. In the introduction of the Finance Report of 1842, is a brief and explicit explanation of the manner in which the public accounts are kept, yearly closed, and reported—which it will be found difficult to misunderstand. In truth, the public accounts are admirably kept to answer the designated specific purposes of the government. If a call be made for information on principles conformable to the arrangement of the accounts in the public offices, the answer can be made speedily, and in the most satisfactory manner. But when the call of either house or of the convention requires a new account to be made and stated,—the accounts and vouchers must be reviewed perhaps for a long series of years—the labor must be great, there is danger of error, and delay is inevitable. The committee, therefore, endeavored to shape the call ordered by the convention, so as to make the answer easy and correct, and to afford the convention the largest practicable results of past experience in the branches of the public service to be considered, and as free as possible from all mere estimates and opinions. They desired to give the practical facts of the past as the best means to judge of the future. These are fully, correctly and clearly stated in convention document No. 47 and its tables. Painful as it may be to attend to these dry, cold details, I must ask it while I attempt—what no one was ever before required to do—to make a parol report, without writing, on a vast debt, accumulated in long years, under systems of complicated and varied finance. By following me through the tables and reports, members will find it possible to understand me correctly. Without that labor on their part, I must despair of making myself intelligible to them.

Before we proceed to consider what our present debt is, it may be well to ascertain what it was in April, 1842, that we may see how much it has been reduced by the system of payment adopted in that year. A full explanation on this part of our inquiry will be found in convention document No. 47, p. 4 and 5—a part of which I will read—p. 5. "Below is shown in the first column the several items of debt as given on the 7th of February, 1842, in table F.—and in the second column as it has since been ascertained to have existed at that period, say on the 1st of April, 1842, viz:

	As shown in Table F. Feb. 7, 1842.	Ascertained debt as of April 1, 1842.
" Canal debt,	\$18,656,011 72	\$21,179,019 81
" Contingent debt,	5,235,700 00	1,720,000 00
" Treasury debt,	1,872,878 92	5,388,578 92
	<hr/> \$25,764,590 64	<hr/> \$28,287,598 73'

The causes of these changes is in part explained on pages 3 and 4 and completely in the paragraph which follows the one I have just read. The report then proceeds, p. 5—"The whole debt at the time the suspension law passed, instead of being \$25,764,590.64, as was then supposed, actually amounted at that time, as since ascertained, to \$28,287,598.73—"without including the sum which has since been paid to canal contractors growing out of the suspension law." These unearned profits paid to contractors amount to \$409,641.95—including large sums allowed to contractors under the act of 1839, for changing some structures on the Genesee-Valley canal, as appears from the Comptroller's report, Assembly doc. 1846—No. 25, p. 17.

What was our present debt on the first day of June, 1846, when the convention met? Beyond our passive debt the answer to this inquiry will be found in the convention doc. No. 47. The passive debt consists of the United States deposit fund of \$4,014,520.71. In the act of congress which authorized the deposit, the State was required to pledge its faith for its return. In the act of the legislature which accepted the deposit, this pledge was made in the most explicit manner, and your public officer, in the receipt he gave for the money in pursuance of law, in express terms pledged the public faith of the state for its safe keeping and return. It is therefore a most sacred debt, made doubly sacred because our pledge is to the government of our own choice. The net revenue from this money is by law devoted to the purposes of education—that most absolute necessary of life—and the money has been loaned on bond and mortgage, according to a law that requires all losses of the fund to be immediately supplied out of the revenue. So far this act has been carefully observed and the fund kept good, and I suppose it always will be, so long as men have any regard to honor, honesty or good faith. The securities being thus made perfectly good, the bonds and mortgages may be justly deemed sufficient to satisfy any possible claim the federal government can make for these moneys; and I shall therefore take no further notice of this passive debt.

The active debt of the state, direct and con-

tingent, on the 1st of June, 1846, will be found at p. 8 of the doc. No. 47. The interest computed is according to the rates fixed on the stocks and brought down to the time the stocks are respectively payable; and on that small part of the general fund debt for which there are no stocks—the interest is calculated at the rates usual for these moneys and down to the period indicated in the report. The report and the tables all state the debt as it stood on the first day of June. For this there are several conclusive reasons. The Convention met on that day—the call for the report was made in June, and though the first of June is not as good a season to ascertain the money on hand as a quarter day or the close of the fiscal year, yet the day had gone by and an examination of the books would show with reasonable certainty what these funds were, and their worth. The commissioners of the canal fund have a heavy debt to manage—with large sums to be paid for principal and interest; as well as the duty of preserving the public works in the most useful condition, the yearly expenditure on which is some \$600,000, and where from accidents or disasters, large expenditures may suddenly become inevitable.—It was seen that the funds on hand on the first of June would leave in their hands the means necessary to make these operations safe—say some quarter of a million. A portion of the canal debt became payable on the first of July, amounting in interest and principal to some \$500,000. To call for the account at that time was not only to ask it before it could be in fact taken—but to ask it for a time when nothing available would be left in the hands of the commissioners for either the safe management of the canal debt or the secure operation and maintenance of the canals. The first of June was therefore the only safe or proper time to fix on for the ascertainment of the State debt or the funds on hand. No greater available funds were then on hand than the interest of the canals and the security of the State credit required. All the estimates of interest have been made, therefore, with a reference to that date—and the debt ascertained as at that time. In all the tables the debt is supposed to be paid as soon as it becomes payable—without any extension beyond that period. If in the actual progress of the debt it should become necessary to extend the period for the payment of any part of it, new interest, which I will call extra interest on such extension, must be calculated. Almost any yearly sum that our revenues will permit us to devote to the payment of this debt, will leave some portions of it to be extended and delayed with consequent additional or extra interest for the extension.

On these principles the State debt on the first of June, 1846, should be thus stated:

	Principal.
Canal debt, table B.—2.	\$17,516,119 57
Insolvent Rail Roads, table C.—1.	3 515,700 00
Solvent Rail Roads, table C.—2.	1,713,000 00
General Fund debt, table D.	2,369,849 24
	<hr/> \$25,114,668 81
	Contract Interest.
Canal debt, table B.—2.	\$9,379 838 33
Insolvent Rail Roads, table C.—1.	2,933,165 37
Solvent Rail Roads, table C.—2.	1,001,707 50
General Fund debt, table D.	870,292 87
	<hr/> \$13,185,004 07

Will require for prompt payment.

Canal debt, table B.—2.	\$25,895,967 90
Insolvent Rail Roads, table C.—1.	6,448,865 37
Solvent Rail Roads, table C.—2.	2,714,707 50
General Fund debt, table D.	3,240,142 11
Total, principal and interest	<hr/> \$38,299,672 88

From this statement, it is seen that the principal of this active debt, which in April, 1842, was in fact, as since ascertained, \$28,287,598 73; has by payment been reduced to \$25,114,668.81, showing payments for principal, exclusive of interest, of \$3,173,929.92. Although this reduction has been made, yet it appears that the contract interest up to the time the money becomes payable, will be \$13,185,004.07, and that this reduced debt cannot be paid short of \$38,299,672.88. If to this we add interest for extensions almost inevitable, we may deem ourselves fortunate if this debt shall be eventually paid, principal and interest, for forty millions of dollars, to which it was at one time supposed the principal of our debt might safely be extended, and its payment secured without direct taxes, in 1865.

Whether we regard this debt as it should have been stated in 1842, at \$28,287,598.73, or as we find it on the first of June last at \$25,114,668.81, requiring in addition to that principal the payment of \$13,185,004.07 of interest before the debt can be extinguished, and some addition for interest on inevitable extensions—it must be regarded as a British debt, to be paid by British taxation, direct or indirect, with the misery inseparable from that taxation. It is a solid, broad foundation on which to build perpetual, endless debt and taxation—to wither, blight and blast every branch of human industry. I do not make these remarks to censure those who contracted the debt. They may have been mistaken. We have, if we will apply them, the means of payment, and if we will not apply them, because we desire rather to spend the money and employ these means for our own wants, ours will not be an error, but a deliberate crime, committed against faith and obvious duty.

In 1841, when I came by the sheerest accident into the legislature, it was strongly denied that any part of the Railroad debt ever could become a charge upon the treasury. Charging these stocks to the State as part of her debt, was denounced as panic making and treasonable. While the contest on this point was waging, these debts amounting to \$3,515,700 became a charge on the treasury, and settled the contest, that to that amount at least they were to be paid by the State. There was still left \$1,720,000 of this debt hanging as a contingent debt on the State, which by a payment of \$7,000 made by the Delaware and Hudson canal company, has been reduced to \$1,713,000, as now stated by the Comptroller. In truth the liability of the State for these stocks, in aid of incorporated companies, was always absolute. The only thing contingent about these stocks was whether the companies to which the credit of the State was loaned, would redeem them, and thus save the treasury from the payment of them. Of the companies which have as yet paid interest, two have applied and obtained, one by joint resolution, and the other by law, some exemption from paying in the two per cent sinking fund required to be paid for the eventual redemption of the debt.—Others may need the like or greater relief; and as

viest of these companies have become bankrupt, such relief has been given to some, and the head and left the treasury to pay these debts, it seems reasonable to suppose that more of this debt will eventually fall upon the treasury. Without descending to invidious particulars, I think it probable that the State will be obliged to pay some \$420,000 of the principal of this contingent debt, with interest for a greater or less number of years. If the State shall escape from this contingent debt, by the payment of one million of dollars for principal and interest on this part of the debt, I shall regard it as fortunate. We may do better—we may do worse. Still as the public officers do not desire to encourage these incorporated companies to become defaulters, they treat the debt as contingent, and therefore usually omit this portion of the State debt; but in making a final provision for the State debt, it cannot be safely disregarded.—The provision to extinguish the general fund and insolvent railroad debt, should be such as will also extinguish any portion of the contingent debt that will probably become a charge on the treasury, though we cannot now fix with certainty the amount. If this contingent debt to \$874,433 for principal and interest shall become a charge on the treasury, as I think it will, it will cost you about \$45,000 for each of the ensuing 19 years.

Omitting then this contingent debt, the absolute debt of the State will be found in the Convention document No. 47. The Canal debt is stated at page 36, in the table marked (B2), which I will read:

(B 2)

CANAL DEBT.

Statement showing the amount of principal and interest actually payable in each year, as it becomes due, on the State stock issued for the several canals.

YEAR.	Principal actually payable.	Interest actually payable.	Total Principal and Interest.
1846, from 1st June to 30th Sept.	571 334. 00	312 797. 54	\$884 101. 54
1847, Sept. 30,	1,564 736. 00	935. 00 32	935. 00 32
1848, "			

The above statement embraces the debts of all the canals, the debts of the railroads which have failed to pay interest, and the debt of the General Fund, being the aggregate of the direct debt on which the State is now paying interest. The first column shows the amount of principal payable in each year; second, the interest payable in each year on the whole debt; third, the amount of principal and interest payable in each year, from 1st June, 1846, to the maturity of the stock or debt. This table is a consolidation of tables B, 2, C, 1, and D.

From the table B 2, it is seen that the Canal debt of \$17,516,119.57 will cost you in interest before it can be paid, \$8,379,838.33, making a charge on your revenues of \$25,895,957.90. The table E shows you that your general fund debt is \$5,885,549.24, and that the interest on it will in the period fixed for its redemption, cost you \$3,803,458.24, creating a charge on your revenues of \$9,689,007.48. The burthens of this direct absolute debt united, are stated in the table F, principal \$23,401,668.81—contract interest \$12,183,296.57, making a total of \$35,584,965.38, which must be paid to extinguish the debt. This calculation does not include any portion of the contingent debt, stated in table C, 1—C, 2; nor any thing for interest that must be paid for any extension of time for paying the absolute debt.

In fixing a contribution to your sinking fund, if you fix it too small, and pay too slow, you may disgrace your sinking fund and the State. The disgrace will be ours, but the injury will fall mostly on our creditors. They expect not only payment, but that your credit in their hands will be maintained. Their necessities frequently oblige them to sell, and every reduction in the price from proper and adequate means to sustain your credit, is a robbery on them.

It may be said that there were funds on hand on the first day of June, that might be applied towards the reduction of this debt. A statement of these and their character, will be found in the Convention document No. 47: p. 6.

"Available deposits in banks, \$392,854.46"—These funds are good, and to a small extent exceed what is necessary to be kept on hand at all times for the proper care of the public debts and public works. The payments in July consumed them entirely. The remainder of the funds on hand promise but little.

Unavailable deposits in banks, viz:

Bank of Brockport,	\$3,715 50
Bank of Lyons,	19,113 85
Clinton County Bank,	86,300 00
Lockport Bank,	29,700 00
Lockport Bank & Trust comp'y.	32,072 31
Lewis County Bank,	20,000 00
Watervliet Bank,	42,450 00
Wayne County Bank,	20,912 02
	<hr/> 254,211 69

The Canal Fund has also in stocks issued for the payment of balances due on account of Canal fund, monies deposited in the Bank of Buffalo, Commercial Bank of Buffalo, and Commercial Bank of Oswego, \$314,448 02

Total unavailable loans to Banks,
Loan to the city of Albany,
To be raised under chap. 326 of
the laws of 1846,

\$565,659 71
30,000 00

300,000 00

\$1,291,614 17

Now looking at the character of these funds, they appear to me to be really "unavailable." It cannot be expected that the enumerated bankrupt banks will soon, if ever, pay the deposits entrusted to them. Nor do I regard as available the stocks of the Bank safety fund, though that fund may redeem them at some indefinite but remote period. The claim against the city of Albany is under protest, though the city must ultimately pay it. The \$300,000 about to be borrowed is destined to pay arrearages to contractors and for land damages, and can be regarded as available for no other purpose. These remarks dispose of all these funds, and show that the available portion of them are fairly needed as funds on hand. If other portions shall prove available, then, and not before, they may be employed to improve the canals.—When available, the legislature may appropriate them to any canal purpose. They are certainly not now applicable to the payment of the debt, nor should dependence be placed upon them for that purpose.

Having thus briefly stated our debt, I will now call the attention of the committee to the charges against the State. The first in order is the Canal current expenses. These are large and will increase with the increase of business on the canals. We shall hereafter have occasion to consider what they probably will be for a short series of years.—The charge next in order is for the payment of the interest and principal of the Canal debt. We must also prepare to meet the interest and redeem the principal of the General fund, and Insolvent Railroad debt, with such portion of the contingent debt as may fall on the treasury. In addition to these three charges, we must meet the State current expenses, which have increased rapidly for many years, and which it will be difficult essentially to reduce.

Then what are our ways and means—our revenues to meet these charges?

Some effort has been made to tax the railroads on their transportation, as if the company paid this class of taxes, and not the persons who consume the articles transported. The legislature have made some progress in this Spanish Bourbon legislation of pensioning the government on trade and travel. We would make internal improvements to cheapen transportation, and tax the transportation to make it dear. Supporting a government by tax on trade and travel appears to me worse than the old repudiated practice of asking a bonus for a bank charter. If we attempt to extend and fix this system of taxes on transportation—if we pursue the course of taxing transportation on roads not made at the expense of the State, we shall make the government a real highwayman—odious, and an oppressor. Such a course may, like any other abuse, answer for a time—but it must soon fail from surrounding circumstances. Trade, travel and transportation will be driven from us, and our industry must languish for want of the rewards which untaxed transportation and trade can alone secure to labor. We can do ourselves an injury by this sort of taxation; but there are so many rival routes, and there soon will be so many more which will not be taxed, that to secure trade and travel we shall be obliged to act in this whole matter with liberality and justice.

I might dismiss this branch of the subject, but I never can consent that the current expenses of

the State, and all its great expenditures, should be charged on the right of way, which the sovereign should hold, not as property for revenue, but in trust for the million—to promote travel, transportation and commerce. To the extent that the State makes advances and incurs a reasonable risk in making a road or canal, the State from the tolls should fully indemnify itself for those expenses and that risk. But when the citizen, at his own expense, makes the road or canal, I can think of no worse or more oppressive course than the Bourbon one, which we have commenced, of taxing the transportation on it for the benefit of the State. The revenues will be collected in small sums from every body in every quarter, and no one can afford to resist or make effectual complaint. But the monies when they go out of the treasury, will go in large sums for families, interests or localities—to reward followers, and purchase supporters. Such a course must engender the worst oppression and the worst corruptions, and soon realize the worst vices of the worst governments—Taxation on all we consume—which will allow nothing to move to or from the market without tribute to the State.

The salt and auction taxes resemble in character and impolicy the tax on transportation; and I think you will not long be able to maintain either. Of the two last, I have given my views somewhat at large on former occasions. They are both strictly local taxes, and it is as unjust to defray a general expense by such a local tax, as it is impolitic and dangerous to make expenditures for local improvements out of a general revenue. To be safe, local expenditures must be met by local taxes. To be just, general expenses should be paid from general revenues. If a peculiar tax can be collected in a locality, the peculiar circumstances which enable it to be raised will expose that locality to peculiar charges, which render such a tax necessary to be expended where it is collected. This is certainly true of the auction tax.

The salt tax has already been reduced to one cent a bushel. If then 4,000,000 of bushels shall be manufactured yearly, the gross revenue will be \$40,000; and the yearly expense has been about \$30,000—leaving a nett revenue of only about \$10,000. These expenses may perhaps be somewhat reduced, but there is quite as much danger of their increase as hope of their reduction; and I can scarcely expect to see them brought below \$26,000. For the great State of New York to cling to such a tax, looks as if it were driven to the last extremity; and were acting like a broken down merchant, endeavoring to live out of his old book accounts trumped up against old customers, with whom he had long before fully settled. But sir, if we will cling to this tax, we cannot increase it, and it will soon escape our grasp. By the St. Lawrence, salt has reached Lake Champlain, and the federal tax on it once reduced, it will come freely, to supply not only that lake, but the countries bordering on the whole extent of the great lakes; and by the Hudson, will reach Troy, and the interior connected with the Lakes, and the Hudson. Our salt tax therefore is substantially gone forever.

Then comes the auction tax almost exclusively collected in the city of New York. It is equally unjust and unwise. It comes in direct opposition

to trade. It is a tax against trade. It declares that you must not sell in the manner in which trade finds it best to make its sales. Hitherto about \$32,000 of this tax has gone for the support of some charities located in that city. At the last session this tax was reduced; and you cannot long continue it. If other rival cities have no such tax, it can and will be evaded. In truth, your tax is a bounty to invite evasion. If the tax presses on the business, instead of carrying his whole stock to the auction, the seller may send there fair samples of the whole—a fifth or a tenth—and sell them; thus fix the price, and then say to buyers, you can take stocks from my store at auction price, less the tax. If your tax is oppressive, auctions may be opened in other states where your tax cannot reach the goods. You may embarrass or drive off trade by this tax, but circumstances will not long permit you to sustain it as available revenue. I do not regret that you will soon be obliged to abandon these two impolitic taxes; and to my mind, I must confess that the salt and auction taxes look somewhat disreputable. Reduced as they are, we cannot safely estimate their proceeds at more than some \$100,000 a year; and disgraceful as they are, they must soon go down to the tomb and shrivel into nothing.

Here then our state ways and means are reduced to canal tolls on the one hand, and direct taxes on the other. What we do not take from canal tolls, we must obtain by direct taxes. Our silence as to direct taxes is of no avail. We cannot always continue to borrow and not pay; we cannot adopt the infamous course of repudiation by neglecting to pay. We must meet our state expenses and debts, by canal tolls or direct taxes, or both; and what we do not realize from tolls, must, whether we say it or not, be wrung from our people by direct taxes. We cannot deny, we ought not to conceal the fact.

These charges divide themselves into four kinds. First our canal expenses, already very large, and to increase with time and the increase of business on the canals. Second, our large canal debt to which I shall have further occasion to call the attention of the committee, and on which every delay of payment must occasion additional interest. Third, our general fund debts, including that for aid given to companies already insolvent as well as any part of the contingent debt before spoken of, which may fall upon the treasury.—On these perhaps I have said enough to show their character and probable amount; but I must add that every delay to meet them early, must add proportionably for extra interest. Fourth, the state current expenses, already large and to increase with our population. To these I shall have occasion hereafter to call special attention.

To pay your debts and to meet your canal and state current expenses will require about \$3,200,000 a year, nor can you in my opinion reduce these charges as low as three millions a year.—Whatever you do not take from canal tolls to meet these charges, you must take from direct taxes. You may to some extent delay the payment of your debt by a guilty breach of the public faith—or by the British system of funding the debt, paying interest and making the debt and drain for interest, perpetual—a system, if less base yet more cruel than repudiation. Repudiation

would be a bold stand in infamy, but this funding system would fasten on the limbs of your children the withering, blasting effects of British eternal debt and taxation. Payment, prompt payment—payment with the least interest is your only course, and what we do not pay with canal tolls we must pay by direct taxes. You cannot well live on the future as the past has foraged on you.

It therefore, becomes proper for us to consider briefly, the general circumstances applicable to our future canal revenues. If some of these look to a probable large increase, others may incline us to believe that sooner or later we must adopt considerable reductions on the rates of toll.

Our canals have been in operation since the spring of 1826, and the competition of carrier against carrier, shows what competition can do. Without going into detail, it seems to me right to say that taking the up and down freights together, competition has reduced the share which the carrier retains for himself, from what was two dollars, to one, or less than one. What was \$3, for him, is certainly now less than \$2, and I believe it does not exceed \$1.50; and yet the full force of competition has not probably been felt. Formerly the up freights made a fair yield to the carrier; now they are much reduced, and yield him little over tolls. Will not competition on all other routes have a like effect in reducing freights? On the rivers of the south west, on their main streams, the competition has been respectable, but by no means equal to the competition on our canals and the Hudson; while on all the upper portions of those rivers, the competition has been new, imperfect and feeble, and will long and rapidly increase. In 5, 10, or 15 years the increase of competition in that quarter will probably do as much to reduce freights there, as it has done here, in the like past period of years. The same thing is true with regard to the Pennsylvania route. The competition has been feeble—time will make it active, strong and vigorous, and it will force down the freights there, as it has done with us. Competition, hitherto feeble on the Ohio routes, will in due time become active and efficient; and it will play for us, or against us, according as the season and our rates of toll shall affect the choice of the merchants between our route and the great south western rivers, where we must expect large reductions in charges. The new works at the west, too, will come in to play a part in this competition and reduce prices still further.

I must not in this enumeration omit the great works from the tide waters of the St. Lawrence to the extreme west of the great lakes, some 1300 miles of ship navigation. Of the full size of the vessels that can pass this inland navigation, I can not speak with certainty, but I find in the report of the officer in charge of these public works that there were three propellers on lake Erie, the aggregate tonnage of which is 1900, which would be able to reach the tide, on completing certain of the new locks on the Welland Canal. The works are now, I believe, completed, or soon will be; and it appears from this fact, that vessels of 600 tons can pass from Montreal to Chicago.—This route is so entirely new, that competition has there yet to do its whole work in reducing freights. When, or how far it will reduce them, cannot now well be foreseen; but that it will do so largely, can scarcely be doubted. Indeed this

route appears to have drawn an unusual quantity of produce this season to Montreal and Quebec. For, without any unusual deficiency in the shipping at these ports, the price of freights has risen so much as to be the subject of complaint. From this, I infer that the Canada route has not been idle. Another year may send more shipping to these ports, and thus reduce their charges. Besides the reductions which a growing competition can effect on that route, it is evident, that the rates of toll there, are such as will well bear large reductions.

It seems to me, therefore, entirely probable, that a great reduction will sooner or later be effected in transportation on all these rival routes, not only by the competition between carrier and carrier on the same route, but also by the reduction of tolls on these several routes. We have several times set the example of reducing tolls—and it will be earnestly followed by all our competitors for the trade to and from the great west. The prize is great and the struggle will be earnest as well on the part of the routes reducing tolls as on the part of the carriers reducing their charges; and in these reductions, the newest and least improved routes on which the least reductions have as yet been made, can go farthest. This competition of rival routes and of the carriers on them, will yet effect enormous reductions in the cost of transportation.

The great west will enrich us it is true, if we do not forbid it by our rates of toll. "From the vast extent of that new country, from the fertility of its unexhausted soil, and the rapid increase of its population, well may we justly expect a great increase in the products to be brought and the pay to be returned; but if we keep up our high rates of toll, or increase our debt and make the reduction of our rates of toll impracticable, we shall drive those products to other less taxed routes, more effectually than by any other means in our power. The high rates of toll is our greatest enemy in this competition for revenues and transportation. The debt which forces us to impose these rates of toll is our greatest misfortune—worse than if the waters of our canals were solidified into rock—because then less than this canal debt of \$17,000,000, to say nothing of our other debts and expenses, would remove the rock and clear the passage.

But, sir, this competition does not end with rival canals. Hitherto railroads have been constructed almost exclusively for the accommodation of travel upon the principle of flying—and we cannot safely determine how far they can be made useful instruments for the transportation of property. By a proper location and use, they may, and doubtless will be largely improved for this purpose, and existing circumstances show us, that they will be constructed and fully tried.

Finished goods for the spring consumption, reach the great Atlantic cities, in January, February and March, from abroad—the return pay for our exports. Our own manufacturers must bring his into the market at the same time, or wait for a purchaser for consumption until the fall sales. From Maine to Carolina, a country, made some 100 or 150 miles wide by short railroads to the water, can reach the great cities every week of the winter, to purchase and sell; that district includes the great cities, a vast population, and a large part of our manufacturers. These therefore have

a free and full use of the markets in winter, to buy what they need, and sell what they make. But in our vast interior, whatever other advantages may be enjoyed, the manufacturer must purchase in autumn—risk the changes of the market during that long period, and if dependant on a canal, frozen up five months in the winter, he cannot get his goods into the market, until after the traders have made their purchases for the spring business. He must in effect, buy in autumn, and sell for the next autumn business, or all his wheels, spindles, and machinery must rest from October until May. This is a great, and he regards it as an insupportable misfortune, and will therefore, join with all others who desire a railroad to open the way in winter, to and from the markets. As some of the cities have railroads, which open far into the country, and enable their merchants in winter, to supply their country customers, other cities must secure the like communications with the country, or their merchants will feel, and find that trade leaves them, and goes to those favored with rail roads operating through the winter. The merchant will therefore be obliged to join in the effort to multiply and extend the transportation by railroads. Since large agricultural districts accommodated by these roads, made and making, will possess a monopoly of the market in winter; all other agricultural districts must seek the like facilities to reach that market. At the southwest the great rivers are open in the winter, to a certain point. At that point, a railroad may be used in winter, extending into the country, and thus in effect extending the unfrozen rivers in winter, when it is safe to transport bread stuffs and butchers meat, through the Mississippi and the Gulf, to the Atlantic cities, the West Indies, Brazil or Europe.

From all these causes, I infer, that it is quite certain that railroads will be stretched from the Atlantic to the Lakes, as well for the transportation of freight, as of passengers. The change has in part taken place, and soon these works will be constructed, and their power of competition will be tried.

One further view of the subject. Suppose all these desires do make these rail roads, can they compete with the canals, for transportation? I have stated before, that since they have all been made heretofore for **FLYING**, it is very uncertain how useful they may be made for the transportation of property. But there are some examples which may serve to show us what they can do, and I may add, what they must do, if they once get made. The railroad from here to Boston, over as ungainly a route as could well be selected, either for its grade or its operation, and which has to war against the open Hudson, and against the open coast—what does it do? It is made, and like all things which have a being, it must struggle for existence. On that hilly route of 200 miles, it picks up its barrel of flour at the dock here across the river, and drags it over the mountains and through the country, and delivers it at the merchants store in Boston for 25 cents. The Hudson—than which a better canal does not exist on the whole earth—if put under such tolls as are put on the Erie canal, could not carry as cheap for 150 miles, as can the Boston rail road for 200 miles. I mention this to show you what is meant by tolls. Applying to the Hudson such a rate of toll as you must necessarily apply to the Erie ca-

nal, you would drive traffic and trade to Boston. In less than twenty years, the same question may arise in respect to the Erie canal; for it cannot be denied that owing to the smallness of the grades of the rail roads from Buffalo to this city, if the road were as good as the one from here to Boston, they could transport flour cheaper for 360 miles than it can be done for the 200 miles from here to Boston. It would be one almost continuous level grade, with scarcely even a sharp curve. The rail road from Ogdensburgh to Lake Champlain, occupies at least as favorable a position as the road from here to Boston. I say then, that from the examples of the Boston road, these roads, if they existed, could strongly compete with the Erie canal, loaded and burdened as it is, with its debts and tolls. We may through the power of legislation, maintain our monopoly, may prevent the Ogdensburgh rail road, and the Erie rail road from carrying freight. Legislation may block up the passage from here to Buffalo—it has the power to do so. But that power is the immoral power of self-destruction—a horrible, impossible power. You could only turn the trade by all the varied channels to which I have alluded, to the southwest in winter, and to the north and south in summer. That is all you could do. You can destroy commerce, and with that, destroy the rewards of industry, but you cannot by that destruction secure your revenues. You must be just and wise—you must deal with your neighbors as you desire to be dealt with—you must afford for them a better and cheaper way, and must act towards them in kindness and conciliation.

Viewing this matter altogether, how does it stand in the range of probabilities? Why fairly and rightfully thus: That for some period to come, say every eight or ten years, your tolls on the canals, may be sustained at about their present rates, and your revenues increased as they have been, and that in ten or fifteen years, you will find them beginning to culminate, unless you reduce your rates of toll. In ten or fifteen years, with the competition and the reduction of tolls on other routes—the introduction of new rail roads, with the present, competing for bread, and each well knowing that five per cent. is better than four, that four is better than three, three better than two, and two a hundred per cent. better than one; knowing this, and looking back and seeing how much ten years experience have aided to improve rail roads, who can doubt that the competition will be severely felt. These roads when they once exist, must like all other things, struggle to obtain a living; for these roads have living representatives, men wanting bread, clothing and lodging; and they will compete with industry, economy and iron perseverance for the means of existence. I may be mistaken in the period when the competition will be felt, but I cannot disguise the conviction of my own mind, that it certainly will be felt in twenty years, I believe it will strongly in fifteen, and that we shall not be without some experience of it in ten years. And I wish to say, that in my own mind, whatever it may be in others, this view of the subject is not entirely new. The past has not pushed on in this competition, as fast as it would if it had not been for the wretched public bankruptcy, and social insolvency of the West, and if the evils of bad financiering in the Southwest, and from, civil dissensions in the Canadas. From

these causes you feel no injury from competition now. They may be unwise, again, they may not, and I think they will not—but if they are, you may be saved again. But is it wise thus to calculate on the folly of your neighbors? Perhaps the burnt child will dread the fire too much to repeat his folly.

During the present year too, the road to the Southwest by the Gulf of Mexico, has been to some extent, avoided, because of apprehended danger of war with Great Britain; for I do not believe any thing was apprehended from miserable Mexico, and the road through the Canadas was probably, to some extent avoided for the same reason. I believe that all these things had some small effect upon the progress of the last year.

These remarks enable me to say that I do not believe that this Convention here, is in a situation to fix rules against the reduction of canal tolls.—All such attempts are, in my opinion, gone past their time. You cannot do it with safety, you must leave the question open. You must take the consequences of this discretionary power for good or evil. If you can make the revenues large either by high or low tolls, and thus get rid of the debt, you will be fortunate,—if you cannot do it, the debt must be met by direct taxes. It cannot hang around the energies of the people of the state, it will not. You have not even a corporal's guard to enforce your laws, and if we who have contracted the debt, who have looked somewhat to its reduction—have not the moral courage and foresight to end it by payment, and instead of paying, will take the money to spend, who believes that the conduct of our successors, when the debt comes to them with the weight of years, will be in anywise more reputable or honest? The result will be non-payment and repudiation. If we who have been active in getting up debts, are not prepared for payment, but will use the means of payment for our own expenses, believe you, that those who come after us will pay them? You may believe it if you can, but it will not be true. You must take these tolls when you can get them, and you must pay with them as well as you can. When they will not answer, you must meet the deficit by taxes, direct or indirect, and expunge the debt. I wish to know whether any other course is open to a free people? What is the worst vice of the worst government? It is the fact, that it does not pay—will not pay its current debts. This vice generally goes on and ends as it would here—in cruel and oppressive taxation for a period—the wronging of the creditor, and despoiling of the citizen. Such is the way in which debt works in every country. I wish to know whether these representative governments are to be marked by this worst of vices, or whether they will as becomes a free and responsible people, by canal tolls, and if these are insufficient, by taxation, meet this debt. For one, I answer, that it must be paid speedily, and with interest, by canal means, if it can; but be paid by taxes if necessary. And in saying this, I believe I express nothing but the opinion of every member of the standing committee. While I say this for the committee, I will conclude this part of the subject by expressing as my own opinion the conviction, that in all probability our revenues for some 8 or 10 years to come, will increase, as has been usual, and we shall be able to maintain mostly our tolls at present rates. After 8 or 10 years,

competition will be sensibly felt, and compel us to reduce our rates of toll to secure transportation and sustain our aggregate revenue. In 15 or 20 years that competition will become so strong as to force down these rates of toll so strongly and rapidly as to reduce that aggregate of revenue.—While yet we can, we should pay our debts, and prepare for this great and distinctly foreseen competition.

With these general observations, applicable to the whole subject, I now proceed to examine the *projet* introduced by the committee, for the disposition of this debt.

Mr. HOFFMAN then read the following :

SEC. 1. After paying the expenses of collection, superintendence and ordinary repairs, (\$1,500,000) one million and five hundred thousand dollars of the revenues of the State canals shall, in each fiscal year, and at that rate for a shorter period, commencing on the first day of June, one thousand eight hundred and forty-six, be set apart as a sinking fund, to pay the interest and redeem the principal of that part of the State debt called the canal debt, as it existed at the time aforesaid, and including three hundred thousand dollars then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

The first matter provided for in the section, is the ordinary expenses of the canals.

The committee thought themselves bound to apply for these repairs of the canal the funds, so far as they are necessary for that purpose. Good faith to the creditors require it—good faith to the State, and sound policy in every respect. Then what will be the ordinary repairs of the canal?—On this subject there is undoubtedly room for some degree of speculation. But I believe from the tables presented, it will not be very difficult for the Convention to come to a safe conclusion. Table 9, page 48 of the Convention Document No. 47, shows the charges for repairs upon all the canals as a system and the aggregate amount of expenditure upon them. Looking at page 49 and taking their whole course, gentlemen will find that the whole payment upon all the canals, for all sorts of expenses paid upon them, has been over \$10,098,370, and the difference between their income and payment is \$18,603,155. A general inference from this comparison tolerably safe, would be that the ordinary expenses upon a system of canals of the kind, would about equal one-third of their entire revenues. In the case alluded to, of all the canals as a system, the rate would be a little higher. Taking the Erie and Champlain canals from 1826, when they were first brought into operation, down to the end of 1845, as it appears by table H, p. 47 of the same document, the total payment for expenses were \$8,630,921—and revenues over these payments were \$18,964,796—the expenses being between a third and a fourth of the whole income from these canals. In the table, some extraordinary expenses are included, but even after all past improvements, such must be expected hereafter. In these tables the Convention have our large practical results. Taking the expenses of these canals as a system for the last ten years, and I find that they have paid in all \$5,841,609, and that their annual cost might be put at \$584,160. I refer the Convention to these tables, as affording the best information in our power to obtain on the subject of these expenses. They speak truly as to the past, and furnish the best grounds for judging of the future. [Note A., foot of next column.]

I do not like to hazard a calculation on a matter of this sort, at best a mere matter of conjecture.—When the canal commissioners who managed the canals in 1825-'26 estimated the expense of the canals for a series of years to come, they supposed that about \$100,000 per annum would be ample for nine years then to come, but when it came to be tried, it was found that the expenses in some nine years came to \$3,000,000. I prefer, uncertain as estimates must be, to be guided in this matter, somewhat by certain results. The repairs last year were a little larger in amount than usual. In future years we may not be so unfortunate, and we may be more so. And when we come to examine the question as to the capacity of the canals, I believe it will be found that not too much has been set apart for these ordinary repairs. Under these circumstances, allowing for every thing, considering all things that have passed in relation to it, recollecting that some items which ought to have been put in here as repairs, have actually got into the funded debt, the committee were not able to say, that probably the ordinary expenses of the canal as a system, can be less than \$600,000 for each of the ten ensuing years. In some years it would be more, in some less; but for the general average this is as small a sum as we ought to estimate.

MR. WORDEN: I wish to ask the gentleman if that includes all the expenses on the canals?

MR. HOFFMAN: No sir. The heading of the table shows that it includes only what you must pay to keep the canals in operation, and includes nothing for debt, or interest on stocks.—The necessary amount for expenses might be put perhaps at \$584,000, if we continue to do for the next ten years as we have for the past. But \$600,000 yearly is more probable. The average of \$600,000 to which I allude then, is by the plan of finance of the committee entitled to priority over all others, and I believe that it is rightfully. We supposed that sum to be about sufficient to cover ordinary expenses. This is not the time or place to discuss the question, whether the canals, in their present condition, can perform their duty to the public. I will only say here that before I set down, I hope to be able to satisfy every member who will attend to the question, that they are abundantly able to do all the business, and better than they did in 1834-'35, in the condition in which they then were; and that by a proper expenditure upon them, they may be made equal to any duty which can in all human probability overtake them in the next ten or twenty years.

I now proceed to consider whether the \$1,500,000 of tolls proposed to be taken to pay the canal debt, is a fit and proper sum. The debt, as I showed the Convention from the table B—2, Con. Doc

No. 47: p. 36, on the first day of June 1846, was \$17,516,119.57, the interest up to the time of payment is \$8,379,833, making in the aggregate to the day of payment without any extension, \$25,895,957.90, or in round numbers, \$26,000,000.

This annual sum of a million and a half proposed to be set off as a sinking fund, will pay the debt at about 1864; but it will add to the debt about a million and a half, from its necessary extension beyond the time when it falls due. In no scheme of paying this debt yet brought forward do we get rid of the necessity for this extra interest. The scheme adopted by the committee comes nearest to doing this—so near, that although it cannot at all times pay the debt as portions of it fall due, it does pay the whole within the time at which the latest portion of it does actually fall due. It becomes then a question for consideration if the debt must be deferred, how long it can safely be deferred, and what will probably be the expense of deferring it, and the interest upon it. On the long loans of the State, when its credit was best, money could be obtained at 5 1-2 per cent. quarterly, and I urge attention to this distinction. The State has no yearly loan, and you cannot tell precisely what the yearly rates of interest are, the rates are quarterly, except in the single instance of temporary loans for the general fund, which have been six per cent half yearly. Looking at the table in general use among the dealers in stocks, I find that 5 1-2 per cent quarterly, comes within the very smallest possible fraction of being six per cent per annum, taking the short time of one year, and cannot differ a very little from it, taking another year or two. The temporary loans have generally been six per cent half yearly, that is something over six per cent yearly. Five and a half per cent quarterly, has been about your lowest rate, and that is about six per cent per annum. Endeavoring to come at some rate which might be practical in its operation, I have supposed six per cent yearly to be about that rate.—Other estimates are here, as I presume from the printed papers before us, calculating interest at lower rates. I believe such a mode to be entirely deceptive, and that six per cent yearly will be the lowest rate at which the matter can be managed. In paying large sums you must have a sum on hand accumulating to meet the payment while the interest is running, both on the payment to be made, and the money you have provided to make the payment. If you are obliged to extend the old debt and your sums are large as they are here, you will be obliged to obtain money somewhat beforehand to pay the interest or principal, and if in the movement of this matter, your fiscal officers shall be able to keep within the limit of six per cent per annum, they will do well. They will try to obviate the difficulty by purchasing stock at a premium. Your creditor has a right to hold till the last hour. For he is dealing with these stocks as a trade, and rightfully. We blame him sometimes for this, as if the money-lender had not the same right to pursue his trade as others have. You are bound to meet him at the time and place appointed, and to do so you may have to lose interest on your money—he will not on his. I object to the low rates at which the estimates alluded to are computed, because they make no provision for this loss in the movement, and the quarterly rates. They are made in direct disregard of what has taken place since we have been here. You have advertised for \$300,-

[A.]

Erie and Champlain Canals—table H: pages 46-47.

From 1826 to 1845—total Revenue,	\$27,595,718 25
“ “ total Expenses,	8,630,921 72

Difference in 20 years,	\$18,964,796 53
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All the Canals as a system—table I: pages 48-9.

Total Revenues,	\$28,701,527 64
Total Expenses,	10,098,370 34½

Difference,	\$18,603,155 69½
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All the Canals as a system for the last 10 years.

Total Expenses for 10 years,	\$5,841,609 88
Or average of	584,160 98

• Vide Con. Doc. No. 47.

000, and looking at the table here, it may be supposed that you get it at five per cent. Not one offer was made at that rate, and the State in 1846, cannot get \$300,000 at five per cent. quarterly.—You offered six, and it was taken at a small premium of five or six per cent. on eighteen years. In a long period of eighteen or twenty years, which this debt has to run, the rate of interest may be reduced—so it may be increased. Suppose you had to attempt loans now, in the face of those sought by the Federal government. In some of the plans submitted here, it is proposed to get \$12,000,000 or \$16,000,000, but suppose you had to get half of that sum in the face of the Federal government in the market, believe you that you would get it at 5 1-2 per cent. quarterly? No sir! You may not always be at peace. You may be compelled to make these payments. Not when struggling with weak, insignificant Mexico. No sir; but when in conflict with France or with Great Britain. It is not safe to suppose that because you choose to run in debt, that the world therefore will choose to be at peace with you.—True, you may be at peace if you will yield in every controversy, but it may not be honorable, profitable, or in your temper to yield. But gentlemen seem to suppose, out of doors, that it would be John Bull that would hold our stocks, and that if he goes to war, you would be under no obligation to pay them. Such vile logic, such villanous immorality, does not exist in fact. If John Bull did hold your stocks, he is not compelled to do it. He can put them in the hand of a neutral, your friend, perhaps the very country where you go to borrow the sinews of war, and who will say to you, pay us this money. The demand would not come from the public enemy, but from your friend, a neutral, and he the very one from whom you desire to borrow to arm and defend your country. It is not very agreeable to have such a debt; it is rather unpleasant. But we must try some mode of paying this debt, besides repudiation. Now, I have stated the reasons why the committee have adopted no other mode of calculation than six per cent., and I now wish to state the result of that calculation. I want to show its movement and how the thing will practically work at the end of each year—beginning with June, 1846. I have in my hand tables to show the operations of all or most of the various sinking funds proposed, calculated in the same manner, as well for the canal debt, as for the general fund debt, (always including the insolvent rail-road debt as now fixed on the treasury,) and of the canal and such general fund debt united. The sum due as ascertained from the tables estimated by the comptroller, as I have read them, for interest and principal due at the end of each fiscal year, is taken as the debt due that year—and from it is deducted the sinking fund of that year, showing, as an actual settlement would do, the deficiency of the fund, or its surplus, for that year. If there be a deficiency, interest on it at six per cent. for the coming year is charged and added to what falls due for principal and interest that year, as stated in the table; and then the sinking fund for that year is applied in payment and the new balance is struck. But if the sinking fund over pays the demands of the year, then interest at six per cent. is calculated on that surplus and added to the income of the sinking fund for the next year. In this manner the process is contin-

ued each year until the sum set apart as a sinking fund fully pays the whole debt, principal and interest in the table, and any balance of extra interest which may be caused by the extension of payment. The estimate makes in fact a statement of the balance at the end of each year, showing at once the principal and contract interest united, and the extra interest received or paid each year, until the debt is wholly extinguished by the fund—the sum over due or in arrear, the surplus on hand, and the extra interest each year. Here they are, sir, and any gentleman can examine them.—Since the committee made some of these statements, they have been recalculated by able, faithful clerks in the public offices, and are undoubtedly correct. They show the practical working of the several propositions, and as I may not be able to print them at full length, I must state to you some of the results.

Take the canal debt—if we pay at the rate of \$1,500,000 a year, as proposed by the committee, then for the years 1847 and 1855 there will be a surplus in the fund and interest in its favor. For every other year there will be a deficiency in the fund, and of course extra interest against it. These deficiencies in the fund will in general not be large—but will in 1856 be \$2,249,396—in 1858, \$3,238,229, and in 1862, \$2,444,486—the balance of interest on these deficiencies over the interests on the two surpluses will be \$1,587,817 49—and the debt will be paid in 18 1-3 years, in 1864. In this mode of paying the canal debt,—it will cost—(table B. 2—)

For principal,	\$17,516,119 57
For interest per contract,	8,379,858 38
For extra interest for extension,	1,587,817 49
Total for canal debt,	\$27,483,775 89

I must here anticipate and state the results of paying \$500,000 a year towards the General fund debt, as proposed by the committee.* The fund would in general be able to meet that debt, interest and principal, as it is proposed to be paid in the Comptroller's table E. before made.

The interest on deficiencies of the fund would be	\$214,244 23
And in favor of the fund on its surplus,	197,167 89

Leaving a balance of interest on deficiencies, of only \$ 17,086 34

* NOTE.—The part of the report of the standing committee which contains the provisions for the General Fund debt is as follows:—

§ 4. Of the sum of six hundred and seventy-two thousand and five hundred dollars, required by the second section of this article to be paid into the Treasury, [\$600,000] five hundred thousand dollars shall, in each fiscal year, and at that rate for a shorter period, commencing on the first day of June, one thousand eight hundred and forty-six, be set apart as a sinking fund to pay the interest and redeem the principal of that part of the State debt, called the General Fund debt—including the debt for loans of the State credit to rail road companies which have failed to pay the interest thereon, and also the contingent debt on State stocks loaned to incorporated companies which have hitherto paid the interest thereon whenever, and as far as any part thereof may become a charge on the Treasury or General Fund,—until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the said five hundred thousand dollars shall at any time be deferred, by reason of the priority recognized in the second section of this article, the sum so deferred, with quarterly interest thereon, at the then current rate, shall be paid to the last mentioned sinking fund, as soon as the sum so deferred shall be received into the Treasury.

showing that there would be some balances in favor of this fund in the hands of the public officers, with which they could aid the canal sinking fund—and the general fund debt would be paid in 19 1-3 years, at the cost of—

For principal,	\$5,885,549 24
For interest as per table E,	3,803,458 24
For balance of extra interest, ...	17,086 34

Making together,..... \$9,706,093 82

But this supposes that no part of the contingent debt will fall on the Treasury. If the sum which I have before stated, as the probable one, shall become a charge on the Treasury, then this sum of \$500,000 a year would pay the debt about as soon without that charge as it would be paid, by applying \$450,000 a year towards the debt.—The latter sum without any increase of the debt, would subject the fund to pay:

Interest on deficiencies,	\$1,118,577 84
And receive interest on surplus, ..	20,626 76

Making a balance of extra interest of,.....	\$1,097,951 08
Add interest and principal as in table E,.....	9,689,007 48

Requiring to pay the debt in about 24 years, or by May, 1870,..... \$10,786,958 56

If the sinking fund for this debt be reduced to \$400,000 a year, it would without any increase from the contingent debt extinguish it in 1878, at a cost for the balance of extra interest of \$3,191,442 83—requiring \$12,880,450 31 to extinguish the debt, the principal of which is now only \$5,885,549 24, and which if promptly paid, will cost only \$9,689,007 48 to pay it.

Your committee could not, therefore, recommend these slow, expensive modes of paying this part of the public debt. I must, therefore, call attention to the slower and still more expensive projects to pay these debts, or rather of non-payment.

The gentleman from Schoharie, proposes to pay the canal debt by a sinking fund of \$1,275,000 a year. To make his sinking fund, he appears to have taken the one third of the interest when the debt was largest, and to have added it to the interest when the debt was least, and reduced by the late July payments, instead of doing as the acts of 1842 and 1844 require, that is, adding that third of the interest of the debt when it was largest, and applying the aggregate in a constant sum every year. On his plan of paying the canal debt, there would be no surplus or interest in favor of the fund. There would be a deficiency in each year, and extra interest on it. These deficiencies would be large; for example in the year 1849, \$3,116,089; in 1851, \$3,540,321; in 1858, \$7,184,851; in 1861, \$8,246,539, and in 1863, \$3,411,332. And the aggregate of interest on these deficiencies, from January, 1846 to 1872, to which the debt would extend, Would be,..... \$6,455,295 37

Principal of debt, \$17,516,119 57

Interest from the table,..... 8,379,838 33

25,895,295 37

Making the debt cost for its ultimate payment,..... \$32,351,253 27

He proposes to pay the General Fund and Insolvent Rail Road debt, table F., by a sinking fund of \$420,000 a year. On this plan the deficiencies of the fund would be almost constant, and in some years quite large, as for example, in 1852, \$1,050,658 16.

The aggregate interest on these deficiencies would be	\$ 2,164,166 88
And the interest on surplusses, only	7,061 39

Causing extra interest to

If we add the principal of this debt, table E.,	\$5,885,549 24
Interest by the table,	3,803,458 24
	9,689,007 48

Requiring to pay this debt in 1874. \$11,836,122 13

All the other schemes of payment are, I believe slower, more expensive, and are subject to the objection that they wholly disregard the prior equities of the canal creditors over all others and over the State. These canal creditors have special pledges that can not be violated without great injustice to them and severe reproach to those who may violate them. As fiscal means to pay the whole canal and general fund debt united, as calculated in the table F., which I have read—they may be considered and compared with the plan of the committee.

The plan of the committee, if united, would establish a sinking fund of \$2,000,000 a year for the whole absolute debt which, according to table F., would be,

For principal,.....	\$23,401,668 81
Interest as computed in the table according to contract,.....	\$12,183,296 57

Will be together,.....	\$35,584,965 38
which, for brevity, I will now call the whole debt. On this plan the largest deficiency would be felt in 1861, of \$3,302,335 18, and in 1862, of \$3,512,461 80. It would pay the debt in Dec., 1864, with an addition for interest on deficiencies, of.....	\$ 1,583,014 32

Whole debt, as above,.....	35,584,965 38
Interest on deficiencies,.....	1,583,014 32

Necessary to pay the debt on the committee's plan,..... \$37,167,979 70

Mr. Bouck's plan united proposes to pay the whole debt as above,..... \$35,584,965 38 by a sinking fund of \$1,695,000 a year, will leave very large deficiencies for many years, and in 1862 of \$11,600,851 91—redeem the debt in July, 1872, and the aggregate of interest for deficiencies will be..... 8,528,708 47

Requiring to pay the debt,.... \$44,113,673 85

Mr. AYRAULT, of Livingston, proposes to pay the debt of,..... \$35,584,965 38

By a sinking fund of \$1 500,000, for ten ad a half years, and after that of \$2,000,000 which will leave still larger deficiencies and in 1862, amounts to \$13,200,953.85, will extend the debt down to January, 1872, at an aggregate for extra interest of..... 10,366,479 01

Requiring to extinguish this debt, \$45,951,444 39

And extending the debt down to January, 1872.

Among the other schemes for not paying this debt, is one which proposes a sinking fund of \$1,500,000, very little exceeding the interest.—The deficiencies on this plan will for three years exceed \$15,000,000, and in 1862 will amount to \$16,772,117 73. The debt will extend to May, 1883, and the aggregate of interest will be,

\$19,441,113 87

Adding the debt, 35,554,965 38

And it will require,..... \$55 026,078 87

To extinguish it one hundred years after the treaty of peace with Great Britain, at the close of the Revolution.

My friend from Allegany, Mr. ANGEL, has proposed a sinking fund, I believe, of \$1,600,000 a year. This is worse than that of Mr. BOUCK, and only some better than the last, and could scarcely fail to require the payment of ten millions or more to the debt for extra interest.

Such, sir, are the comparative results of the several sinking funds proposed for payment, when calculated by the same rule and rate of interest which I believe to be the true one, and most conformable to what will be found correct in practice. Although our means are great, yet the payment of our debt will be most expensive.

You will scarcely get rid of it short of \$40,000, - 000. I have the detailed results of the plans of others, to show this committee how much worse can be done, than by the prompt payment recommended by the standing committee. It is seen that even paying one and a half millions a year towards the canal debt, there will continue to be deficits, in some instances, of two and a quarter millions, and in one instance of more than three millions. How are your public officers to meet these temporary deficits at the end of the year? So long as they consecrate the creditor by temporary advances from the School Fund, the Literature Fund, or any other, with the tolls of the next month, or of the next quarter, so long as the borrowing power of the State is main tained, so long will your financial officer be able to get along.—But whenever these deficits are larger, you must not only pay the large interests, but you will have to commence a British funding system. If I had time, and temper, and the committee had time to hear with me, I could show what a curiosity the action of your financial officer would be in the nursing of this debt through eight or ten years of suspension. But I wish to show how much worse this thing can be done. As these deficits are arranged in the plan of the committee, and comparatively small as they will be, they will be controllable by the public officers, and the management of them will be perfectly easy and safe. But when they come up to four or five, or six, eight, twelve or sixteen millions, it appears to me that it will not be entirely safe. By looking at the dates, the committee will see, that bringing these entirely within the limit of the time for the payment of the debt, the last sum becomes due in 1864. I believe that the plan of the committee will comprise the whole ground by that time and be entirely satisfactory. But if it will not do so, there is yet another part of the report which defends the faith of the State against the reproach of repudiation.—The sixth section provides that if the sinking fund will not respectively preserve the credit of the State, the Legislature shall make them sufficient to do so perfectly by taxes—not to be direct, be-

cause that might not be just—but by any other mode which necessity may make just and proper.

There is another part of the subject to which I wish to call attention. The plan of the committee proposes to pay this debt within the time the law of 1842 promises to pay it. The act of 1842, it seems to me, never could be misunderstood. In drawing that act if I had had a doubt, it would have been removed by clauses however tautological. All the acts prior to that time, fixed a day when this money is to be paid. I do not ask the rigid exaction of the time, or ask the payment as early as some of the acts required. They pledged your faith, you must keep it inviolate. It became endangered, and your credit sunk in 1842, and you called again upon those who loaned you before to aid you in your difficulty. That act was understood here, by the people of this state, by the creditor, that you would pay them in twenty-two and a half years. No one doubted it, and it was in the faith of that promise that you obtained credit for four or five millions of dollars, and were secured from a social bankruptcy, and your credit was restored. And if you do not pay when you promised, your course is as unjustifiable, as if you obtained money by false pretences. Again, if that act was in itself in any degree doubtful, it was not long left so. The finance act of 1844, approved by the then Governor, and passed by the two branches of the Legislature, receiving a decided majority, gave a construction to the act of 1842, and expresses in strong, plain terms, that the act of 1842 engages to pay in twenty-two and a half years. On that act you obtained \$900,000—it was renewing your engagements to your creditors.—You said to them, the former act intends that those who loaned us money should be paid in twenty-two and a half years from the passage of the act of 1842—and we will pay you the amount borrowed under this act in eighteen years. This was the act of 1844, approved by the then administration, and by the country. In the report of the Commissioners of the canal fund for 1846, will be found a computation upon the sinking fund on the act of 1842. It supposes the funded sum every year to be made equal to the production of six per cent. It carries out the scheme of a sinking fund, and pays the debt in twenty-two and a half years, and is made out precisely in accordance with the acts of '42 and '44. In the same report, page 9, is a sinking fund constructed under the act of '44, for the payment of the \$900,000 in eighteen years.—The same period for payment is taken by the standing committee, and these two funds are supplied as nearly as can be. It pays the debt with the least possible extra interest, and therefore makes the least burthen upon the finances of the State. It does another thing; the act of '44 imposes a tax of one-tenth of a mill or \$56,000 a year, and pledges so far the payment of the interest on the \$900,000 loan, and declares that it shall continue to operate in favor of that class of creditors, until the surplus of the tolls shall make the requisite sinking fund for its discharge in the 18 years specified in the act. If we take the sinking fund as proposed by the standing committee, in connexion with the 6th section, it will liberate in effect the \$56,000 of direct taxes that are now paid towards the canals. But if you make the sum less, you must either violate this sacred, direct and specific pledge, or else you must leave this tax to operate in favor of the canal debt. You will not say, we approve of the promises, we have got the money, and we turn you over such security as we think right. The creditor must have what you agreed to give him—he must have the canal tolls, or direct taxes to the amount agreed on, and these tolls when they come in.

Mr. ANGEL; What was this \$900,000 for?

Mr. HOFFMAN ; To pay arrearages and unearned profits to canal contractors, and land damages. Instead of being \$900,000 I believe it should have been more, \$1,200,000, because during the last session, the legislature authorized a new loan of \$300,000, paying 6 per cent. interest for it, and not 5 as is supposed in the table. Now I appeal to gentlemen here when they recollect the condition of the State credit in 1842, and the relief obtained under the act of that year, the sense in which it was known to be received and understood here by the creditor and all who supported and opposed it. The construction given to it by the act of '44, the loans obtained under that act, the direct tax under it, operating now in favor of the canal debt, and the specific loans for the canals, with the approbation of the then government and those who represented the State sovereignty, whether the standing committee could with any propriety have recommended a less sum to be applied to the payment of the canal debt.

I have no desire to make a stalking horse of the public faith, but I wish to bring before the committee, what is meant by a breach of public faith. In a moral point of view, and in its numerous consequences, it is in relation to the sovereign body precisely what wilful and corrupt perjury is to the individual man. It is the maximum of human guilt. It may be committed by contracting debt, for which the sovereign makes no adequate provision. In other states, it has been so committed, and perhaps we came too near it to leave us any great cause for exultation in this State. But it may be committed in a worse, and if possible in a more disreputable and guilty manner. When the sovereign has contracted a debt, wise or foolish, if we have the means to pay it, if instead of paying it, we will take those means for our own convenience or in any other way, it is the worst and most corrupt manner of producing a breach of the public faith. I believe this has been the usual mode among sovereigns, personal or social, because I apprehend that not a single one of the embarrassed states of the Union could have reached their situation of debt and difficulty, without foreseeing their danger, being warned of it, and that the day must come when the debt would exist, and there would be no means for its payment: Nor one which by an application of the means in its power, might not have wholly provided for its debt.—We were on the very verge of this condition. If you will take your revenues and apply them in payment, make it as rapidly as you engaged to do, and keep your promises fully, you will do something to redeem representative government from the reproach of repudiation. But if you will lag behind, if to pension this locality or that, to reward followers, or to get a numerical majority here or there—you will apply these revenues to new or old works, you will designedly destroy, by disregarding the rights of your creditors. Their just claims must first be provided for. If under any pretences for better or for worse, you will take these revenues to answer any of your own purposes, instead of giving them to the creditor, then I submit that in the eye of heaven, and in the judgment of the whole earth, you have repudiated and incurred a breach of faith in the most deliberate, most corrupt, and in the worst manner. The standing committee have asked you only to pay according to the lightest rule of your own engagement. Not only did the government in '42 and '44 make these promises, but I submit that the government in '38 did the same. It was then supposed that these debts would reach the large sum of \$40,000,000—they did reach \$28,000,000. The revenues have been as great as they were then calculated or expected. You have no apology for non payment on that score, and you have put forth to the whole

country, to the creditors, to the people of the State and to the world, that these revenues would pay the debt, in the very period, in which the standing committee have required it to be done. Here is the sinking fund table as found in the Assembly document No. 242, of 1838.

Mr. HOFFMAN exhibited and read from that table, calculated by Mr. Ruggles for the purpose of showing the progress of the sinking fund formed from the surplus revenues of the canals, commencing in 1838, and amounting in 1865 to more than \$40,000,000; and extinguishing the debt of that amount which he alleged might be safely created for internal improvements, on the assurance of its being paid in that manner.

It was then said that these revenues would pay the debt without a resort to taxation. The debt has not been so large as was expected, by many millions, and yet they have not done it. It may be said that the gentlemen who then administered the government here were not our political friends, that we were not bound by those engagements, and I am afraid that even political friends have repudiated the engagements of their predecessors in office. Whoever occupies these places as the representatives of the government of the State, speaks for the people as the sovereignty of the State. If they hold out promises of this kind, they are the promises of the sovereignty, and it is in vain to say that they are political friends or opponents.—If they act within their constitutional limits, they are the sacred inviolable word of the sovereign; and accused be that person, who finding himself under an obligation of this kind, should renounce it, or hesitate to the extent of the means in his power, to meet the sacred engagements of the sovereign body. They did make these promises in 1838, to redeem the debt in the time, and almost the total of our debt was contracted on the faith of those promises—the revenues have been as ample as was expected—the debt upon us is some 17½ millions of dollars, and the standing committee ask you to pay it within the time you pledged and engaged yourselves it should be paid. Will you hesitate, will you doubt? You said in 1842, you would pay it—you said it, because whoever stood here then spoke for you,—you said it again in '44—you had said it in '38, and you said it with more distinctness and emphasis, in the progress of this debt each time you borrowed. Do I say too much then, when I say, that not to secure these funds, and pay as far as you are able, is to commit a wilful and deliberate breach of trust? I will say that if this convention should do it, I may be obliged to keep silent while I remain here, but not even this convention or any other on earth without these walls shall hinder me from expressing my utter detestation of such a course. I will hold it to be a breach of public faith, to be the perjury of the State, and I will apply it to the conscience of every individual man. I will not be deterred from doing it, for I know what has been the consequence of speaking and acting lightly in matters of this kind. It has brought social bankruptcy on other States.

While in this convention, I will submit to its action, but I will hold to my right as a citizen of the State, to express freely my convictions upon this or any other subject, in or out of this body. I can look around here on some gentlemen who I supposed would, under any circumstances, have stood by me, and perhaps they will stand by me yet. I was about to address an argument to them on the subject, but I will wait until the issue is made.

The committee have proposed that you keep your faith—that you be not guilty of a breach of public trust—that you do not engage in a course which shall protract this debt, endanger its eventual payment, and encumber the people with interest and taxes. Do we

desire in order to pay this sum to take the most expensive scheme? Are we so greedy to get a dollar to spend to-morrow—is it so necessary to pension dependents, reward followers, and purchase numerical majorities, that we will allow this extra interest of ten millions to become a burthen upon the public works? I believe there are some other schemes—one to pay this debt by applying to the joint debt \$1,500,000 per annum. This is a joint stock concern, and its deficits are abundantly large. I shall content myself with saying, that they get up to 15, 16, 13 and 12 millions. These are the deficits to be from time to time provided, and the extra interest on them amounts to \$19,451,113.49. This enormous sum is to be paid to get money to spend, because in all these calculations the same debt is eventually to be paid, and the revenue for the same time would be the same. By paying

these large deficits you get a few six-pences to spend instead of getting the debt out of the way and having large dollars to spend. That is the effect of it. I have compared some of these schemes with one another, and intended, although I am not very able to do it, to read them now, and to bring them in contrast more fully than I have done. Gentlemen at their leisure can compare for themselves. They will purchase a delay by these several propositions; and if they think the people of the State ought to make such a purchase let them say so. I believe they ought not and that we ought to resist any attempt at such a purchase.

Painful as it must be, I must read you an abstract of the statements showing the practical workings of these various schemes of payment:

In each year.	Sinking Fund. \$1,500,000 36 years and 9 months	Sinking Fund. 10 1-12 yrs 1,500,000 154 2,000,000	Sinking Fund. \$1,695,000	Sinking Fund. \$2,000,000
	36 years 9 months.	Ayrault. 25 years & 7 months.	Bouck united. 26 years & 1 month.	Committee united. 18 years & 7 months.
	Deficiencies	Deficiencies	Deficiencies	Deficiencies
1846	526,260 56	526,260 56	461,260 56	359,593 90
1847	330,316 75	330,316 75	66,416 75	*346,349 90
1848	2,025,166 25	2,025,166 25	1,550,432 26	807,899 61
1849	3,887,782 92	3,887,782 92	3,189,564 89	2,097,480 28
1850	4,033,584 75	4,033,584 75	3,098,473 64	1,635,863 95
1851	5,434,664 68	5,434,664 68	4,248,446 90	2,393,080 63
1852	5,590,641 96	5,590,641 96	4,138,251 11	1,866,562 87
1853	5,269,957 88	5,269,957 88	3,526,423 58	813,434 04
1854	5,423,242 75	5,423,242 75	3,389,636 40	208,867 47
1855	5,052,514 72	5,052,514 72	2,701,891 98	*974,723 08
1856	9,157,438 59	9,098,500 63	6,470,778 49	2,268,566 53
1857	8,777,723 21	8,215,248 97	5,734,863 50	975,518 82
1858	11,495,597 67	10,399,374 98	8,075,166 38	2,725,261 02
1859	11,345,991 56	9,633,995 51	7,525,334 39	1,549,434 71
1860	12,203,737 58	9,942,021 77	7,958,840 98	1,319,387 33
1861	15,339,746 44	12,442,327 69	10,645,156 05	3,302,335 18
1862	16,772,117 73	13,200,953 85	11,600,851 91	3,512,461 80
1863	16,307,931 29	12,022,497 58	10,631,389 52	1,752,696 01
1864	16,393,350 42	11,350,790 68	10,181,216 14	464,801 02
1865	15,906,491 45	10,061,378 12	9,126,629 11	1,313 04
1866	15,360,880 94	8,665,060 81	7,979,226 85	on 31 Dec. 1864
1867	14,782,533 80	7,184,964 46	6,762,980 46	
1868	14,169,435 83	5,616,062 33	5,473,759 28	
1869	13,519,654 98	3,953,026 07	4,107,184 84	
1870	12,830,834 28	2,190,207 63	2,658,615 92	
1871	12,100,684 34	321,620 09	1,123,132 88	
1872	11,326,725 40	on 1 Jan. 1872 }	Surp. 97,576 15 }	
1873	10,506,328 92	Surp. 172,555 61 }	on 1 July 1872 }	
1874	9,636,708 66			
1875	8,714,911 18			
1876	7,737,805 85			
1877	6,702,074 20			
1878	5,604,198 65			
1879	4,440,450 57			
1880	3,206,877 60			
1881	1,899,290 26			
1882	513,247 68			
1 Mar. 1883	Surp. 98,921 13			
Debt.....	35,534,965 38	35,534,965 38	35,534,965 38	35,534,965 38
Int. on deficienc.	19,441,113 49	10,366,479 01	8,538,708 47	1,533,014 32
	\$55,026,078 87	\$45,951,444 39	\$44,113,673 85	\$37,167,979 70

Worse than the plan of the committee to the amount of

\$17,858,099 17

\$2,783,464 69

\$6,945,694 15

NOTE.—\$1,400,000 and 400,000 is worse than the committee by \$4,876,687.99

Vide B2, Con. Deb. No. 47—1,400,000 for time and particulars.

[The amount of debt to be paid is \$35,584,965.38. The 1st column in the preceding table shows the deficiencies there would be in each year, in paying the debt as it falls due, if a sinking fund of only \$1,500,000 was annually set apart for the payment of principal and interest. The 2d column shows the deficiencies on a sinking fund of a million and a half for ten years, and two millions thereafter, as proposed by Mr. Ayrault.

Will the Convention, could they ask this standing committee with any regard to the duty of the State, to adopt any less sum than the one they have recommended? It pays the debt within the period for which its faith was pledged, and reduces the deficits to a sum so small, that they can be managed with safety. It observes good faith to the creditor and saves the citizens from the expenses of millions. And if the standing committee could not in the sight of man be justified in recommending a less sum, how will you, who are here as a committee of the Convention, desire to make yourselves equal to what the standing committee were morally forbidden to do. I hope I have sufficiently vindicated the position of the committee in saying that \$1,500,000 of the canal fund revenues should be taken in each year to pay the debt until it is paid. I do not pretend that the argument on the subject is finished. It is not difficult to turn to other passages in history that would come as the scourge of Nemesis to the hands of any one who wished to inflict it. Perhaps in the progress of the debate this matter may be more distinctly brought to the view of the Convention and the country. I believe I have explained the only clause in the section that could need it.

The next question in order, is what is justly and fairly due from the canals as a system, to the State? For in my opinion the State has a right to a return of what advances it has made, with the fair and usual mercantile profit upon them for the risk fairly estimated for engaging in the work. Beyond that it has no right, in my judgment, and if it had, it has lost it by the unhappy manner in which the account for the advances of the State to these canals has been kept. To that extent I go; and I leave it to gentlemen when they come to view the subject, to say whether they can with propriety resist the claims of the State against the canals to that extent. It will be seen that the standing committee do not intend that the canals must pay the rail-road debt, the general fund debt, or any thing of the kind. They put the question distinctly to the Convention, what is the fair sum which is due to the State for advances to the canals as a system, and for the risk of the State for engaging in their construction. How shall that account be taken, and when ascertained? What annuity shall the canals settle upon the State in liquidation of those claims? Neither in form or in substance do I accede to the doctrine that the canal tolls shall be taken for general purposes. I deny it. The right of way, I insist, is the right of the million; the sovereign holds it in trust, and can exercise it only for their benefit, and has no right to make a revenue out of it. This is my opinion. What are the fair actual advances made by the State? Now I say that any sum of money which has gone into the Canal fund, and which does not proceed directly from the canal revenues, tolls or water rents, is an advance by the trustee having them in charge, and should justly be repaid, and with the proper interest. This is the position I assume, and I beg leave to call the attention of the Convention to the sum, and to explain the manner in which the result is obtained.

The first item of these advances, as stated in table C, page 44, Con. Doc. No. 47, is the Salt duty. The Salt Springs were the property of the State, and the duties from salt were devoted to the Canal System in 1817; and before their restoration to the Treasury, amounted to \$2,055,458.08. A question has arisen whether this is a fair charge, and I admit that sophistry has exercised its ingenuity to show that it is not. It is said that the canals have largely increased the salt tax. Be that so. The salt transportation has largely increased the canal tolls; but because it has, is that any reason why the salt boiler should claim that part of the canal tolls? No sir. And on the other hand, because the canals may have increased the salt tax, by extending the trade, that is no reason why the salt tax should belong to the canals. I submit that this infinitesimal mode of financiering, by which these two resources assert claims on each other, which are capable neither of computation nor of collection, is absurd, and practically impossible. The State was entitled to the salt tax, for it was the tax of the State. The canals may have increased it, so the salt manufacturer may have increased the canal tolls, but neither has a just claim against the other. However much the transportation of salt has increased the tolls, those belong to the canals. And however much the sale of salt has been extended by the canals, the salt tax belongs to the State. Sir, good faith is a jewel, and I advise the canals not to act like a fraudulent bankrupt and repudiate the debt. Good faith is a jewel,—at any rate bad faith is vile any where. In 1817, when about to enter upon the construction of the canals, the committee of ways and means of the Assembly addressed themselves directly to Mr. Clinton, then chairman or president of the Board of Internal Improvements or Navigation, on the subject of a finance system for the canals. That gentleman gave them advice on this subject,—that this salt tax, this auction tax and the like, should be taken from the State, and given to the Canal fund, and that advice was adopted. He promised that in due season, and in a short period, the salt and auction tax should be restored to the State by the canal tolls. Sir, that great man is no more among us, but did he believe, when he made this engagement, that after all he predicted has taken place, there would be a human being on earth who would come forward and say that what he promised, should not be performed? No sir. Let no such thing be believed. You did promise to the people who assented to that law, the restitution of those funds, and this was distinctly one of the reasons why they went for that bill. Good faith is a jewel,—let us abide by our word: We said that these taxes should be restored—let it be done. In 1825, when the canals were completed, the gentleman from Dutchess (Mr. TALLMADGE) was one of the Fund Commissioners, as Lieut. Governor of the State and so was the present Secretary of War. These commissioners took up this very subject, discussed it, and then renewed in the strongest and most direct terms, the engagements of 1817. They promised the restoration of these taxes. In 1830, this subject came before the Canal Board, a computa-

The 3d column shows the annual deficiencies on a sinking fund of \$1,695,000, as proposed by Gov. Bouck.		
The 4th column shows the operation of the plan of the committee. In paying the debt with a sinking fund of \$1,500,000, the interest on the deficiencies would be, as shown at the foot of the first column, \$19,441,113 49		
Interest on deficiencies in Mr. Ayrault's plan,		10,366,479 01
do do Gov. Bouck's plan,		8,528,708 47
do do plan of committee,		1,563,014 32]

tion was then made of these arrearages, the claim of the State was distinctly asserted and maintained, that in fairness and fact the salt tax should be restored—and that the interest on it be compounded. They estimated the very items down to that time and compounded the interest on them at the rates now charged. In 1838, the ground was maintained in full force, and it was asserted that the general fund existed in the canal revenues,—it was the doctrine upon which the then administration continued to act. I wish then to know whether, while the people look to this as a source of income to free them from direct taxes, it is honorable or honest to contend that the salt tax or the auction tax ought not to be restored? I deny the moral right of this Convention to repudiate these promises upon which all men have relied. In my judgment, therefore, the Salt tax and the Auction tax, with the interest on them fairly compounded, is a just charge against the Canal. So with the land sales. I know that some of these lands were given by private donation to the canals, and to the amount of \$32,240, they ought to have been allowed in this account. But even this had been more than made up to the canals. The preliminary surveys of them were paid by the State—to the amount of \$42,957,—that is 10,717 more than the donations to the Canal fund. Lands have also been given by the State from the general fund to the Oswego canal, the sales of which brought \$213,087. So that the land sales are in fact charged at \$223,804 less than they ought to have been. As to the other items in this account, no honest man who is willing to pay for money borrowed in an emergency can hesitate about them. Credit for all the canals has paid has been given. The items charged will be found in Con. Doc. No. 47. p. 44, table G.

For the salt tax	\$2,055,458 06
" the auction tax	3,592,039 05
" the land sales	103,755 18
" the steam-boat tax	73,509 99
" money paid for lateral canals	1,386,498 58
" $\frac{1}{2}$ mill tax	280,563 58
	<hr/>
	\$7,491,824 74

If simple interest at 5 per cent be calculated, deducting from time to time the sums refunded by the canals, there will be added for interest 3,796,973 98

Making—due the State..... \$11,278,798 72
But if the same deductions be made and the interest be compounded at 5 cent yearly—there will be due to the State..... \$13,451,167 74

as the proper basis of the State annuity—and at 5 per cent on this sum the annuity would be—\$672,553 38—or in round numbers \$672,500.

The argument used by the Canal board in 1830, in favor of the items and the mode of computing interest, appears to me conclusive. If these taxes had not gone to the Canal fund, money must have been borrowed instead of them, and the rates of interest would have been calculated at $5\frac{1}{2}$ or 6 per cent quarterly, and that compounded quarterly in effect, and not as has been done here, compounded yearly at 5 per cent only. As the State paid quarterly interest to supply the deficit caused by the diversion of those revenues, it is right to compute the interest compounded yearly. It could not force a settlement; it could only compound interest for delay. I insist

that the account made out is fair and ought to be allowed. The same principle has been recognized in this matter from the beginning—in 1817, in 1825, in 1830, in 1835, and in 1838. Therefore in calculating the annuity due to the General Fund, the committee have concluded that in round numbers \$672,500, is about the just annuity against the canals.* Not that the canals should pay the State debt or the rail-road debt, but that they should pay their legitimate debt to the State. Pay that, and so far as the committee is concerned, all that is asked is done.

There is no reason why the claim should be reduced, but several why it might very justly be increased, both as to the items and the rate of interest on them. On long loans the State usually paid $5\frac{1}{2}$ per cent quarterly, which is nearly equal to 6 per cent yearly—and on short loans it usually paid 6 per cent half yearly. The diversion of these revenues to the canals, obliged the State to borrow equivalent sums at 6 per cent half yearly—and in no way could these monies have been borrowed for the canals at less than $5\frac{1}{2}$ per cent quarterly—in effect by new loans compounding the interest. These revenues too gave its best credit to the canal fund and enabled it to obtain credit on the most favorable terms. In many cases too, items fairly chargeable to the canals have been omitted. And I desire to call the attention of the committee to the fact that in the legislative efforts to increase the canal revenues by bounty, the General fund has been deprived, up to the 30th of September last, of \$377,180, collected for that fund by direct taxation; and that from time to time special appropriations for canal purposes, in the whole amounting to about \$130,281, have been paid by the General fund for the canals which have never been charged against them.

A few days since the gentleman from Ontario, (Mr. Worden,) supposed that the Legislature had always acted very properly, and I ask him whether, in the particular instance to which I am about to allude, there was any propriety in their conduct. Direct taxes were provided by act of 1842, for the General Fund, and the Legislature in 1843 found it more convenient to forage on the act of 1842, and get \$300,000 to pay canal contractors, than to levy it in any other way. While the General Fund was increasing, although it had direct taxes to aid it, the Legislature passed an act with one of those exquisitely moral titles, which so clearly express the intention of the act. It was described as a proposition "for improving the revenues of the State." Now as to the manner of improvement. While the General Fund debt was accumulating, while the treasury was being replenished by direct taxes, the Legislature directed a bounty to be paid on salt, coal, gypsum, and I believe empty barrels transported on the

* The section of the report of the standing committee which proposed this settlement is as follows:

§ 2. In liquidation of the State claims for advances to, and payments for, the canals, [\$672,500] six hundred and seventy two thousand and five hundred dollars of the revenues of the said canals shall, forever, in each fiscal year, and at that rate for a shorter period, commencing on the first day of June, one thousand eight hundred and forty-six, be paid into the Treasury for the use of the State; and if the payment of that sum, or any part thereof, shall be delayed by reason of the priority established in the preceding section, the amount so delayed, with quarterly interest thereon, at the then current rate, shall be so paid out of the said revenues as soon as can be done consistently with such priority.

canal, out of the General Fund, to contribute to which the people were every day paying direct taxes, and under that law the \$377,281 which the people had paid into the treasury by direct taxes, has gone as a bounty to the general transportation on the canal. If this did improve the revenues of the State, then I submit that this money ought to be charged to the canals, as aid given by direct taxation to them. The purport of the act was to take it out of the salt tax, but in effect, in substance, it was taken out of direct taxes. If all that was fair and honest, I say nothing against it except that it is fair to charge it against the Canal Fund, and just as fair as any of the other canal charges, for it did increase the canal revenues. The State lost nothing if it goes to pay the debt, perhaps it makes now part of the supposed surplus, but I have not been able, with the most liberal views, to believe such a course to be consistent with good morals, either public or private.

Mr. Worden—When was that law passed?

Mr. Hoffman—In 1843. I believe the gentleman had no part in that law. I do not know that he ever voted for any act "to improve the revenues of the State." I believe he has for several to increase the debt. But I have, on this occasion, hoped that he would vote with me to try and get the debt paid.

I have no doubt that certainly half a million and more might be justly charged. If these items were taken into the account, and the same rate of interest which the State has paid, and the canals must have paid, if the money had been borrowed directly from them were calculated, the basis of the annuity would have been enlarged a million or more. I do not desire to increase the amount; but there are strong reasons why it should not be diminished.

I do not stop to inquire whether the canals can pay these sums or not; they are just debts, and should be paid if possible. If they are deferred, then, it is provided in the second section that the canals shall pay quarterly interests at the then current rates. I suppose that it will be said that the canals will not be able to pay these sums of money. Does any gentleman suppose that any larger expenditure upon them will be required than what the committee have authorized if they cannot pay? If they will not pay what is already chargeable upon them, then I apprehend no further expenditure will be made upon them than is necessary to keep them in a useful condition. But if they can pay, I wish to know whether you will leave them not to pay the State, and say to the Legislature, you shall tax the constituent body to pay the debt and State expenses, because we will not take from the canals what is due from them to the State? For in one way or the other the State debts and the State current expenses must be met. If the canals should unfortunately prove insufficient to meet these charges, they will be deferred, and when the tolls are sufficient to pay them they will be paid to the State. That is the provision of the second section, and if either of those sinking funds prove insufficient, then the taxing power of the State is to be brought into requisition to make them sufficient, and any such sum so advanced is to be reimbursed out of the canal tolls, if ever these are adequate.

It will be seen that so far I have not argued the question upon the ground that the canals can do this, but solely on the ground that it is their duty to pay. This enables me to close all the observations I have felt it my duty to make on this part of the subject.

I now come to the consideration of the 3d section of this plan, and it involves very serious questions, and on which perhaps I shall be obliged to occupy considerable time.

Mr. Hoffman here read the following:

SEC. 3. The surplus of the revenues of the canals, after paying the said expenses of the canals and the sums appropriated by the two preceding sections, shall in each fiscal year be applied to the improvement of the Erie canal, in such manner as may be directed by law, until such surplus shall amount in the aggregate to the

sum of [\$2,500,000] two millions and five hundred thousand dollars.

The charges now proposed to be fixed on the canal revenues, say,
 For ordinary expenses, \$600,000
 For the canal debt, 1,500,000
 For the State annuity in liquidation of past advances, 672,500

Making together a yearly charge of \$2,772,500

Will there be any surplus of canal revenues? This raises the question as to what are and what have been the canal revenues, and what will they probably be for a course of years to come—what capacity has the canals, and how far this sum of \$2,500,000 may be rendered necessary to add to the capacity of the canals. I could write a book upon such a subject, and find a difficulty to compress my remarks upon it. I ought, before I proceed, to call attention to the difficulty which lies in the matter, and which to some seems not to have occurred with reference to the several laws authorizing the State debt. I find that in general the canal creditors have had both general and specific liens upon the canal fund. All of them, so far as I can recollect, and I believe every one of them, unless it may be for the last \$300,000 debt, are entitled to a priority in this fund over the State or any other creditor. This is a reason why none of these joint stock projects for paying off this debt can be carried into effect. You must create two sinking funds, and give the canal debt priority, and take the residue to pay the State the claim of which must be regarded as subordinate. In drawing up estimates of the joint operation of any one of these propositions, the committee did not mean to have it supposed that any such proposition could be adopted, and when I come to that part of the report relating to the State General Fund debt, I shall have something more to say in relation to the several and joint operation of the different sums proposed as a means of payment. This question as to the future revenues of the canals, like all others that lay in conjecture, must be determined upon principles of rational probability. Different minds will come to different results in relation to it. I have said in view of all surrounding circumstances, that I believe that the canal tolls will continue their usual increase for the next eight or ten years, and that in that period they will probably begin to culminate, and require reduction in the rates to compete for business, and the largest aggregate revenue. The question then arises, will there be any surplus? The revenue of 1846, ascertained to the 22d of July, is \$2,550,000 and a fraction, and estimating the remainder of the year according to what was received in 1845, the accruing revenues should be \$2,757,178.08. According to the scheme of the committee, there will be wanted for expenses on the canals, \$600,000; for the canal debt, \$1,500,000, and for the State annuity, \$672,500. This will make an aggregate of \$2,772,500, and it would be \$14,000 more than the income for the present year by estimate. But it is now ascertained that these revenues for this fiscal year will exceed \$2,775,000. They will exceed the proposed charges on the canals by some 2,000 dollars. I shall therefore view them as coming to one and the same result. The wants as proposed by the committee, and the actual revenue would be about the same, or at any rate would not differ to an amount worth naming, the tolls, perhaps, being a little in excess. I have tables of the past increase of the canal revenues. The actual tolls in each year are given in Con. Doc. No. 47, p. 48, table I, down to 1845. The tolls in 1836 were unusually high, inasmuch that they fell off considerably in succeeding years, yet comparing a series of ten years with the year 1836, and taking the actual tolls as they came in, to 1845 inclusive, and averaging them so as to suppose an equal sum of increase for each year over that of 1836, and the common difference in an arithmetical series, would be \$48,274 81-100 over the tolls of 1836. It is a very low, and the lowest mode of estimating these

future surpluses. There is another mode of estimating them, and that is as the tolls have for the last ten years increased 3.02-100ths per cent on those of 1836; to assume that they will in the ten years to come, increase at the same rate on those of 1846. The basis of these modes is exhibited in the table of the actual canal revenues from 1836 to 1845, both inclusive, which I now read:

ACTUAL CANAL REVENUES.

Year.	Tolls, &c.	Actual differences.	
		Increase.	Decrease.
1836	1,598,455 48	.....	.....
1837	1,325,609 77	.....	272,845 71
1838	1,465,275 16	139,665 39	.....
1839	1,655,783 56	190,508 40	.....
1840	1,606,827 28	.....	48,956 28
1841	1,989,686 71	382,859 43	.....
1842	1,797,463 80	.....	192,222 91
1843	1,953,829 08	156,365 28	.....
1844	2,348,457 34	434,628 26	.....
1845	2,375,533 43	.....	12,923 91
	18,156,921 61	1,304,026 76	526,948 81

CONTINUATION OF TABLE.

Year.	Common Diff.	Arithmetical series of tolls.
1836	48,274,818	1,598,455.48-0
1837	1,646,730.29-8
1838	1,695,005.11-6
1839	1,743,279.93-4
1840	1,791,554.75-2
1841	1,839,829.57-0
1842	1,888,104.38-8
1843	1,936,379.20-6
1844	1,984,654.02-4
1845	2,032,928.84-2
		18,156,921.61-0

In the series of ten years the increase is equal to 3 02-100ths per cent for each year on the tolls of 1836, the first year of the series.

On tolls of 1836 to 1845, 10 years, common difference \$48,274,818. Rate per cent 3 02-100ths.

I give you now the result of these two modes of computation, and of another beginning with the lowest. Commencing a series of ten years immediately after the present fiscal year, and the common difference would be \$48,271 81 cents at that rate. Continuing it for five years, the total revenue from 1847 to 1851 inclusive, would be \$14,510,012.67. Deduct from this the amounts the committee have stated as the charges on the canals, that is five times \$2,772,500, equal to \$13,862,500, and it would leave for these five years the small surplus of \$647,512.67. If the same mode of computation be continued until 1856, that is, for ten years, the surplus would amount in these ten years to \$2,501,895 and 76 cents. Or more accurately, taking the canal revenues of 1846 as equal to the charges on them, and they will to some small amount exceed the charges, and converting the common difference, \$48,271.81, into a series in arithmetical progression for ten terms or years, the first term would be

The last in 10th term, ten times that sum, 482,718 10

The sum of the two extremes,..... \$530,989 91
Multiplied by half the number of terms,.. 5

Surplus in ten years,..... \$2,654,949 55

Mr. Worden—Are these results the same as given by the Comptroller?

Mr. Hoffman—I believe not. The call on the Comptroller prescribed the rule by which he should estimate. He computes by the same common difference, but he was directed to commence with and include 1846, which I exclude. In the two first results I have given, I estimate on the revenues of 1846, as ascertained in part by estimate, making them only \$2,757,178.08, when in fact they will amount to \$2,775,000; and instead of falling short, will a little exceed the proposed charges on them. In the mode I last gave, estimating merely by the common difference, I avoid this error, because this mode assumes that the tolls of 1846 were equal to the proposed charges.

If we assume the second mode of estimating these surpluses, that is, that the Revenues will for a series of 10 years, commencing with those of 1846—increase 3 02-100 per cent—then the common difference taking the tolls of 1846 as above stated, in part from estimate \$2,757,178.08, would be \$83,266.78—but on the actual tolls as now ascertained, it would be somewhat higher. Disregarding this error as immaterial, and the surpluses would be—

For 5 years from 1847 to 1851, \$1,248,401
For 10 years from 1847 to 1856, 5,579,672

This mode of estimating the future surpluses appears to me the most probable, and produces results most in accordance with past experience. It supposes the revenues of 1846 equal to the proposed charges on the canals, when in fact they exceed these charges, and takes a common difference from the tolls of 1846, ascertained to June and estimated from that time, which it is now ascertained, gives less than they actually are as above stated. But this mode of estimate supposes that we can for ten years keep up our present rates of toll, and yet secure our usual increase of business. In the estimate of the committee of Ways and Means in the Assembly of 1833, of which Mr. RUGGLES was chairman, Assembly Doc. No. 242—it is assumed that these revenues would become stationary, and not increase after 1849, when they would reach \$3,000,000 after deducting expenses. The bankruptcy at the south-west, the civil dissensions in the Canadas to which I have alluded, the general embarrassment which has injuriously affected the construction of Railroads, have delayed to a considerable extent the then expected competition with our canals, and I incline to the opinion, that we shall not reach this culminating point in some 8 or 10 years, though I think the rate of increase was taken on somewhat too high an expenditure. If we take from the committee's proposed charges on the canals the \$600,000 for ordinary repairs, we may adopt as a third mode of estimating our probable surpluses, the net revenues stated by the committee of 1833, and they would give—

For 5 years from 1847 to 1851, \$3,237,500
And for 10 years from 1847 to 1856, 7,375,000

By a rough general average of these various modes of estimate, it seems entirely probable that these surpluses in 6 or 7 years will exceed the \$2,500,000 proposed in the 3d section to be exclusively appropriated to the improvement of the Erie Canal; and that it is reasonable to suppose that they will exceed five millions in the next ten years. Beyond that period, I am not disposed to indulge in the luxury of estimating surpluses.

In any event it seems right to say that there will be canal surpluses in 3, 6 or 7 years, equal to the \$2,500,000, contained in the 3rd section. From past experience and under existing and probable circumstances it can scarcely be doubted and cannot be disputed. Well suppose there is not, then there can be no increase of canal business, because the present revenue runs a little beyond the wants of the canals as the committee have fixed them, in the sums for ordinary repairs, and to pay the canal debt, and the annuity to

the State. They have fixed the sum a little below the canal revenues, and if there is any increase in the canal transportation or business, it must bring with it a surplus of tolls. Either there will be no increase of business and no occasion for canal improvements, or the increase of canal transportation must bring these surpluses as fast and as early as they can possibly be needed. It is not possible to escape from this conclusion. The canals now perform their whole duty and carry all that is presented, and could well transport much more. If there be no increase in business all will be done in the best manner, and if the transportation shall increase as I believe it will for some years to come—that increase must bring with it all the surpluses that can be required.

Here Mr. HOFFMAN gave way to a motion to rise and report progress—

Afternoon Session—Mr. HOFFMAN resumed—

The question to which I will now call the attention of the committee is, has the canal in its present condition capacity to perform its duties well in carrying on the navigation? If the surplus, I mentioned this morning of \$2,500,000 shall accrue from the business of the canals, will it so improve the canals that they may perform their whole duties to the public? I will endeavor to answer these questions, for I have statements here which I cannot very well read, yet I shall be obliged to ask the attention of the committee while I attempt in some way or other to read or explain them. In 1834 and 1835, there was a very large crowd on the canal, the lockages rose to a considerable number, and the navigators were forced to increase the tonnage of the boats, then small, and averaging some 35 or 36 tons. Perhaps now and then there was a boat carrying 40 tons. The appearances there were that there was to be a very large and rapid increase of this trade. I am not certain what the depth of water in the canal at that time was, but from circumstances which then came to my knowledge, and from facts since ascertained and attested upon oath, I have been inclined to believe that perhaps at that time the water in the canal was scarcely over three feet, it may have been more, but I am rather inclined to the opinion that it was a very little over that. I do not know that I can state with perfect precision what was the swiftest lockage performed, but from recollection, I can state that 7, 8 and 10 minutes, prior to the spring of 1835, was the ordinary working time of the locks. I believe there were some locks that could not operate with the same facility, and the commissioners appear to have been of the same opinion, and in the spring of 1835, ordered new paddle gates to the locks where the crowd was the greatest, in order to increase the facility of discharging and receiving. How that worked I am not able to say, but I believe it increased most materially the capacity of the canal; and if the commissioners in 1834, and 1835, had known the shallow state of the water, they would hardly have come to the conclusion which they did, that double locks were indispensable.

But they did come to the conclusion, and in their report recommend as the probable extent of the enlargement, 5 feet by 50 and 6 feet by 60. The enlargement—of 7 feet by 70—was then a thing unheard of. It owed its birth to a convention at Rochester, got up I believe the succeeding year, and where we have lately had a convention on enlarging and improving navigation. In all this matter there was a vast deal of theory and something of fact, and I have done the utmost in my power, since I have been here, and before, to try and get for this convention the facts so that gentlemen might judge in some degree for themselves. I have a table here of the boats which navigate the canals, and I find that a well built boat carrying 80 tons or more, in point of fact draws but 3 feet 4 inches of water. An ill form-

ed boat of the same burden draws a little more, and the heaviest of all these boats I find is one to which has been given the name of "Bull-head." This comes up to 3 feet 8 or 9 inches. These boats make their trips with such cargoes, they come to the weigh-locks. they are weighed there, and therefore the fact that they carry such cargoes is unquestionable. It may be said that these boats are ill-formed, and I do not know but they are. The doctrine of easiest traction in navigation has been in practice disregarded; and I believe I may say that the boatmen and the carrier hold it in sovereign contempt. I am not sure but they are right, because in any effort to get at it, the boat will be so far from the towing path as to render the traction indirect and inconvenient. At any rate, they hold in sovereign contempt all these theories, and continue to make their 80 ton boats and carry their 80 ton cargoes. I must refer to one of these tables, bringing into discussion at this point what ought to have been thrown in somewhere else, that is the moderate increase of the lockages, the increase in the tonnage of the boats, and the vast increase of the tonnage transported.

Mr. Hoffman here referred to and commented upon the following table.

Navigation year or season on the Erie Canal.

Year.	Total of lockages at Alexander's lock.	Lockages at Alexander's lock being as one half the whole	Tonnage arriving at tide water from the Erie canal.	Average (down) cargoes of the boats.
1835	25,798	12,899	497,839	38.6
1836	25,516	12,758	419,125	32.8
1837	21,055	10,527	387,506	36.8
1838	25,962	12,981	419,249	32.3
1839	24,234	12,117	386,267	31.8
1840	26,987	13,493	467,315	34.6
1841	30,320	15,160	532,520	35
1842	22,869	11,434	480,149	42
1843	23,184	11,592	635,345	54.8
1844	28,219	14,109	799,816	56.6
1845	30,452	15,226	959,590	63

From this table it is seen that while the lockages have increased from 26,798 in 1835, to 30,452 in 1845, the tonnage arriving at tide water has increased from 497,839 tons, in 1835 to 959,590 tons in 1845. It is also seen that the average cargoes of the boats in 1835 was 38.6 tons—in 1839 that average was reduced to 31.8 tons, and had risen in 1845 to 63 tons, or more than doubled. The average cargoes of the boats for 1846 will probably be still greater, as almost all the new boats exceed the highest average stated in this table.

The canal commissioners in 1841, and again in 1842, stated as a matter of demonstration, that if 225,000 tons should be added to the down tonnage of 1840—which was 467,315 tons, the Erie canal would then have reached its maximum capacity—they were confident that its greatest capacity would not exceed 692,315 tons.

They supposed and said that when the canals were doing this amount of transportation, they would have reached their maximum. They were fated to experience the same overthrow in this matter of conjecture which their predecessors, of whom I was one, had experienced on the subject. In 1845 the tonnage was 959,590. It had passed the maximum which the

canal commissioners had fixed, not once, but more than twice. This is the way in which the canal performed in point of fact. It seems to have had a sort of flexibility to overthrow calculations. It realizes its own results and brings out, as time always does, truths on which it is safest to rely. The boatman, acting in defiance of the rule of easiest traction, contrived greatly to increase his cargo, as appears by the return from the Weigh locks.

The table which I hold in my hand, shows the number of cargoes, exceeding 70 tons, weighed at Rochester and Syracuse, and exceeding 65 tons weighed at Utica, in several months of the present year. It may be assumed that these are down cargoes, for nearly all the cargoes weighed at these locks are such.

Cargoes weighed in 1846, at the several Weigh Locks:—

	Over 70 tons. ROCHESTER Weigh-lock.	Over 70 tons. SYRACUSE Weigh-lock.	Over 60 tons. UTICA Weigh-lock.
April, (2 weeks)	23	59	40
May, "	97	138	120
June, "	169	147	91
July, "	136	125	66
August, "	129	122	93
	559	601	410

I now beg leave to call the attention of the Convention to another statement illustrating the increase of these cargoes, by showing the continued increase of the tonnage of the boats. Formerly, all boats were entered in the register, but what became of them afterwards was never known. In 1844, an order was made to have the officers go along the line of the canal, and take down the name of the boats, and of the tonnage of each, and transmit them to the office here. As all the boats were then tied up by the winter, the truth as to the number of boats and their tonnage was obtained. The number of boats according to that account, in 1843, was 2126, and their tonnage and the tonnage of the boats built in each year since, is given in the table which I will now read.

Mr. HOFFMAN here read and commented on the following table:

TONNAGE OF NEW BOATS.—F.

Tonnage.	Boats, let. Jan. 1844.	Built and re- gistered in 1844.	Built and re- gistered in 1846.	Built and re- gistered in 1846.
180				1*
100			1	
90	2	1	4	1
85	1		1	3
80	3	9	13	33
75	13	38	60	118
70	162	124	107	97
65	264	94	54	20
60	444	71	33	7
55	325	15	4	1
50	464	14	5	3
45	166	1	2	
40	158			
35	53	1	1	
30	40	11	1	
25	16	3		2
20	8		3	2
15	3	1		
10	4		1	
5			4	
2			3	
	2,126	378	297	268
Av. Tonnage	55	64	67	72

* Note.—The boat of 180 tons, built in 1846, is 95 feet long, 16 feet 2 inches in width, draws 3½ feet water when

With this increase in the tonnage and cargoes of the boats, has come a corresponding reduction in the prices of freights exclusive of tolls. The up freights in 1830, '31 and '32, gave to the carrier after he had paid the tolls, some 45 cents on the hundred weight; and in 1845 and '46 only 9 cents. I do not know if that result is possible, but it is actual—it cannot be hed, for the thing is done. The down freight is now so heavy and so bulky, and the up freight so light, being scarcely sufficient for useful ballast, and most easy navigation of the boat, that the carrier gets very little beyond the tolls, for the up freight. In 1830, '31 and '32, the carrier after paying the tolls on a barrel of flour, reserved to himself, 37 cents; in 1846, but 22 cents. So that while this controversy about reducing the cost of transportation by the enlargement of the canal has been going on, a reduction of much more than fifty per cent. on the carrier's share of the charge for transportation has, taking the up and down business together, been in general, actually effected. The carrier has, with such a canal as you have given him, reduced his compensation more than one half.

The facts now brought to the attention of the committee, prove strongly, that in the increase in the tonnage of the boat and the reduction in the freight which the carrier after paying tolls, can retain for his use, we have without the enlargement, realized about all the benefits promised by that enlargement. It may be supposed that the canal has been deepened or enlarged by repairs, but there is no foundation for this supposition.—Since the Convention has been in session, by order of the Canal Board, the water in the canal on the upper and lower mitre-sill of every lock, and at about every four rods of the space intermediate the locks, and on both sides of the boat, has been measured—the measurement sworn to, and returned to the Canal Department, with the ascertained time to fill and discharge the lock and pass the boat,—where any gentleman may examine them. From these returns, it appears that at points of considerable extent, there is not full four feet of water either from Albany to Utica, or from Syracuse to Buffalo. Some of the boats, however, draw 3 ft. 8 inches, and one 3 feet 9 inches—and I infer from this, that the canal when very full of water, affords this draft at all points—but the admeasurement of the water shows that it does not afford the full four feet promised in the construction.—On the mitre sills there is usually an excess of five or seven inches over the four feet, and I suppose these mitre sills, especially at the heads of the locks, indicate more truly than anything else, the true original bottom water line of the canal. The admeasurements, however, show that in the distance between locks, the bottom of the canal is frequently, and for long spaces, some inches above the mitre sills.

[Here Mr. BOUCK interrupted Mr. HOFFMAN by saying, that these sills were usually depressed some six or eight inches below the bottom water line of the canal.]

Mr. HOFFMAN proceeded. I have often doubted whether, although the state paid for a four foot canal—the contractors ever excavated it to that depth. The returns to which I have alluded, create doubts on the point—and if these

freighted with 120 tons, but would require 4½ feet to carry 180 tons—runs from Buffalo to Rochester, and moves from 2½ to three miles an hour.

sills were depressed five or seven inches, I should conclude that the canal was not originally excavated to much more than three feet. Aside from this question, however, these returns prove that the water for navigation does not exceed, if it equals, four feet in depth. The increase of the tonnage of the boat, and the carrier's reduction of his share of the freight, has been effected with a canal of not exceeding four feet; at points, it is less.

These returns also show that with the best paddle gates and apparatus, a lock may be filled in 40 seconds, and discharged in the like short time. With such a lock, a boat may pass in three minutes with practical ease. Yet some of the locks operate much slower. In truth, if at the most crowded points on the canal, (for which as is seen by the lockages, there is and can be no difficulty,) there should be given to every lock the same power and facility now possessed by some, the capacity of the canal would be largely increased, say one-third, to pass boats, to say nothing of the great increase of its capacity that must result from fairly cleaning it out, and affording 4 ft. 5 inches of water through the whole distance, being less than the average on the mitre sills. These two changes alone, which can cost almost nothing, would increase the capacity of the canal with only its old locks one-half, and make it answer all our purposes until surpluses can be earned, as I have endeavored to show they will be, to improve it.

What then can these surpluses do when obtained to improve the Erie canal? They will be sufficient to secure double locks, and one of them, a line of enlarged locks to Syracuse. From Syracuse to Lockport, they will either extend the old locks, to make them 100 feet in the chamber, or erect enlarged locks. They will complete the double enlarged locks at Lockport, and extend them to Buffalo. In addition to all this, they will raise and strengthen the banks from Albany to Buffalo, so as to secure by reasonable cleaning, full five feet of water—and thus with the improved facility of the locks, enlarge the boats to 120 tons, and triple the capacity of the Erie canal. The expense of this work to Syracuse, has been closely estimated. For the residue of the distance experience furnishes a safe guide. To obtain five feet of water and locks of 100 feet in the chamber, the engineer's estimate would reach about \$1,600,000,—my own about \$1,900,000, and certain it is that the \$2,500,000 proposed would complete it in the best manner. The \$300,000 to reach Syracuse will soon be realized. To my mind, it is entirely certain, that we can, in this manner, without deferring the payment of our debt in due season, and before it can be needed—give the Erie canal capacity at once, to reduce its tolls if need shall be, and yet earn the surpluses to complete its construction, and that of any work the State may desire.

Sir, pain obliges me to desire to bring these remarks to a close. But in the schemes proposed for the arrangement of our debts, I cannot fail to perceive a strong wish to preserve the old debtor system, under the new and milder pretence of delaying payment, in order to get money to spend. I must therefore call attention to the great injuries we have sustained from this debtor system. We cannot now very well estimate the cost of completing the works begun. Judging from the estimates and the reports of those who had them in charge

in 1842, the cost would equal \$15,000,000. That was the sum asked by the commissioners of the canal fund, and canal commissioners, and recommended by the Governor. The estimate then for the Black River called for some \$800,000, which with land damages, extras and contingences, would probably swell to one million. About \$1,800,000 appeared then to be required for the Genesee Valley, which with the usual additions, would probably reach \$2,000,000, unless the work should be executed bad enough, as on the Chemung, to reduce the cost; and yet these canals would not probably pay their own expenses in many years. The Erie enlargement seemed then to require some \$12,000,000 to complete it, although at some expensive points, the plan to be pursued was not settled—might be changed, and made more expensive. Lower estimates may have since been made, to get them again under way, but I rely more on the estimates of those who supposed they might be required to complete them, than on those who seek their resumption. When we engaged in these works we had only a small debt, some four or four and a half millions beyond funds on hand; yet in five years, from 1838 to 1842, we exhausted and depressed our credit, brought on numerous and extensive bank failures, and rolled up a debt of more than \$28,000,000, and sunk ourselves exhausted, and suspended these works. We have by four years' effort, somewhat reduced our debt—but that debt is still some \$24,000,000, quarterly demanding the payment of interest, and rapidly becoming due in its millions of principal. Under the most favorable circumstances the debtor system was fully tried and failed us. The failure drove from power its most ardent friends—and I ask does any Whig desire to repeat it?—does any Democrat concerned in the effort to pay it, desire to repeat it?—does any of the new parties, Natives or Abolitionists, desire to repeat a system so destructive to its friends and the country? Is there no other road to defeat, ruin and political disgrace?

We have had very bitter experience of the evils of this poor, impoverishing debtor system. Let us see the great advantages we might have secured by a cash system. The Erie and Champlain canals cost us, including the care of them, to completion \$8,401,394.12, and were eight years in construction, from 1817 to 1825. When we began them we had a general fund, which is now entirely expended, and while they were in construction, the salt tax, the auction tax, the land sales, and some canal tolls were poured into the canal fund now so deeply indebted. During those eight years the canal fund received:

From the salt tax,	\$557,409 09
“ Auction tax,	1,351,349 57
“ Steamboat tax,	73,409 99
“ Canal tolls,	977,339 32
“ Land sales,	2,371 30
Add the general fund now gone,	2,740,001 51

Making together, \$5,601,880 78 which if deducted from the cost of the canals, as stated before, would leave to be supplied by taxes \$2,799,513.34. So that a direct tax of about \$350,000 for each of the eight years, these canals were in construction, would have enabled the State to construct them without one dollar of debt. Since these two canals were completed, after paying their own expenses, their net revenues, as is seen

by Convention document No. 47—H, has been down to 1845, \$18,964,796 53

The whole cost of constructing all the finished lateral canals, was only 3,496,839 66

Leaving without interest \$15,567,850 87 for the construction of the Black River canal, the Genesee Valley, and the Erie enlargement without a canal debt; and yet in the receipt of our full and growing canal revenues. To this we should add \$3,749,954.42 cents for the salt and auction tax, and land sales, that have been sunk in the canal fund since 1825. With the experience of all we have suffered from, and the great advantages we have lost, will we still, if not in an open, yet disguised form, cling to this fatal debtor system?—Will we permit our debts to hang about us—increase by accident, and by interest, and make our debt and the taxes, direct or indirect, to meet it, eternal? The action, not the words of this Convention, shall answer. Be that what it may, your people will answer no! Eternal debt and taxes are not ours—and cannot be fastened on us. The government have not the power to do it.

The annuity in liquidation of the State claim for advances to the canals, is fixed by the committee at \$672,500. Of this sum \$500,000 a year is proposed to be taken as a sinking fund to pay the General fund and insolvent Rail-road debt, and such part of the contingent debt as may fall on the treasury. It will do it in some nineteen or twenty years, as I have before showed. I had designed to say something more of the origin of this debt, and the character of the legislation that caused it, but I must forbear. If we deduct this last sinking fund from the State annuity, we shall have remaining \$172,500 a year to apply to State current expenses. All beyond this small income for some twenty years, must be supplied by taxes, direct or indirect.

What then will these current State expenses be, and what taxation will be necessary? As to the first, the past is our safest guide. These expenses, exclusive of interest on the General fund debt, will be found in Convention doc. No. 47, p. 18, in each year from 1817 to 1845. Looking at the table, it will be seen that they have maintained a steady increase and most rapidly for the last ten years.—From 1836 to 1845 they amount to more than \$7,000,000 in the aggregate, making an average of more than \$700,000 a year. A part of these expenses are for matters which bring into the treasury or as it is called the General fund, as much as they take out—such as advances for non resident

taxes replaced to the treasury by tax sales. Items of this kind may reduce these expenses some \$50,000 or \$100,000 a year. Beyond this I see no reason to look for reduction in our State expenses.—We will have geological surveys or something quite as expensive. We have asylums and state prisons, and must build more. Their construction is their least cost. The great expense is to maintain them—and this class, called extraordinary expenses, will increase with our population. Under all circumstances, it is not probable that our State current expenses, for each of the ten years to come, will be less than \$609,000—and after that period it is probable they will largely exceed that sum.

The State expenses then will be.....	\$600,000
To meet them we have residue	
of state annuity as before,.....	\$172,500
Auction and salt tax, say.....	100,000
	272,500

Unprovided for, \$327,500.

To meet these expenses unprovided for, we must retain in force—

The half-mill direct tax.....	\$280,000
The one-tenth mill direct tax.....	66,000
	\$346,000

and any increase of our current expenses will impose new taxes until 1865, when the extinguishment of the General fund debt will leave the whole annuity to the State, \$672,500, for current expenses. But in that long period it is reasonable to suppose that these expenses will pass some \$300,000 or \$400,000 beyond that annuity, and make direct taxes to that amount necessary. Such, sir, it is probable, will be the result of our debtor system for internal improvements. It promised exemption from taxes and with it the endowment of schools and charities. It has already made us feel these taxes, and will leave us long to their mercy. In this view of the subject, it is scarcely necessary for me here to repeat that what we do not take from the canal revenues to pay these, must be supplied by taxes. Although this is no reason for enlarging the State claims for advances for the canals beyond their just amount, and a fair rate and mode of estimating the interest—it is a strong ground for asserting and maintaining this claim to its full and fair extent.

Sir, other matters in the report of the committee deserve some explanation, and I had designed now to make them, but I am not able. I will endeavor, however, to do so when the several sections shall be considered. In the main, however, they will sufficiently explain themselves.

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